



REDACTED PUBLIC VERSION

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TRAFFIC COMMISSIONER FOR SCOTLAND

PUBLIC PASSENGER VEHICLES ACT 1981

UNITED COACHES LTD – PM1074566

PUBLIC INQUIRY HELD AT EDINBURGH ON 10 OCTOBER 2017, 4 JULY and 13 AUGUST 2018

DECISION OF THE TRAFFIC COMMISSIONER

Background

1. United Coaches Ltd (“United”) holds a standard international public service vehicle operator licence, with current authorisation for 5 vehicles. Arising from some concerns I had regarding entity and control of the business; an adverse Vehicle Examiner report; the operation of local registered services; and a variation application to increase the authorisation; I directed that the operator be called to Public Inquiry.
2. The Public Inquiry initially convened on 10 October 2017 when those present were Mrs Helen McGroarty, director; Mr James Reilly, transport manager; represented by Ms L Hadzik, Solicitor. As I wished to familiarise myself with the operating conditions, I adjourned that Inquiry to allow me to visit the localities in which the operator had a presence. The Inquiry reconvened on 4 July 2018 when those present were Mrs McGroarty, director, represented by Mr James Backhouse, Solicitor; and Ms H Calltain BUS (Bus Users Scotland). That Inquiry was adjourned to allow Mr Backhouse and his client to provide me with information to assist my understanding of entity and control of the business. As I put it to Mr Backhouse, there was industry talk that Mrs McGroarty was either a front or being used by others, notably Mr Stuart Chapman. The Public Inquiry reconvened for the final time on 13 August 2018. This was a somewhat discursive Inquiry between myself and Mr Backhouse with evidence from Mrs McGroarty. It was a useful way of proceeding. The Inquiry was recorded in usual way. This decision reflects the evidence material to my decision.

Variation application

3. The operator’s authorisation is for 5 vehicles. On 26 May 2017, the operator applied to increase the authorisation to 9 vehicles. That variation was considered at this Inquiry.

The Inquiry brief, productions and other evidence

4. The initial Inquiry brief extended to 237 pages; supplemented by an addendum, dated 12 June 2018, and paperwork relating to local registered service applications.
5. For the operator, in addition to documentation derived from the operator which was in the Inquiry brief and addendum, the operator sent a video showing the parking capacity at the operating centre and other recorded evidence of the operational environment.
6. The undernoted documentation was produced.

Productions

To whom it may concern letter dated 28 August 2016 from S Chapman relative to lease of the workshop yard at 108 High Street, Motherwell, ML1 5JH.

Letter 30 August 2016 Mrs McGroarty to Leeds re change of director and correspondence address.

Letter 21 September 2016 Mrs McGroarty to Leeds.

Fleet List showing 6 Optare Solos.

Invoice 8/10/16 Parnell Coaches to United for sale of Optare GX55 LNF.

Invoice 30/10/16 Recovery for You Ltd to United for sale of Optares YJ05 JXB and YJ05 JXC.

Invoice 8/9/16 Drew Wilson Coach Sales to United for sale of YJ57 XXB.

Invoice 26/9/16 Drew Wilton to United for sale of Optare KX04 HRJ.

Invoice 26/9/16 Drew Wilson to United for KX54 NLC.

Invoice 10/10/16 Drew Wilson to United for KX04 HRL.

Letter, dated 10 August 2018, from Letham Cache, Chartered Accountants, stating United pays monthly payments of **[REDACTED]** being rental for garage premises.

Companies House extracts showing transfer of shares S Bruce → H McGroarty and change of registered office.

Letter, dated 22 July 2016, from Moore Macdonald Solicitors to Mrs McGroarty, with draft Share Purchase Agreement.

Share Purchase Agreement, dated 4 and 5 August 2016, vendor Scott Bruce of Colliertree Road, Airdrie (Disclosure letter not produced).

Employment Contract United and Stuart Chapman, dated 9 October 2017.

Letter 8 August 2018 from Letham Cache Accounting confirming that they have acted as tax advisers and accountants for United and have only dealt with Mrs McGroarty since 2017.

Employee Payroll print from Letham Cache (including name of S. Chapman) showing gross and net pay, NIC and deductions and submission to HMRC.

[REDACTED].

Transport manager CPC bookings for Mrs McGroarty – examinations in March 2016 (failed).

GTG booking form for CPC course and exam 27 November 2017.

Photograph of post box at 108 High Street.

Letter, dated 6 October 2017, from Stuart Chapman confirming house address 106-108 and assignation of 108 to garage workshop.

Day balances period 1/7/17 – 29/9/17.

Copy of Facebook posts.

Photo of vehicle YJ57 XXB, with graffiti on windscreen taken on first day of operating.

Mr Stuart Chapman

7. My Office's interest in Mr Stuart Chapman was set out in the Inquiry brief. By written decision, dated 17 August 2011, in the conjoined case of Stuart Chapman trading as Stepend Coaches and Stepend Coaches Ltd (directors Stuart Chapman and Isobel Chapman), I revoked both licences with immediate effect. At paragraph 21, I wrote

“The sole trader licence held by Mr. Stuart Chapman is revoked on grounds of lack of financial standing and the material change brought about by his sequestration. As from 19 May 2011, he had no right to operate under the licence, given his sequestration, and his Trustee has not sought to operate in his place. I can also consider orders for loss of repute, professional competence, breach of the licence undertakings and disqualification. However, these types of orders are not orders which I ever care to make in the absence of an operator. It appears to me that I can reserve my position in respect of these matters until such time as Mr. Chapman indicates that he is well and able to come to a Public Inquiry. Why I feel I can do this is because Mr. Stuart Chapman will not be able to get any other operator licence or be involved in any operator licence until these matters are resolved with me. If his circumstances are such that he will never operate again then these reserved issues become academic and can fade into history. However, should he decide that he wishes to re-enter operating in whatever capacity, these matters will all have to be considered such that I have his version of events”.

Address

8. Mr Chapman's house is at 106 High Street, Motherwell. The yard has been given the number 108 High Street which is the address Mrs McGroarty has been using for the licence. A separate mailbox with number 108 on it is attached (photograph available).
9. A letter sent by my Office to Mrs McGroarty at 108 High Street, intimating the date and time for the 13 August hearing was returned by Royal Mail as “not called for”. Mrs McGroarty

was unaware of any card left by the postman. She agreed to her home address in Airdrie becoming the correspondence address for the licence.

Entity and history

10. In evidence at this Inquiry in relation to how she came to purchase United; to rent Mr Chapman's yard at 108 High Street; and to employ Mr Chapman, Mrs McGroarty explained to me that she had a static snack bar business in an industrial estate. Through that she came to know persons who had coach and bus businesses or who worked in them. She enjoyed listening to them. She became aware that Scott Bruce wanted to sell United.
11. From the Public Inquiry brief and productions, supported by the oral evidence from Mrs McGroarty and submissions from Mr Backhouse, I can make the following findings in relation to entity, history and control.
12. United Coaches Ltd, Scottish Companies House SC305583, was incorporated on 17 July 2006. At incorporation, the directors were Ronald Bonds (b.1957) to 26 November 2010 and Derek Bonds (b.1986) to 24 January 2012 joined by Mrs Maria Bonds (b.1958) from 24 January 2012 to 1 November 2012. On 1 November 2012, Mr Scott Bruce (b.1983) of Motherwell was appointed sole director and remained such until his resignation and the appointment of Mrs Helen McGroarty (b.1959) on 5 August 2016. Mr Scott Bruce was shown as the person with significant control until his shares were transferred to Mrs McGroarty – Companies House showing the date of transfer as 5 August 2016. Thus, Mrs Helen McGroarty has been sole director and shareholder (owner) of the business from that date to present.
13. Mrs McGroarty purchased the business from Mr Scott Bruce. She concluded a Share Purchase Agreement through her Solicitors Moore Macdonald. She paid [REDACTED] for the company. She did not buy any of the company's assets nor did she take over any premises. For her [REDACTED], she bought a company which held an operator licence. United did not operate any registered services so there were none to continue. She did not buy any vehicles from the company. In her oral evidence, she said that she had been injured in a road traffic accident and had received compensation and thus had funds at her disposal.
14. Mrs McGroarty's oral evidence was that no other person has a proprietorial role in United Coaches Ltd. It is her business. This is supported by the letter from Letham Cache CAs.
15. Mrs McGroarty notified the Central Licensing Office a Leeds ("Leeds") of her appointment as director in a letter dated 30 August 2016, thus within the 28 days condition on the licence within which material change must be notified to the Traffic Commissioner. She also notified a change of address to 108 High Street, Motherwell. By letter of 21 September 2016, she notified Leeds of the resignation of Scott Bruce, lodged a variation application, produced letter of authority from the landlord of 106 High Street, Motherwell. On 6 August 2017, she notified Leeds of the company's registered office address to 5 Victoria Place, Airdrie.
16. There is no evidence that Mr Stuart Chapman owns or controls United Coaches Ltd. He does have roles as Workshop Manager, mechanic, driver and landlord. Mr Stuart Chapman is the landlord of the yard at 106 High Street, Motherwell. His 2 storey house sits on the High Street and the yard is located to the back of the house and is entered by a drive to the side of the house (photographs and video produced; seen at site visit). Mr Stuart Chapman is an employee of United Coaches (he appears on the CA's list of United's payroll employees). He receives rent from United. Mrs McGroarty did not hide that he has been a source of advice and suggestion to her. He has influenced her.

Vehicle roadworthiness

17. The Vehicle Examiner's investigation in February 2017 showed deficiencies in the operator's standards given the high fail rate at MOT. Considerable advice had to be given in relation to contemporary standards. Mrs McGroarty replied to DVSA by email of 23 February 2017.

Finance

18. **[REDACTED]**. There was sufficient financial standing for the existing authorisation and at 13 August 2018 there was sufficient to meet the increased authorisation sought of 9 vehicles. [I can also record that satisfactory evidence of continuing financial standing for current (5) and proposed (9) has been presented to my Office in recent days.]
19. **[REDACTED]**

Registered services

20. All of United's work is local registered service work. Mrs McGroarty was steered in that direction by Mr Chapman who advised her.
21. Three services were registered in 2016 being:
- | | |
|-------------|--|
| PM1074566/1 | Service No 1, a circular service operating to and from Newarthill High Street; |
| PM1074566/2 | Service No. 3, to and from South Circular Road via Glenboig; |
| PM1074566/3 | Service No. 7, to and from South Circular Road, Coatbridge to Townhead. |
22. These services have been varied, most recently by short notice applications supported by SPT given withdrawal of some McGill's services in the area.
23. The registering of these services put United into direct competition with services 217 and 232 operated by McGill's. This gave rise immediately to unpleasant and potentially unsafe behaviour between servants of the 2 operators. Police involvement was necessary. Mr Stuart Chapman was one of those persons charged and convicted in the Sheriff Court.
24. Mrs McGroarty had no insight into the consequences of registering competing local services in the operating environment which I could assess as difficult. Essentially, the registering of these services in manner done sparked a "bus war" such that I have not seen for many years. She did not take legal advice such as Mr Backhouse would have given. Competition between operators is lawful but must be safe. The registration of these services was provocative and alas there was bad behaviour by personnel from both operators (and 3rd parties making mischief through intemperate posts on social media). Absent enforcement officers such as I used to have at my disposal when such reports emerged, it was left to the criminal courts and police to intervene.
25. This decision is not the place for me to consider the other operator. I focus on United. I am in no doubt that Mrs McGroarty, as owner of this business, was very badly advised by

Mr Chapman. She must reflect on his proximity to the business. Given the papers she has seen in the Public Inquiry brief and having heard the dialogue at the Inquiry, she knows now that he is a man to whom I would not grant an operator licence without scrutiny of his repute.

26. The report from BUS, my own observations, the age of the vehicles, show that this is an operation which needs to improve. The BUS officer found early running, aggressive driving, and adverse engagement with other drivers on the route. The registration timings had the effect that United and McGill's buses would often run at almost the same time, a situation exacerbated by roadworks. The BUS officer comment favourably on customer service. She was concerned by aggressive, though not dangerous, driving.
27. In dialogue with Mrs McGroarty and Mr Backhouse, it was not clear what Mrs McGroarty got for the payment to Mr Bruce. She could have applied for an operator licence in a company incorporated by her. She was drawn into the transaction. She has been, is, in business; she has engaged in her local community; she has a genuine concern for those who do not have access to a bus service and wishes to expand into areas not served by a bus service. She sat the CPC before concluding the purchase of United.
28. I will expect the next reports from BUS to be wholly favourable as to punctuality and presentation. BUS will report to my Office regularly. DVSA will be asked to monitor roadworthiness. This operator will require the services of external contractors for brake testing and other diagnostics. I require that PSVs are roadworthy and that vehicles do pass first time at annual test. There must be no failings at annual test. There must be no more bus wars. She should become a respectable bus operator geared to standards and distancing herself from any persons who are aggressive or Neanderthal by nature. She should consider joining CPT as a source of advice and guidance. She has a choice – to be a good compliant operator or to be never off the Traffic Commissioner's radar. Mr Backhouse can spell that out for her.
29. I had concerns about the capacity of the operating centre. The operator can manoeuvre vehicles into spaces in the yard. However, I shall place a condition on the licence that access and egress to the operating centre will be in forward gear only. That will serve to secure road safety and to encourage a move to different larger premises if more vehicles are obtained.
30. In relation to the failings of local registered services as disclosed in the BUS reports, I will impose a penalty of terms of section 39 of the Transport (Scotland) Act 2001 as a marker to Mrs McGroarty that she is operating in a regulated environment and that I am not satisfied as to reasonable excuse. The maximum penalty is the number of authorised vehicles 5 x £550 i.e. £2750. The statute and the case law allow me to take a broad-brush approach (as well as one that is more formulaic as reflected in the Senior Traffic Commissioner's Statutory Guidance south of the border). In this case I do consider that a financial penalty is appropriate given the recklessness with which these services were registered and the operator's contribution (through the company's servants) to adverse behaviour in the operation of the services which affected punctuality. I will just hold back from the maximum as this is Mrs McGroarty's first time at Public Inquiry. However, I will impose a section 39 payment of £2000 (TWO THOUSAND POUNDS). That payment will be due to Scottish Government by 30 October 2018.
31. What I am about to write is of critical importance to Mrs McGroarty and Mr Backhouse as her law agent. In cases where there are adverse findings, and this is such a case, it is unusual to "reward" an operator with an increase in authorisation. In this case, (as distinct from many others), I have the tool of a section 39 payment to mark regulatory displeasure and to sanction financially. Thus in the context of my being able to make a section 39 payment, I can allow myself to consider granting the variation application. Thus given the penalty of £2,000 as the regulatory marker, I will grant the variation which will take the total authorisation to 9 vehicles. Mrs McGroarty has been subjected to scrutiny and the delay

which comes with scrutiny. She also needs to know that what is granted can be taken away. The next Traffic Commissioner and the Deputy Traffic Commissioner will be able to read this decision and the severest warnings given. If I have been misled then others will deal with that when such comes to light. All that said I do hope that Mrs McGroarty as an individual can develop United into the type of business which brings service and pride to the served communities.

32. I give a warning to the Operator and Mrs McGroarty in respect of repute. I am un-amused that the operator did not foresee the operational difficulties which would follow the particular registrations. I agree with Mr Backhouse that an operator is entitled to operate in competition with a pre-existing operation but there are known and foreseeable operational difficulties and risks to safety and punctuality if such is done in a particular way as happened here. Mrs McGroarty was not well served by Mr Chapman and it did not please me that her main adviser was a revoked operator.

Summary of my decision

33. The operator and Mrs McGroarty, as director, are warned in relation to repute.
34. The operator has breached the licence undertakings in respect of vehicle roadworthiness and is warned in that respect.
35. The operator will pay £2000 to Scottish Government by 30 October 2018.
36. There will be a condition on the licence that access and egress to the operating centre at 108 High Street, Motherwell and any future operating centres will be in forward gear only.
37. The variation application is granted and the authorisation on the licence will be 9 vehicles.

Joan N Aitken
Traffic Commissioner for Scotland
Edinburgh

13 September 2018