



## TRAFFIC COMMISSIONER FOR WALES

**Tacsi Gwynedd Ltd – PG1131497**

**&**

**Transport Manager – Alan Vaughan Owen**

### **Public Passenger Vehicles Act 1981 (“the Act”)**

#### **Decisions made in respect of the operator’s licence held by Tacsi Gwynedd Ltd**

1. Adverse findings are made under sections 17(3)(a); 17(3)(aa); 17(3)(b); 17(3)(c); and 17 (3)(e) of the Act.
2. The operator no longer satisfies the requirement to be of good repute, section 13A(2) and 27(1)(a) of the Act.
3. The operator no longer satisfies the requirement to be of sufficient financial standing, section 13A(2) and 27(1)(a) of the Act.
4. The operator no longer satisfies the requirement to be professionally competent, section 13A(2) and 27(1)(a) of the Act.
5. The operator’s licence is revoked. The date of revocation was given at the hearing held on 31<sup>st</sup> August 2018, it was given as 23.59 hours on 2 September 2018.
6. Sion Ifor Edwards is disqualified from holding or applying for an operator’s licence for an indefinite period.
7. Huw John Edwards is disqualified from holding or applying for an operator’s licence for an indefinite period.

8. Tacsí Gwynedd Ltd is disqualified from holding or applying for an operator's licence for an indefinite period.

**Decisions made in respect of Transport Manager Alan Vaughan Owen**

9. Alan Vaughan Owen has lost his reputation as a transport manager. He is disqualified from holding or applying for any transport manager position within the EU for an indefinite period.

**Background**

10. Tacsí Gwynedd Ltd was granted a standard national PSV operator's licence in September 2014, at the time of the public inquiry held on 31 August 2018, it had six discs, with nine vehicles in possession, and there were two operating centres in Caernarfon at the Penygroes Industrial Estate and the Cibyn Industrial Estate. The operator appeared previously before a deputy traffic commissioner who revoked the licence but that decision was overturned on appeal to the Upper Tribunal, see 2015/040 Tacsí Gwynedd Ltd. Paragraph 100 of the Upper Tribunal decision ordered the operator to have an audit, which was to be copied to my office.

11. A DVSA investigation was conducted following a number of complaints and concerns, including an incident where allegedly two wheels fell off a bus, as a consequence this latest public inquiry was convened.

12. The two directors of the limited company were Huw John Edwards ("Huw Edwards") together with his son Sion Ifor Edwards ("Sion Edwards"). The nominated transport manager was Alan Vaughan Owen ("Alan Owen").

**Public Inquiry**

13. Paragraphs 101 to 119 of the Upper Tribunal decision in 2015/040 Tacsí Gwynedd Ltd deal with Welsh language issues that arose. It is a matter of record from published annual reports and elsewhere that I have previously expressed concerns as to compliance with Welsh language requirements, this is being addressed and I am grateful to the Welsh Government for providing additional resources to address this. As soon as I appreciated the need for a public inquiry I instructed my staff to immediately make contact with the operator asking whether it sought to have proceedings in the medium of the Welsh language; the reply from Sion Edwards was that he would speak to his solicitor first and would call her back 10 to 15 minutes later. There was no call back made and so the hearing was arranged in the medium of the English language. I was aware that a Welsh speaking traffic examiner would be giving evidence, along with a Welsh speaking vehicle examiner.

14. A public inquiry was listed for 31<sup>st</sup> August 2018 but the day before the hearing a letter was received from Backhouse Jones solicitors on behalf of the operator offering to surrender the licence with effect from 31 October 2018. The letter also confirmed that neither of the two directors would be in attendance. It went on to indicate that although solicitors did not represent the transport manager that they were led to believe that he would also not be attending.

15. I did not accept the surrender of the licence and this was communicated. Very serious issues were raised in the brief which, if they came up to proof, could lead to potential disqualification orders.
16. Whilst neither of the directors attended and the transport manager failed to attend, the following attended the hearing in Welshpool: SVE Martin Garlick; TE Nia Lloyd Daniel ("Nia Daniel"); VE Gwyn Griffiths; and Rhian Williams from Gwynedd Council. VE Ruth Kyriacos was unable to attend due to illness, fortunately other examiners present were in a position to corroborate most, if not all, of her written public inquiry report.
17. On receipt of the surrender request I had asked that contact be made with Gwynedd Council with a request that someone attend before me as I was conscious that the timing of any decision to revoke would have an impact on both the travelling public and the local authority. I record my gratitude to Gwynedd Council for its invaluable assistance.
18. At the conclusion of the evidence, which lasted approximately two hours, I was sufficiently concerned at the grave road safety concerns that I typed a short summary of findings and decisions, they are self-explanatory and set out below:
- 1. I have completed a public inquiry today with evidence from various DVSA witnesses.*
  - 2. Yesterday the operator sought to surrender the operator's licence with effect from 31<sup>st</sup> October 2018. No one attended today's hearing from the operator or transport manager. I have also heard evidence from the local authority in respect of the impact of my decision.*
  - 3. I will be producing a written decision justifying my decisions with reasoning. However it takes time to do this to the standard required by appeal courts. It is clear from the evidence that anything other than a very short delay in revoking the licence will put an unjustifiable and unnecessary risk to road safety as far as the travelling public are concerned.*
  - 4. Road safety concerns are immediate and significant. I will expand when I produce my written decision.*
  - 5. My written decision will spell out that there have been attempts to intimidate DVSA enforcement staff; false claims have been made as to an incident when two wheels fell off a bus, with the operator falsely claiming that it was a tyre blow out; a very recent S marked prohibition has been made on a vehicle operated as PSV with a director falsely claiming that it was not used by the operator; and, the nominated transport manager has not been performing a transport manager role and instead has been working full time for a business in Abergavenny.*
  - 6. Evidence as to the state of vehicle safety has been impeded by obfuscation from the operator and attempts to mislead. My findings will include one that most vehicles go out in an unsafe condition.*
  - 7. The combination of poor vehicles, deliberate false claims as to incidents and calculated attempts at intimidation are such that I cannot allow buses to continue to be run.*

8. *As no-one is present from the operator today I have typed this short note before I leave the Welshpool Justice Centre, I have instructed that it be posted and emailed to all known addresses involving the operator and their solicitor.*

10. *All the grounds in the call up letter have been made out, fuller details will be spelt out in my later written decision. This includes sections 17(3); 17(3)(aa); 17(3)(b); 17(3)(c); and, 17(3)(e) of the Public Passenger Vehicles Act 1981.*

11. *The operator no longer satisfies the requirement to be of good repute; it no longer satisfies the requirement to have financial standing; and, it no longer satisfies the requirement to be professionally competent. I will articulate why this is so in my full written decision.*

12. *Transport manager Alan Vaughan Owen has lost his repute as a transport manager. Why this is so and the order of disqualification that follows will be set out in my written decision.*

13. *Both Sion Edwards and Hugh Edwards will be made the subject of orders of disqualification under section 28 of the Transport Act 1985. The periods of disqualification and reasoning will be set out in my written decision.*

#### **Decision to revoke**

14. *In view of the above, whilst more detailed reasons will be set out later, I revoke the operator's licence with effect from 23:59 hours on 2<sup>nd</sup> September 2018. Any later period places an unjustifiable risk on the travelling public. Aside from issues of trust and fair competition, there are very significant and immediate concerns for road safety. Hence my decision on a Friday lunchtime to make an order for closure of a business before the end of the weekend.*

15. *I very much regret the inconvenience caused to the travelling public as a result of the lack of notice, however their safety must be paramount.*

#### **Evidence**

19. Before preparing this written decision, I have reviewed the following:

- Written public inquiry brief for Tacsí Gwynedd Ltd PG1131497 and transport manager Alan Vaughan Owen ("Alan Owen");
- Contemporaneous handwritten notes from the hearing;
- Evidence given to me during the hearing;
- South Bucks District Council and another v Porter (FC) (2004) UKHL 33 in relation to written decisions generally; and,
- Aside from those quoted below, various authorities in relation to the approach to regulation, fitness, proportionality, and the burden of proof. – Thomas Muir (Haulage) Ltd v Secretary of State for the Environment, Transport and Regions (1999) SLT 666; Crompton trading as David Crompton Haulage v Department of Transport, North Western Area (2003) EWCA Civ 64; Muck It Ltd and others v Secretary of State for Transport (2005) EWCA Civ 1124; 2009/225 Priority Freight Ltd and Paul Williams; Fenlon 2006/277; and, 2002/217 Bryan Haulage (No. 2).

20. Evidence of financial standing was required and some details were submitted prior to the hearing. Bank statements produced to my office did not meet the required sum for the authorisation held by Tacsí Gwynedd Ltd.

21. Two public inquiry statements were in the call up papers from VE Ruth Kyriacos and from TE Nia Daniel. Unfortunately VE Ruth Kyriacos fell ill prior to the hearing, although much of her evidence was corroborated by others, including oral evidence from VE Gwyn Griffiths and SVE Martin Garlick.

22. As the line manager for VE Ruth Kyriacos, SVE Martin Garlick confirmed that he had very detailed knowledge of the case and was physically present for a number of the incidents described in VE Ruth Kyriacos's public inquiry statement. He confirmed that to his knowledge her statement was correct.

23. The operator was engaged in school contracts running both regular services and service bus contracts. Private hire had been undertaken in the past but the operator had advised that since winning service contracts the private hire side of the business had reduced. Sion Edwards, one of the directors, was also a sole trader trading as Edwards Garage which was an approved Class 4 MOT testing station since September 2016, the testing station was located at the operating centre on the Cibyn Industrial Estate. Sion Edwards was a qualified MOT tester. The operator also ran a fleet of taxis known as Huw's Taxis.

24. Maintenance was conducted in-house at the workshop in the Cibyn Industrial Estate with PMIs stated to be six weekly. An investigation was due followed an unsatisfactory visit conducted in January 2018 by VE Gwyn Griffiths. VE Ruth Kyriacos had not planned to visit the operator on 12 June 2018 but she had received a call from a manager informing her that one of the operator's buses had been involved a wheel loss incident and she was asked to visit that day to have a look at the bus.

25. On 12 June 2018 VE Ruth Kyriacos visited the operating centre and spoke with director Sion Edwards, his brother Dafydd Edwards and Robert Jones who was the operator's compliance officer. On being asked about the wheel loss incident Sion Edwards told her that the bus had a blowout to both tyres on the nearside rear. On VE Ruth Kyriacos mentioning wheels physically falling off, Sion Edwards said that he went down to the bus and whilst he was changing the tyres, he snapped one of the wheel studs so he had the bus recovered back to the yard by Gwalia Garage, it was repaired straightaway and put back into service.

26. On being asked about the transport manager the response was perceived by VE Ruth Kyriacos to be vague, Sion Edwards said that he visited every week for around 18 hours, Robert Jones said he wasn't sure when he came and when the examiner asked what he looked at, Robert Jones said that he looked at the tachographs. VE Ruth Kyriacos commented to them that 18 hours a week seemed a lot to spend looking at tachographs when there probably weren't many to look at due to the nature of the work carried out, much of it being tachograph exempt. Sion Edwards had already shown her details of the companies that undertook tachograph analysis, so VE Ruth Kyriacos presumed that the transport manager only had to look through the analysis reports eight weeks, she queried why this took 18 hours. There then followed a discussion between Robert Jones, Dafydd Edwards and Sion Edwards about what the transport manager did or didn't do, in her written report VE Ruth Kyriacos commented that she felt none the wiser.

27. VE Ruth Kyriacos commented that Sion Edwards was accommodating and pleasant to deal with, he aired some concerns he had about one of his mechanics. VE Ruth Kyriacos did not perceive Robert Jones as being as accommodating and he was described as being very vague in his responses, being unable to locate documents that she wanted to see and when being asked about why systems weren't working the way he designed, he didn't have anything to say. VE Ruth Kyriacos complimented Robert Jones on the design of the vehicle filing system which she thought was excellent, but added that it was a shame that it clearly was not being used as intended. Dafydd Edwards told VE Ruth Kyriacos that he was not involved in the operator's licence and instead was only involved in the taxi side of the business.

28. Sion Edwards had to leave so the visit was ended with VE Ruth Kyriacos making a list of missing records to be produced to her the next day, this was agreed by Sion Edwards who confirmed that he would meet with her at her office the next day after 11 AM.

29. The next day, 13 June 2018 VE Ruth Kyriacos was on her way back to her office and stopped at the operating centre as she wanted to take a picture of the wall planner, something which she hadn't done the day before. As VE Ruth Kyriacos pulled into the yard, Sion Edwards was there and walked towards the car and greeted her. VE Ruth Kyriacos told him that she wanted to quickly take a picture of the planner, but was told that he had Rhian in the office so he would bring it round with him and he would be there in about 15 minutes. At 11:30 hours VE Ruth Kyriacos arrived at her office which is around the corner from the operator's depot. At 12 noon VE Ruth Kyriacos received a telephone call from Sion Edwards asking if he could see her in an hour as he had to go to Penygroes quickly, he was told that this was not a problem as VE Ruth Kyriacos was in all day. At 13:00 hours VE Ruth Kyriacos went into her front office to see if Sion Edwards was waiting and found Robert Jones and Dafydd Edwards there with a box of paperwork and the wall planner, on being asked they told her that they did not know where Sion Edwards was. Robert Jones and Dafydd Edwards were told that she could not discuss what she wanted to with them as they were not part of the operator's licence and she needed to speak to Sion Edwards or his father Huw Edwards who was the other director recorded on the licence. VE Ruth Kyriacos took a photograph of the wall planner and gave that back to them, she asked Robert Jones to get Sion Edwards to contact her to make another appointment. VE Ruth Kyriacos also asked them if they had contact details for the transport manager, neither of them did, but responded that contact details were in the office. VE Ruth Kyriacos asked if they could give her the transport manager's contact details when they returned to the office, Dafydd Edwards told VE Ruth Kyriacos that he would text it to her shortly after they left, which he did.

30. VE Ruth Kyriacos telephoned Alan Owen, the transport manager, to inform him that she wished to see him to discuss the operator's licence and the incident involving the bus wheel loss. He responded that the driver had called him last night and told him that it had a blowout. On being asked when he usually visited the operator, the response was Friday evenings and Saturday mornings. The transport manager was told by VE Ruth Kyriacos that she needed to discuss issues relating to maintenance paperwork, he responded that the last time he had visited everything was fine. He went on to advise the examiner that he was on holiday that week and the next and so VE Ruth Kyriacos told him that she would call after he had completed this holiday with view to making an appointment. Due to events that followed contact was not made with transport manager Alan Owen for an appointment.

31. On 14 June 2018 VE Ruth Kyriacos was present at an organised police road check at a school, Ysgol Hafod Lon in Penrhydeureath at 8 AM, two taxis were examined which

were operated by one of the operator's taxi companies, Huw's Taxis. An S marked prohibition was issued for each vehicle, indicating a significant failing in maintenance. Both drivers told VE Ruth Kyriacos that they had not checked their vehicles that morning, in each case the S marked prohibitions were issued for items that could and should have been identified if a walk round check had been carried out prior to commencement of work.

32. VE Ruth Kyriacos left the school at 10:40 hours to make her way back to her office in Caernarfon, during that 40 minute journey she received two calls from Sion Edwards at 10:56 hours and 11:16 hours; she arrived at her office at 11:20 hours and returned the calls from Sion Edwards at 11:30 hours, there was no answer. When pulling into her office VE Ruth Kyriacos had seen one of the taxis that she had prohibited in the visitor area and at the front office found a woman who claimed that the faulty seatbelt had been fixed and wanted clearance. VE Ruth Kyriacos asked her if the vehicle had been MOT tested, as was the usual procedure when dealing with LGV clearances, she said no it had not been MOT tested, Sion Edwards had spoken to someone in the DVSA who said it did not need to be tested and merely needed taking to Caernarfon where someone would clear it. VE Ruth Kyriacos asked who they spoken to in DVSA as this was not the procedure that should have been followed, this resulted in a call to Sion Edwards who advised that he would get it MOT tested if the DVSA insisted. It was confirmed that the taxi needed to be MOT tested before clearance could be issued.

33. VE Ruth Kyriacos's report advised that her colleague, VE Gwyn Griffiths, later told her that Sion Edwards had called him after he had left at the school check site and that he had spoken with him about the prohibition to the taxi. VE Gwyn Griffiths was present for the public inquiry and confirmed to me that he had received a telephone call from Sion Edwards on his way back from Wrexham and told him what the correct procedure was, and reminding him that he had not been involved in the prohibition.

34. Later SVE Martin Garlick arrived at the Caernarfon DVSA office when they discussed the operator and attempts by VE Ruth Kyriacos to continue the investigation. SVE Martin Garlick accompanied VE Ruth Kyriacos to the operating centre in the Cibyn Industrial Estate at 13:00 hours, on arrival the garage was open and as they walked in a young female came down the stairs. VE Ruth Kyriacos asked if Sion Edwards was about, she said no and walked past. In her written statement VE Ruth Kyriacos described the young girl as not accommodating. At this point of the public inquiry on 31 August 2018, I asked SVE Martin Garlick whether he agreed with that description, he confirmed that he did agree with it. The two examiners proceeded up the stairs to the office to see if Robert Jones was about, they looked through the window but no one was in and came back downstairs. The examiners then walked over to the other yard to see if anyone was about and there was only the young female referred earlier and a young male washing one of the taxis. VE Ruth Kyriacos commented to her line manager that perhaps they should wait in case the managers had gone for lunch and in the meantime she would take some photographs of the workshop, something she had not done when she had visited a couple of days beforehand.

35. As VE Ruth Kyriacos was taking photographs she heard a car pull into the yard and up to the workshop door, it was a white Ford. A woman got out of the driver's seat together with two youths, one male and one female. VE Ruth Kyriacos was at the back of the workshop, the woman ignored SVE Martin Garlick who was standing closer to her by the doors and in what was described as an unfriendly tone shouted "who are you?" VE Ruth Kyriacos walked towards her and told her that she was from the DVSA and had visited the other day and was looking for Sion Edwards, did she know where he was? The response was negative and so she was asked if she knew where Robert Jones was, the response

was no, he was probably at dinner. The female told VE Ruth Kyriacos that she was Carol, Sion Edwards's wife. VE Ruth Kyriacos told her that she had an appointment with Sion Edwards the day before but he did not attend and that is why she had come to see if he was there. VE Ruth Kyriacos asked her whether, as she was his wife, whether if she saw him at home that evening would she ask Sion Edwards to contact her so that she could make an appointment to see him? This was agreed. Both examiners then made their way to leave but as they did so, the garage doors pulled down and the gates were locked.

36. On 15 June 2018 VE Ruth Kyriacos had still not heard from Sion Edwards and so she called him at 15:39 hours, again there was no answer, the phone did not go to voicemail. In view of her concerns VE Ruth Kyriacos discussed the issue with her manager, SVE Martin Garlick and he asked her to deliver a letter proposing another appointment and to include specific items that she wanted produced. SVE Martin Garlick told VE Ruth Kyriacos that he would attend the meeting with him and was available to do so on 21 June 2018. He also told her to make sure that she had her pocketbook signed by the person she delivered the letter to. VE Ruth Kyriacos typed the letter and on her copy added a typed statement to be signed by whoever was in the depot that took the letter from her. The operator's copy was placed in a sealed envelope addressed to the Company Secretary, Sion Edwards.

37. Having made many attempts to contact Sion Edwards and having left messages with his wife Carol and with Robert Jones and having called his mobile phone numerous times, VE Ruth Kyriacos commented in her report that she felt that he was avoiding her. VE Ruth Kyriacos further commented that despite not having a call back from Sion Edwards, when he wanted to speak to her about having taxi prohibitions cleared, he had no problem phoning her twice and phoning her colleague.

38. In view to what she perceived to be an unfriendly experience VE Ruth Kyriacos described herself as being hesitant to go around the depot by herself to deliver the letter. However as she was only going to drop a letter in, VE Ruth Kyriacos commented that as other commercial premises were only a few yards away, she could go there if anything was to happen. At 16:40 hours VE Ruth Kyriacos drove near to the operating centre but parked up and walked towards the operator's premises. As she got close to the yard VE Ruth Kyriacos saw Robert Jones coming out of one of the coaches, she could see the gates were locked and it appeared that no one else was about. Robert Jones greeted her and said he had just come back, she passed him the envelope telling him it was a letter asking for an appointment as she had been unable to get in contact with Sion Edwards. Robert Jones was then shown a copy of the letter without showing the contents of it, she asked him to sign the paragraph she had typed at the bottom to confirm that she had delivered the letter. Robert Jones hesitated and told VE Ruth Kyriacos that he was not happy about signing for things on behalf of the operator as he had no authority. He was reminded that it was purely signing to say that a letter had been hand-delivered and he was asked to pass it on to the operator or Sion Edwards. He again said he was not happy to sign for it. VE Ruth Kyriacos asked him whether if the postman delivered a signed for letter, addressed to the operator, would he signed for it? Robert Jones confirmed that he would do so and was told that this was the same thing. However again he told VE Ruth Kyriacos that he was not happy to sign for the letter. The letter was delivered with a record made of its receipt being refused, the issue was also discussed with her line manager SVE Martin Garlick. It was confirmed to me that no contact was made by the operator after delivery of the letter.

39. On 19 June 2018 VE Ruth Kyriacos was sent a link to an article in the local press, *The North Wales Chronicle*, titled "*The wheels on the Caernarfon bus go round and round and*



*then fall off*”, the article referred to a passenger on the bus confirming that wheels had indeed come off.

40. On 20 June 2018 at 14:27 hours an email was received from Dafydd Edwards’s email address, sent by Robert Jones on behalf of Sion Edwards asking if the scheduled meeting could be rearranged as Sion Edwards could not attend due to sickness. A fit for work note was attached showing that Sion Edwards had been recorded as unfit for work due to work-related stress for two weeks. A response was sent thanking Robert Jones for the information and wishing Sion Edwards a speedy recovery. The response went on to indicate that as she had arranged to be in the office the next day could he please still present the items that were required as listed in the formal letter delivered to him, an appointment could then be made to speak with Sion Edwards on his return. He was also asked who had been appointed as the responsible person in Sion Edwards’s absence, they were welcome to attend if they felt that they could answer questions in relation to details set out in the letter sent by the DVSA. No response was received.

41. On 20 June 2018 an email was received from Gwynedd Council which was conducting its own investigation as to what had happened with the bus.

*“... Dafydd Edwards from the bus company rang the office and spoke to Rhian Wyn Williams. He stated that they’d had a blowout and the police had been at the scene..... The bus was apparently back on the road very soon afterwards.*

*We have since received numerous complaints from members of the public stating that the wheel had come off, however we explained that the company had advised that they had suffered a puncture. All the independent accounts we receive disputed this. In order to obtain a formal written account from the company, an email was sent on Wednesday 13<sup>th</sup> June to Sion Edwards requesting the information is a matter of urgency due to the potential serious nature of the incident. We have since been chasing the company on a regular basis for this information, however they won’t answer the telephone or return any calls or respond to emails. We have been informed by a member of their staff that Sion Edwards (Company Director) is off sick due to “taking on too much work”. The same member of staff was supposed to visit Sion last night to sort out the report and ring me this morning with an update. Unfortunately, I have received no communication. We have tried calling their office and mobile but we’ve had no response”.*

42. North Wales police have stated to the DVSA that officers did not attend the scene as suggested by the operator.

43. On 21 June 2018 VE Ruth Kyriacos received missed calls from a female working for (named) solicitors wishing to speak about Sion Edwards. The public inquiry brief relays a conversation as to whether a formal interview was to take place, the individual working for the solicitor asked questions about potential outcomes from the production of a vehicle examiner’s report. VE Ruth Kyriacos explained to the solicitors’ firm that she had yet to complete her investigation and was having difficulty in contacting the operator for an appointment. Later in her statement VE Ruth Kyriacos commented that she was bemused at the call from a solicitor and wondered why the operator felt the need to contact one. I comment on this in my assessment of her evidence.

44. On 25 June 2018 VE Ruth Kyriacos arranged with her colleague VE Gwyn Griffiths to inspect vehicles the next day, she did not want to go alone and explained to him the previous events.
45. A visit was made to the operating centre in Cibyn Industrial Estate on 26 June 2018 by both VE Ruth Kyriacos and VE Gwyn Griffiths. The two mechanics working for the operator, Alan and Melfyn, were on site together with another man who she did not know. Both examiners spoke to the mechanics and asked if anyone was about, the reply was no. The mechanics were informed that the examiners wanted to inspect vehicles, there was a vehicle over the pit and another one behind that, parked in the yard with the engine running. Neither of mechanics knew what the vehicles were in for, whilst they did not assist they did not prevent the inspection in any way.
46. As VE Ruth Kyriacos was walking around the vehicle she saw one of the mechanics walk across the yard to the other parking area, he was speaking to Robert Jones who instead of meeting and greeting the examiners, walked off down the road.
47. VE Ruth Kyriacos commented to VE Gwyn Griffiths that she had seen Robert Jones and that he'd gone off down the road and she then sent a text message to her manager about this, asking if he wanted to come over. SVE Martin Garlick joined the two examiners and carried on inspecting the bus. Cars were pulling into the yard and people started to appear. A man in an orange Hi-Viz who smiled at VE Ruth Kyriacos leaned up against the wall doing nothing, then the garage door started to come down which clearly caused alarm to VE Ruth Kyriacos. She commented in her report, it was not lunchtime and the mechanics knew that the DVSA wanted to inspect vehicles, so how would they be able to inspect the bus in the workshop if they could not get in there? VE Ruth Kyriacos turned around to face the gates and saw cars parked tightly in the yard, blocking DVSA vehicles in, with someone starting to shut the gates. VE Gwyn Griffiths commented "*I think we are being locked in*". VE Ruth Kyriacos responded to effect that she had a telephone and would call the police if necessary, making a reference to kidnapping, being held against their will.
48. At this point VE Ruth Kyriacos took a photograph of the way the cars were blocking them in. The male in the Hi-Viz became aggressive with her and said that she was not allowed to take a photograph of his car. Due to the situation that she saw developing and the aggressive tone, VE Ruth Kyriacos decided that she did not want to escalate the situation any further and, instead of telling the individual that she was taking a photograph of how they were being blocked in and threatened, she said she was taking a photograph of the bus. Dafydd Edwards then appeared, apparently from nowhere, and pushed himself close to VE Ruth Kyriacos, blocking her in demanding to see the photograph. He went to grab the phone out of her hands at which VE Ruth Kyriacos pulled it in close to herself and turned her back on him. On being asked if she was taking the phone home she replied that it was a works phone.
49. Dafydd Edwards then accused VE Ruth Kyriacos of opening drawers "*when you were here last week you opened drawers and was looking for stuff*", at this point he was reminded that one of the drawers was already opened and so she looked in it whilst Robert Jones was downstairs looking for missing paperwork. She also reminded Dafydd Edwards that she had said at the time that she did not want to go rummaging through it, as there was other stuff in that drawer that might be personal, so she did not go through it. VE Ruth Kyriacos also reminded Dafydd Edwards that she had told him at the time that she could see the driver defect reports in there at the time and they were old, she had then went to the drawer that Robert Jones had been opening up to get vehicle files out of to

take a photograph of the set up for her report, she took a photograph of the outside of the draw, then opened it and photographed the contents inside. VE Ruth Kyriacos went on to say *"in any case you (Dafydd) was with me the entire time and never said a word to ask me to stop, you even got up and went through the drawers yourself."*

50. The examiners were then interrupted by the male in the Hi-Viz referred earlier who continued to accuse VE Ruth Kyriacos of taking a photograph of his car saying that he wanted it deleted. He then turned the conversation the fact that he said that she was not allowed to inspect the vehicle and that it had an MOT. VE Ruth Kyriacos replied that DVSA powers permitted them to enter any premises where HGVs or PSV's were parked and they also had the power to inspect any vehicles, including cars. He then asked *"am I allowed to ask you to leave?"* to which VE Ruth Kyriacos responded *"yes of course you are"*. At this point the male said *"get out then I don't want you here."*

51. VE Ruth Kyriacos had never met this man before did not know who he was, however she described him as being aggressive for no reason, she was merely trying to do her job and had every right to be there and doing what she was doing. VE Ruth Kyriacos asked the male who he was as she wanted to enquire about his authority on behalf of the operator, he responded *"I'm family"*. VE Ruth Kyriacos then asked what his name was and he responded *"I'll tell you my name when you're outside"*, at this point VE Ruth Kyriacos asked how she would get his name if she was outside, the male responded that he would tell her through the gate.

52. VE Ruth Kyriacos asked for cars to be moved so DVSA examiners could get theirs out and started to walk towards the car. At this point VE Gwyn Griffiths and Dafydd Edwards were in a bus talking in Welsh, apparently amicably. Dafydd Edwards left the bus and VE Gwyn Griffiths informed his colleagues that he had told Dafydd Edwards that being obstructive was not helping the situation and they only wanted to check the buses. Dafydd Edwards agreed to allow the DVSA to continue with bus checks and SVE Martin Garlick spoke to Dafydd Edwards (in English, SVE Martin Garlick is not a Welsh speaker). The gates were opened and the vehicles that were blocking the DVSA ones in were moved and the two DVSA vehicles were able to leave the premises onto the general highway.

53. All the vehicles that arrived and blocked examiners in were now driving off, everyone had left the premises and the gates were locked. The only person remaining was Dafydd Edwards who stayed with VE Gwyn Griffiths whilst he checked the bus that was parked on the road. Robert Jones then came up in what was described as casually wandering up with a takeaway coffee in his hand and walked almost past VE Ruth Kyriacos before saying hello, to which both VE Ruth Kyriacos and SVE Martin Garlick said hello back. VE Ruth Kyriacos expressed bewilderment at how Robert Jones who apparently missed all that went on could walk back to his place of work, find it locked up with no employees around and without asking what was going on.

54. During the oral evidence before me I reminded SVE Martin Garlick that he had been present and was told that when Robert Jones had walked past to examiners he, (SVE Martin Garlick) did not know him so he didn't take much notice of Robert Jones at the time.

55. Commenting on the behaviour received that day, VE Ruth Kyriacos wrote *"In my many years as a vehicle examiner with DVSA, I have been subject to various types of confrontation, 99% of them ending with an apology, a handshake and no hard feelings. Unfortunately, no amount of apologising and friendly gesture will ever make me feel safe to be with or around this operator or any of his family or personnel, and DVSA staff will not be visiting the depots unaccompanied again."*

56. I asked VE Ruth Kyriacos's line manager, SVE Martin Garlick, about this, who commented on being "*frightened by the experience.*"

57. The written report produced by VE Ruth Kyriacos made it clear that although there were three DVSA staff present that day, she felt that she was the point of attack by two men of larger stature. I asked SVE Martin Garlick to comment on this, he agreed that there was intimidation and commented that when Dafydd Edwards arrived he focused on VE Ruth Kyriacos instead of himself and VE Gwyn Griffiths.

58. Further comment was made by VE Ruth Kyriacos that she had dealt with Sion Edwards since 2014 when the licence was granted when there was a public inquiry and there had been no issues on the day or since. She regarded herself as previously having a good working relationship with Sion Edwards and that this was the case with all DVSA staff. I was reminded that TE Nia Daniel and VE Gwyn Griffiths had dealt with Sion Edwards on multiple occasions. At no point did she ever previously feel unsafe to be around the operator of his staff.

59. Sion Edwards was not present for any of the events that followed VE Ruth Kyriacos's initial visit on 12 June 2018, however it seemed as though every time DVSA visited the depot, no one knew anything, people either left the site without saying anything with the gates been closed, or people arrived to intimidate DVSA officials with view to driving them out or locking them in.

60. Both VE Gwyn Griffiths and SVE Martin Garlick produced section 9 statements which corroborated VE Ruth Kyriacos's public inquiry statement. Further corroboration as to the accuracy of VE Ruth Kyriacos's statement was provided in oral evidence before me.

61. Due to rumours relating to wheels literally falling off a bus and the obstructive behaviour and unwillingness from the operator to assist in the investigation, on 28 June 2018 VE Ruth Kyriacos visited Gwalia Garage, the agent responsible for recovering the vehicle. It was standard procedure within Gwalia Garage that drivers take photographs of vehicles as they find them and, that drivers do so prior to starting any recovery process. Before VE Ruth Kyriacos had spoken to the recovery driver from Gwalia Garage who had attended the scene, she was shown a log of the recovery on the garage's computer and of the photographs taken. I was told that it was unmistakably clear from the photographs that the bus did in fact suffer a wheel loss and not a blowout. The driver who attended the scene said he was asked to recover the bus because it had suffered a wheel loss and when he got there, there was no mistaking that this was the case. A witness statement and photographs from the driver who attended the scene confirm this.

62. The DVSA witnesses who attended the hearing before me confirmed that the photographs taken by the recovery driver clearly showed a wheel loss, not a blowout.

63. Maintenance arrangements and facilities were described fully, it was as one should expect from a class 4 MOT testing bay, although unfortunately the rolling road brake tester was not adequate for larger vehicles. It helped that next to the operator there was another maintenance provider which had a commercial rolling road brake tester.

64. Turning to inspection records VE Ruth Kyriacos referred to Robert Jones, compliance officer responsible for implementing the filing system ensuring records were retained. She described a system that she felt merited praise as it was "nice and simple" - but only if it worked the way it was intended to. VE Ruth Kyriacos wrote that Robert Jones struggled to

locate records, commenting that even after she left a list of vehicle records that were missing, they were not all produced to her the next day.

65. Sion Edwards had described one of the fully qualified mechanics Melfyn Roberts to VE Ruth Kyriacos "*Sion said that Melfyn has a very old-fashioned approach and this is something that causes disagreements between them.*" She discussed this with Sion Edwards as it allowed for many failures in the system. The outcome was missing records or records in the wrong place.

66. Robert Jones informed VE Ruth Kyriacos that he issued a weekly rota to the workshop which included inspections due. When VE Ruth Kyriacos asked to see these rotas, they could not be produced.

67. No formal procedures or documentation could be produced to evidence wheel torque or VOR procedures (particularly relevant in view of the wheel loss incident). A wheel torque book was said to be in place but was not available as Melfyn Roberts had it in his toolbox.

68. Some records were produced to VE Ruth Kyriacos the following day but did not fully address the excessive intervals between PMIs and or missing records.

69. Records completed by Melfyn Roberts usually only showed repair/rectification work but not details of the defect. Those completed by Sion Edwards and others were done so satisfactorily. Brake performance tests were conducted by both decelerometer and the use of a rolling road brake tester at the adjacent commercial garage, unfortunately brake testing was not carried out at adequate intervals.

70. A detailed description of the drivers' defect reporting system was provided, records were not available for all vehicles and not for a period of 15 months. It was also clear that the system was not being used the way it was intended by the operator and apparently there was no procedure or management of driver defect reporting for the vehicles parked at the other operating centre in Penygroes.

71. Robert Jones was described as struggling as he looked through a drawer in his office for driver defect report forms, claiming that the handfuls of paperwork were for filing and he had not had time to file them yet. Further details were given as to what was clearly an inadequate driver defect reporting system.

72. A forward planner was in use on a wallchart but two vehicles were not detailed, this was addressed the next day. VE Ruth Kyriacos's report describes a system that was more than adequate if used as intended, however this was not the case.

73. Details of prohibitions and MOT failures were detailed in VE Ruth Kyriacos's report, neither were satisfactory although specific figures for MOTs were difficult to calculate due to the unwillingness of the operator to cooperate fully with the investigation.

74. It was explained that the visit from VE Ruth Kyriacos was a follow-up to one conducted by VE Gwyn Griffiths in January 2018. VE Gwyn Griffiths explained to me that at the time that he visited this operator in January 2018 there were significant ramifications following my revocation of PSV operator licences involving Express Motors, which subsequently ceased trading. The local authority had asked this operator to assist as result of the revocation and a number of buses were purchased at relatively short notice. The DVSA found a number of problems but decided to give this operator time to sort

matters out. Older vehicles were not maintained properly although when VE Gwyn Griffiths visited, newer vehicles had had some sort of inspection. A number of assurances had been given to VE Gwyn Griffiths (in Welsh and later translated into English by him) including one that rolling road brake tests would be conducted at every other inspection with decelerometer tests conducted on the other inspections. The inspection records that were available and shown to VE Ruth Kyriacos showed that proper brake testing was not being carried out at every inspection as promised by the operator. Furthermore rolling road brake testing was not being conducted at least every other inspection as earlier promised by the operator.

75. It was the view of VE Ruth Kyriacos that the minimum requirements relating to brake testing laid down in the Guide to Maintaining Roadworthiness were not being met. Although arrangements were claimed to have been met with a local facility, there was no evidence of this.

76. Another assurance provided to VE Gwyn Griffiths related to the transport manager and to the work that he did, with a reference to his attending a specialist two day transport manager refresher course. Whilst Robert Jones claimed that the transport manager had attended a refresher course, the operator held no evidence to substantiate this.

77. It was suggested that the transport manager had access to the online self-service facilities, but on the DVSA visit neither Sion Edwards nor Robert Jones had such access. On VE Ruth Kyriacos asking about the transport manager's responsibilities and how they were identified, she was told that the operator had an employment contract with him which they had already provided to TE Nia Daniel when she visited in April 2018. A copy of the contract was obtained from Nia Daniel, it was dated 08/07/15 and showed the transport manager as employed on a full-time basis of 40 hours a week with an annual salary of £36,395. The contract did not refer to specific roles, responsibilities and duties as a transport manager and had not been updated following VE Gwyn Griffiths's visit.

78. Another assurance following the January 2018 visit by VE Gwyn Griffiths related to prohibitions which had been issued and measures to be taken by the operator including driver handbooks with a claim that a transport specialist had been booked to carry out training with company drivers and workshop staff so that they fully understood the required standards. Robert Jones explained to VE Ruth Kyriacos that he was responsible for putting together the driver handbooks but he had not got round to doing this yet as he was too busy. He claimed he was going to do it in the summer holidays. The organisation that was said to have been booked to provide driver training was not evidenced, it being claimed that they were coming in the summer holidays.

79. Yet another assurance was given following VE Gwyn Griffiths's visit, this related to VOR notifications. Unfortunately one of VE Ruth Kyriacos's findings was that there was no VOR system evident at the time of the visit. The vehicle planner showed VOR but this did not correspond with what the vehicles were actually doing, specific details of this were set out in VE Ruth Kyriacos's report.

80. Another written assurance provided to VE Gwyn Griffiths was that both Sion Edwards and Robert Jones would be attending a passenger transport CPC course in March 2018 to enrich the knowledge regarding their responsibilities. On discussing this with Robert Jones, he thought that it was the transport manager who was to attend a refresher course.

81. It was put to me by VE Ruth Kyriacos in her report that the assurances given to the DVSA by the operator had not been fulfilled.

82. Details of intelligence including anonymous letters was provided in the public inquiry statement produced by VE Ruth Kyriacos. An anonymous letter referred to the 12 June incident claiming that both rear nearside wheels were lost and landed in an adjacent garden. It was also claimed that the current transport manager was not undertaking his duties properly and was employed by Griffiths Contractors of Abergavenny, driving a lorry for them every day. It was pointed out that Abergavenny was in South Wales, approximately 150 miles away and a four hour journey. As a result a local examiner, VE Adrian Davies contacted the transport manager for Alun Griffiths Contractors Ltd, the following was confirmed:

- Alan Owen had been employed with Alun Griffiths Contractors Ltd since 9 October 2017, before that he was working for them through an agency.
- Alan Owen was contracted to work 40 hours a week, Monday to Fridays and worked Saturday mornings until lunchtime if required. Overtime was also available, for example the previous week after the request was made he had worked 55 hours.
- His role was to service the Newtown bypass in a road sweeper and was tachograph exempt from this particular work
- annual leave was recorded for Alan Owen on 8 June and 18 June 2018.

83. Timesheets from June 2018 to the date of the visit by the local vehicle examiner confirmed that Alan Owen worked for Griffiths Contractors every Monday to Friday from Bank Holiday Monday, 28 May 2018 to Friday, 6 July 2018. Saturdays and Sundays were not worked during this period and Friday 8 and Monday 18 June recorded as holiday as VE Adrian Davies had reported.

84. The above information provided by Griffiths Contractors contradicts what Alan Owen told VE Ruth Kyriacos when she spoke to him on a telephone call on 13 June 2018. He had claimed that he was on holiday that week and the next, the examiner asked him when he visited and he claimed that he did so on Friday evenings and Saturday mornings. He said he was paid on the 21<sup>st</sup> of each month into his account but did not keep details of his visits. Timesheets for Alan Owen showed that he was working that day between 7 AM and 5 PM, with two breaks 10-11am, then at 1-2pm.

85. Transport Manager Alan Owen's explanations to VE Ruth Kyriacos conflicted with what Sion Edwards and Robert Jones told VE Ruth Kyriacos at her visit, it also conflicted with Alan Owen's employment contract with Tacsí Gwynedd Ltd.

86. An email from TE Nia Daniel was referred to, it related to a complaint sent to Gwynedd Council regarding the quality of service and bus condition on the number 12 bus service, the complaint stated that Huw's Buses were operating the bus the complainant was on. Huw's Buses is the local name for the operator as it was also a trading name for the taxi business.

87. On 10 June 2018 another anonymous letter addressed to me as traffic Commissioner was received by the DVSA in Wrexham. That letter contained similar information regarding the Sunday service route 12 and the incident involving the wheel loss, a paragraph read as follows:

*"Yesterday I travelled on a bus registration SH51MHO belonging to this dodgy operator on the number 12 service. I am not a mechanic, but I am suitably intelligent to know when a bus brakes, there should not be the sound of metal to metal coming from the brake drums. The bus was also operating*

*with no designated sign. Your vehicle inspectors should examine this bus immediately”.*

88. Maintenance paperwork and systems at the time of the latest DVSA visit were described by VE Ruth Kyriacos as being in a dire state.

89. Very full and detailed supporting information was provided to corroborate VE Ruth Kyriacos’s public inquiry statement. This included a statement from SVE Martin Garlick describing in detail the events on 14, 15 and 26 June 2018, this fully supported events described by VE Ruth Kyriacos.

90. Similarly a statement was provided by VE Gwyn Griffiths relating to 25 and 26 June 2018. His statement also corroborated evidence provided by VE Ruth Kyriacos. He went on to comment that he had visited this site as a vehicle examiner on several occasions in the past as the premises was also an MOT station. VE Gwyn Griffiths commented that at every previous visit he had been treated with respect and felt that there was full cooperation, he was therefore surprised and shocked by what he described as strange behaviour encountered during this visit, behaviour that he said could only be described as intending to be intimidating.

91. A statement by Gerallt Jones, the vehicle technician employed by Gwalia Garage confirmed that he attended on 12 June 2018 to recover a bus belonging to the operator due to a wheel loss. He described the bus as sitting on its nearside rear hub as both wheels were missing. His detailed statement commented that the vehicle had suffered a wheel loss of both wheels to the nearside rear axle.

92. Gerallt Jones’s statement concluded with the following:

*Whilst carrying out the recovery I think I heard someone mention a blowout. There was a young guy with Sion who had previously worked for Maethlu Motors and I think it was him who said it. However, as no wheels and blowout tyres were in place, as you would expect with a blowout, I didn’t think he was talking about this bus. As I was placing the chains on the under lift, I also noticed that the offside rear inner tyre was bald, I didn’t take a photograph of this though and didn’t mention it to Sion as he said he was scrapping the vehicle anyway.”*

93. TE Nia Daniel produced a written public inquiry statement and answered questions on it. Her report provided factual background including references to the previous public inquiry and the revocation decision of a deputy traffic commissioner which was overturned by the Upper Tribunal in 2015.

94. In early January 2018 the operator was sent a production letter, this was answered later that month with a file full of information. Later, in March 2018 the traffic examiner work through the information received, it was discovered that:

- Not all calibration certificates were produced;
- On comparing the bookings and the charts produced it appeared that all charts were not produced as required;
- Drivers were failing to record school journeys on tachograph charts when completing private hire work on the same day;
- Drivers were failing to enter centrefield details correctly on charts;
- Drivers were failing to operate the mode switch correctly; and,
- Drivers were failing to record positioning journeys.



95. On 16 April 2018 (well before the wheel loss incident) TE Nia Daniel visited the operator where she met with Sion Edwards and Robert Jones, it was explained that Robert Jones was waiting to complete his transport manager examinations. The nominated transport manager Alan Owen was not present. It became apparent that Sion Edwards and Robert Jones actually dealt with bookings, tachograph charts and drivers; when questioned about the involvement of the transport manager, they explained he visited usually on a Saturday and oversaw the paperwork. When asked if the transport manager was employed it was confirmed that he had a contract of employment.

96. It was claimed that the operator had an analysis system but the scanner used in connection with it had broken since January, hence no charts had been analysed using the software. It was further claimed that these had been done by other means although there was no evidence of this.

97. Apparently infringements which were discovered were discussed with drivers, but this was not recorded. The operator was advised that this was not acceptable and that when analysis was completed it needed to take into account all work undertaken by drivers, not only the driving recorded on the tachograph charts.

98. Analysis of working time was inadequate, again the operator was advised on this.

99. The operator explained that it was currently updating driver handbooks and individual drivers on starting employment were given an induction, a driver assessment and logbook and defect assessment. Again, none of this was recorded.

100. On 7 May 2018 an email was received from Sion Edwards containing a response to the traffic examiner's shortcomings and a copy of a driving licence for one (named) individual; the transport manager's contract of employment; and, a response to the various issues raised. No copies of other driver contracts were provided, further calibration certificates were not produced.

101. Referring to the assurances and explanations given to her, TE Nia Daniel told me that *"bookings compared with charts were a mess, they said they had more jobs than discs and so gave the work to the taxi side of the business using two 8 seater vehicles."*

102. TE Nia Daniel explained that whilst the visit conducted in April 2018 was unsatisfactory, the assurances given by Sion Edwards and Robert Jones resulted in a decision to give the operator time to rectify the issues with view to a revisit later. However, at that time she had not been aware of an audit report produced by Foster Tachographs and Transport Compliance dated 23 March 2016 which had been completed following the Upper Tribunal decision in late 2015. TE Nia Daniel commented that she was alarmed that the audit report raised the same issues as those identified by the DVSA in April 2018. In view of this she questioned whether the operator would act on assurances given to the DVSA following her April 2018 visit.

103. On 14 August 2018, a couple of weeks before the public inquiry, an S marked prohibition was issued for a 16 seater minibus registration BU54 PLT. It had been presented for MOT but failed on a number of issues that should have been identified and addressed prior to submission for test. Failures included a brake pipe that leaked due to excessive corrosion.

104. The MOT tester provided a note which was also copied to the operator prior to the hearing. It referred to his knowing the presenter who was Sion Edwards. The note read *"When I asked about issuing the prohibition he said he had recently bought it and was selling it on and asked me to issue it under Edwards garage and not the O licence because he said he didn't intend on using it."* On my reading this note at the public inquiry on 31 August 2018, I referred to the V5 for the vehicle as this contradicted Sion Edwards's assertion as it showed the keeper as Tacsí Gwynedd Ltd from 2 November 2016. TE Nia Daniel assisted and explained in oral evidence that she had analysed tachograph charts for BU54 PLT and this confirmed it was used by Tacsí Gwynedd Ltd on a regular basis throughout October, November and December 2017. In other words if the MOT tester was correct, then Sion Edwards's claims about BU54 PLT to the MOT tester were untrue.

### **Findings of fact and material considerations.**

105. I declined to accept the surrender request as if the evidence from the DVSA came up to proof, orders of disqualification under section 28 of the Transport Act 1985 were very real possibilities. I also took into account the fact that the operator did not seek to surrender immediately but sought to continue operating for a time, after hearing the evidence it was clear that the serious road safety concerns were such that it was not in the public interest to allow any delay in closing operations.

106. There is one area of evidence from the DVSA witnesses where I disagree with comments made. VE Ruth Kyriacos might well have felt that there was a lack of cooperation from the operator, indeed there is evidence of clear obfuscation and obstruction. However it is not unreasonable for an operator to seek legal advice whenever it wants to do so, indeed I reflect that had this operator taken good advice from specialist transport lawyers that it might well have acted differently and cooperated fully with the investigation. Unfortunately, is clear that this operator did not cooperate and indeed I accept the evidence of the DVSA witnesses that there was obfuscation and obstruction.

107. Specifically I am referring to a paragraph written by VE Ruth Kyriacos in her report where she writes:

*"With the assistance of Gwalia garage, I was able to conclude what had actually happened. The pictures alone provide no doubt that the vehicle did in fact suffer a wheel loss. Sion's account, the defensive behaviour, the unprovoked threatening and intimidating tactics used by his family and staff and, the appointing of the solicitor were, in my opinion, all consciously chosen methods in attempt to get DVSA and me to go away in the hope that this problem would disappear."*

108. I cannot and do not criticise any operator for seeking legal advice from a solicitor, I also appreciate that not all solicitors firms will have specialist expertise in operator licensing.

109. For the avoidance of doubt, with the exception of the point above relating to obtaining legal advice from a solicitor, I accept the entirety of the factual evidence from DVSA witnesses, both written and oral.

110. This is an operator that had a relatively small scale business in PSVs, but there were longstanding issues relating to compliance. The operator had previously appeared before a deputy traffic commissioner who felt the issues were sufficiently serious to warrant revocation of the operator's licence. I appreciate that the order of revocation was

overturned on appeal, however at the very least, this operator could and should have anticipated a DVSA investigation at some point in time.

111. I do not accept that Sion Edwards was truthful when he told VE Ruth Kyriacos that the bus had a blowout as claimed. His claims were an attempt to mislead the DVSA investigation and minimise the maintenance failings.

112. VE Ruth Kyriacos described responses about the transport manager as being vague, I make a finding that this was because those working for the operator were aware that the transport manager was not performing a proper transport manager role. I also make a finding that comments from Sion Edwards relating to the hours worked by his transport manager were made up and were not truthful.

113. Sion Edwards was described as being accommodating and pleasant to deal with when the DVSA visited on 12 June 2018, I accept that that was the case, whilst that might have been the DVSA perception, this was because he was knowingly providing false information to VE Ruth Kyriacos and sought to mislead. Robert Jones was not perceived to be as accommodating and was described as being vague, I make a finding that this was because although he had designed systems which could and should have worked if he had the necessary management skills and time to perform the necessary tasks, he was not doing so. I accept fully the comments from VE Ruth Kyriacos to effect that systems introduced by Robert Jones were not being used as intended. I also reflect that the systems were ones that should have been overseen by a transport manager with continuous and effective management of transport.

114. Referring to evidence at paragraphs 28 and 29 of this decision, I make a finding that Sion Edwards sought to avoid speaking to VE Ruth Kyriacos.

115. I make a finding that transport manager Alan Owen told VE Ruth Kyriacos that he was on holiday that week and the next, I go on to make a finding that he was not on holiday and told her an untruth to avoid meeting with her. This was another delaying tactic.

116. Prohibitions were issued to 2 taxis operated by this operator, albeit they were not in scope of the operator licensing regime which I oversee. However the prohibitions are relevant to corroborate evidence relating to poor standards of maintenance.

117. The description of attempts to have prohibitions cleared from taxis arose because this operator wanted to cut corners in terms of compliance and to avoid going through the proper channels for clearing prohibitions. For the avoidance of doubt I accept fully the evidence from VE Gwyn Griffiths when he told me that he had advised Sion Edwards of the correct procedure for clearing a prohibition.

118. SVE Martin Garlick described events on his arrival at the DVSA office in Caernarfon, I accept the accuracy of his description of what happened, this corroborated the evidence of VE Ruth Kyriacos.

119. VE Ruth Kyriacos described being shouted at in an unfriendly tone, I fully accept her description of events. I make a finding that this was an illustration of family and close friends of the controlling mind of the business seeking to assist in obfuscation.

120. A comment from VE Ruth Kyriacos in her report was that she felt that Sion Edwards was avoiding her, I make a finding that this was a fully justified perception. I note that Sion

Edwards did not have a problem in contacting the DVSA relating to seeking taxi prohibitions being cleared and reflect that it suited him to do so.

121. I accept the description of Robert Jones being reluctant to sign for receipt of a letter and reflect that this was yet another example of a lack of cooperation. All he was asked to do was to acknowledge that he had received a letter. Whilst Robert Jones was neither director nor transport manager he had ostensible authority.

122. No response was received to a DVSA query on 20 June 2018 asking who the responsible person in Sion Edwards's absence was, this reflected the lack of control of the transport. It is clear that there was no transport manager exercising continuous and effective management of the business as required by legislation.

123. I can accept that Sion Edwards might have felt work-related stress and reflect that his inability to adhere to a compliant operator licensing regime will have caused anxiety when probed by an investigatory body such as the DVSA.

124. It was put to me that North Wales police confirmed that their officers did not attend the scene of the wheel loss as suggested by the operator, I have no reason to doubt the accuracy of this.

125. On 25 June 2018 VE Ruth Kyriacos was reluctant to go alone to inspect vehicles at the operator's premises the next day, I accept that this was the case and I go on to make a finding that her reluctance was fully justified. Events that followed fully justified her not going alone. I comment that it is wholly unacceptable for any operator to communicate with any DVSA examiner in such a way that leaves him or her uncomfortable in attending the operator's premises alone. Anyone who seeks to join a regulated regime such as PSV operator licensing, must accept the need to be transparent and cooperative with all investigatory and regulatory authorities.

126. I accept the description of the mechanics as seen by the two examiners on first visiting the premises on 26 June 2018, I reflect that this was a result of the lack of proper management control.

127. In accepting the entirety of the evidence given to me describing cars being pulled into the yard and garage door started to come down, I make a finding that someone, albeit it is not clear who it was, communicated with friends and family who attended with view to deliberately blocking DVSA staff cars in the premises; it was an attempt at intimidation of DVSA examiners.

128. I accept that VE Ruth Kyriacos felt compelled to advise a colleague that she had a telephone and was minded to call the police if necessary, it is manifestly unacceptable that any DVSA examiner should be put into this position.

129. The description of a male in a high viz becoming aggressive is one that I find to be accurate. I also make a finding that Dafydd Edwards sought to intimidate VE Ruth Kyriacos as described, pushing himself close to her, blocking her in and demanding to see the photograph on her phone and setting out to grab it from her.

130. Dafydd Edwards's comments to the vehicle examiner were unjustified and I accept the description as set out in evidence to me. It was an unwarranted verbal attack.

131. Suggestions by the male in the high viz described in evidence to effect that the DVSA were not allowed to inspect vehicles were inaccurate; it also illustrated the lack of basic knowledge as to the rules that apply in this regulated environment.

132. The individual who asked DVSA officials whether he was allowed to ask them to leave had ostensible authority on behalf of the operator. I accept that that individual was a member of the director's family as described in evidence. I go on to make a finding that he sought to intimidate DVSA officers at the scene.

133. It is clear to me that those present sought to isolate and intimidate VE Ruth Kyriacos, fortunately a Welsh speaking colleague assisted by advising those acting on behalf of the operator that they were not helping the situation.

134. I reflect that VE Ruth Kyriacos is a very experienced examiner as indeed is her line manager, SVE Martin Garlick. The fact that he confirmed that he too felt frightened by the experience reflects a wholly unacceptable state of affairs.

135. During the public inquiry I set out to test the comments relating to targeted intimidation of VE Ruth Kyriacos and note that this was corroborated by other witnesses in their evidence to me.

136. There were no issues between VE Ruth Kyriacos and Sion Edwards in 2014 when the licence was granted, neither was there any concern at any stage until this recent investigation. It is clear that the hostility was a result of an appreciation by those controlling this business that there was a very real likelihood of a loss of their livelihood.

137. Evidence from Gwalia Garage is helpful as it is independent corroboration supporting my finding that a bus suffered a wheel loss and not a mere blow out as claimed. Moreover statements to effect that there was no wheel loss were an attempt to mislead examiners.

138. Dealing with inspection records I was told that Robert Jones struggled to locate them, this reflects an organisation where no one person was in control of transport; certainly there was no transport manager with continuous and effective management of transport.

139. The descriptions of weekly rotas not being produced and a lack of wheel torque or VOR procedures are ones that I accept as accurate. It is consistent with a business with a lack of effective controls.

140. VE Gwyn Griffiths described his visit to this operator in January 2018, I accept the accuracy of what he told me. The DVSA were generous in giving time to this operator to sort matters out, an immediate referral to me could have been taken but I understand why this was not done following my revocation of another local operator licence which has had a significant impact within Gwynedd.

141. Assurances were given to VE Gwyn Griffiths but they were, as described by him, empty promises. There was a promise that rolling road brake tests would be conducted at every other inspection with decelerometer tests conducted on the other inspections; I accept the DVSA evidence that this was not carried out.

142. Another empty assurance provided to VE Gwyn Griffiths in January 2018 related to specialist training with attendance at refresher courses.

143. There was a copy of a contract of employment for transport manager Alan Owen in my brief, it having being provided to TE Nia Daniel. I make a finding that it did not reflect the true position. I am highly sceptical that Alan Owen was paid circa £36k per annum for acting as a transport manager. It is clear that there was no continuous and effective management and there was little or no evidence of Alan Owen having any meaningful impact in the business.

144. VE Gwyn Griffiths was given assurance in January 2018 relating to driver handbooks, Robert Jones told the DVSA that he was the individual responsible for putting the handbooks together but had not had the time to do this yet as he was too busy. Robert Jones was not the transport manager and it was a task that should have been undertaken under the supervision of transport manager Alan Owen. As there was no real transport manager in this business it is not surprising that this was yet another task which was not undertaken.

145. Anonymous letters are occasionally received by traffic commissioners, they are by their nature incapable of being tested, and inevitably they carry very little or no weight. In this case it is clear that the comments reflected concern from members of the fare paying public who were understandably appalled at the low safety standards from this operator. The evidence from the DVSA investigation has confirmed that the anonymous concerns were well-founded.

146. VE Gwyn Griffiths told me that the behaviour exhibited by this operator was what he felt could only be described as intending to be intimidating. I agree with him.

147. TE Nia Daniel's evidence is fully accepted by me. Assertions to her by the operator were false. No analysis was carried out as claimed by the operator, I reflect that the operator had ample opportunity to provide evidence to the contrary. I also accept her suggestion that this operator had too much work for the number of discs issued, it is clear to me that this contributed to decisions to neglect proper maintenance of vehicles. Financial gain took priority over road safety.

148. I note that TE Nia Daniel had not been aware of the audit report which had been completed following the Upper Tribunal decision in late 2005. She was naturally alarmed that the audit report raised the same issues identified by the DVSA in April 2018. I agree with her suggestion which questioned whether the operator would act on assurances. I also reflect that this corroborates my other findings in relation to this operator.

149. Evidence was given to me relating to a minibus being subject to an S marked prohibition on presentation for MOT. I accept the accuracy of the note from the MOT tester and make a finding that Sion Edwards sought to mislead and deflect the true position. It was claimed by Sion Edwards that he did not intend using the vehicle which had been prohibited, but I accept the evidence from TE Nia Daniel which proves that his assertions were untrue.

150. When I ask myself whether I trust this operator, I answer in the negative. I remind myself that operator licensing is based on trust and in 2012/034 Martin Joseph Formby t/a G & G Transport; the Upper Tribunal said *"traffic commissioners must be able to trust those to whom they grant operator's licences, to operate in compliance with the regulatory regime. The public and other operators must also be able to trust operators to comply with the regulatory regime."*

151. Judge Brodrick, in the case of 2006/277 Fenlon said:

*"It has been said on many occasions that trust is one of the foundation stones of operator licensing. Traffic Commissioners must be able to trust operators to comply with all the relevant laws, rules and regulations because it would be a physical and financial impossibility to police every aspect of the licensing system all day and every day. In addition operators must be able to trust other operators to observe the relevant laws, rules and regulations. If trust between operators breaks down and some operators believe that others are obtaining an unfair commercial advantage by ignoring laws, rules or regulations then standards will inevitably slip and the public will suffer."*

152. I also remind myself of comments from the Upper Tribunal at paragraph 19 of NT/2013/028 Arnold Transport and Sons Limited v DEONI:

*"the impact of unfair competition is insidious in that it gradually and subtly undermines the confidence of compliant operators that their competitors will comply with the regulatory regime and thus compete fairly. What matters is the perception that other operators are competing unfairly not whether they are achieving any benefit as a result. Once rumours, of unfair competition spread, (or clear evidence of it become apparent), the assumption will be made that it must be advantageous because there would be no point in running the risks involved if it was not. It is also corrosive because once rumours of unfair competition (at the very least), begin to spread the perception that some operators are competing unfairly (whether or not they profit by doing so) has a damaging effect. It means that normally compliant operators will feel tempted to "cut corners" in relation to the regulatory regime in order to remain in business. Some may decide to resist that temptation but others are likely to succumb. The end result, if swift and effective steps are not taken to stamp out unfair competition, is that the operators who are most determined to remain compliant will be at greatest risk of being put out of business, even though they are the very operators who most deserve to remain in the industry. Trust, whether between operators and the traffic commissioner or between operators themselves, is all too easily destroyed. Rebuilding it, if that is even possible, is likely to be a long and slow process."*

153. In the case of 2007/459 KDL European Ltd the court said:

*"We are satisfied of the need "to make an example of the operator so as to send a warning to the industry as a whole". This is consistent with the approach by the five-judge Court of Session in the Thomas Muir case (see paragraph 2(xiii) above) where deterrence is expressly mentioned ("in particular for the purpose of deterring the operator or other persons from failing to carry out their responsibilities under the legislation"). This is not by way of punishment per se but, as Lord Cullen said, is "in order to assist in the achievement of the purpose of the legislation". We answer the question posed in 2002/17 Bryan Haulage (No.2) "is the conduct such that the operator ought to be put out of business" in the affirmative. And we judge this at the date not only of the public inquiry but also of the appeal. This is a bad case and we hope that the message sent out will be clear to all."*

154. A Stay decision in the case of Highland Car Crushers Ltd made the following comments:

*"Other operators, with knowledge of the case, might be tempted to look at the circumstances and say to themselves this operator appears to be getting away with it so why should we bother to incur the expenditure of time, trouble and money to run a compliant operation? It only needs one or two operators to adopt this approach to lead to a greater risk that the operator licensing system, which contributes to road safety, will be fatally undermined."*

155. I always seek to conduct a balancing exercise and to identify both positive and negative features. In this case the most positive features relate to the fact that the operator has been in business in an area where historically there was very little enforcement regulatory action. There is now more regulatory action and the local DVSA staff have done a sterling job in assisting in improving standards by educating operators. I also acknowledge comments from VE Ruth Kyriacos that previous interaction with Sion Edwards had been positive and at that time she didn't feel intimidated. This was endorsed by her colleagues. However I reflect that these positive comments are very much outweighed by the many and serious adverse findings of fact referred to in this decision. The operator could not cope safely with its increased work and this contributed to the failings. Obfuscation, obstruction and falsehoods from the operator are unacceptable. Maintenance failings were many and serious, putting road safety at serious risk.

156. When considering the repute of Tacsí Gwynedd Ltd as an operator I ask myself the Priority Freight question, I answer in the negative as I do not trust the operator. In any event there has not been a genuine transport manager. I answer the Bryan Haulage question in the affirmative. My decision to revoke the licence is an obvious one.

157. Turning to the issue of disqualification under section 28 of the Act, , I consider that it is appropriate that an order of disqualification be made in respect of the limited company that holds the operator's licence and the two directors.

158. Aside from abject failures to comply with assurances in relation to road safety and record keeping, this operator and its controlling mind have sought to obfuscate, mislead and obstruct. Furthermore there have been attempts to intimidate DVSA examiners. I have been assisted by guidance in statutory document number 10, The Principles Of Decision Making & The Concept Of Proportionality at paragraph 100, an order of disqualification for an indefinite period is appropriate. In this case it would not be appropriate to suggest that in a specified period of years the limited company or the directors could be allowed back into the operator licensing regime. There would be a need for a fundamental change in culture and there would be a need for tangible evidence that lessons have been learned and that there would be fulsome cooperation with regulatory and enforcement bodies.

159. I accept that there was no reference at the hearing to director Hugh John Edwards, he is the father of Sion Jones. He is a statutory director and his responsibilities are the same as that as his son. If he sought to re-enter the industry he would need to demonstrate that he was capable of operating compliantly and that there could be no repetition of the appalling facts as found by me. There would also be a need to assure the adjudicating traffic commissioner that he would ensure that lessons were learned.

160. Turning to Alan Owen's repute as a transport manager, he has not undertaken that role and he has deliberately misled the DVSA. He told untruths to VE Ruth Kyriacos about his holiday with view to avoiding meeting her. Many of the failings identified are ones that a competent transport manager could and would have addressed. This did not happen as Alan Owen either was never present or was rarely present. He has had a full time job in the Abergavenny area and has had little or no role in Tacsí Gwynedd Ltd. He loses his repute as a transport manager and is disqualified from applying for or holding an operator's licence anywhere within the EU, the disqualification is for an indefinite period.

## **Decisions**

161. I make decisions as set out in paragraphs 1-9, above.



**Other**

162. There is reference in this decision to my previously revoking another PSV operator's licence in the Caernarfon area, it had a comparatively large number of discs and this has had a knock on effect on the local PSV industry. I hope that within weeks at the most, there will be an announcement as to the site of the first OTC for a full time TC for Wales, it is likely to be in Caernarfon and will be staffed with fully bilingual staff. For some time those seeking new PSV operator licences in the North West of Wales have been asked to attend before me before I grant any new licence. Training and business development is being offered in partnership with others with view to improving both the quality of the local PSV industry and its image.

A handwritten signature in black ink, appearing to read 'Nick Jones', with a horizontal line underneath.

**Nick Jones  
Traffic Commissioner for Wales  
Comisiynydd Traffig dros Ardal Drafnidiaeth Cymru**

**25 January 2019**