

REDACTED VERSION

IN THE SCOTTISH TRAFFIC AREA



McGILLS BUS SERVICE LIMITED – PM0000015

AND

**JAMES EASDALE, RALPH ROBERTS, COLIN NAPIER –
TRANSPORT MANAGERS**

WRITTEN CONFIRMATION OF THE TRAFFIC COMMISSIONER'S DECISION

Background

1. The operator holds a Standard National Public Service Vehicle Operator's Licence authorising the operation of 600 vehicles with 600 discs in issue. The Directors are James Easdale, Alexander (Sandy) Easdale, Ralph Roberts. David Robert Martin was appointed on 10th August 2017 (page 36) but this was not apparently notified to the Office of the Traffic Commissioner as required in breach of the condition on the licence. The last checklist (page 23-32) completed by Mr Roberts indicates that the operator was aware of the obligation to notify such changes. Mr Martin has now resigned, with effect from 19th September 2019.

2. The following are authorised as Transport Managers: James Easdale, Ralph Roberts and Colin Napier. The maintenance is said to be conducted in-house with vehicle inspections to take place at four weekly intervals. The operator has five authorised Operating Centres at 99 Earnhill Road, Greenock, 1 Muriel Street, Barrhead, Glasgow, 80 Locks Street, Coatbridge, Greenock Road, Inchinan, Renfrew, Milliken Park Garage, Cochranemill Road, Johnstone. In the course of evidence I heard that issues connected with the management of Barrhead depot, the decision had been taken to close this site from 1 April 2019. That decision had not been communicated to the Office of the Traffic Commissioner; it is relevant to my consideration of the capacity of management to ensure compliance going forward. The system would prevent removal taking the capacity below the discs in issue.

3. The operator attended a Public Inquiry in March 2010 when it was directed to pay a maximum section 39 financial penalty of £60,500 (page 102-120). A variation to increase vehicle authority was subsequently granted.

The Hearing

4. The hearing was originally listed to take place in the Tribunal Room of the Office of the Traffic Commissioner for Scotland, Edinburgh on Tuesday 30th July 2019. It was relisted following a proactive approach from the Traffic Commissioner's staff revealed that documentation would not be produced as per the earlier direction. Accordingly, the above date was vacated and specific directions were given for the future management of the case. The hearing was relisted for 30th October 2019 when the operator, Transport Managers, Mr Roberts, Mr Easdale, and Mr Napier appeared, represented by Mr James Backhouse.

The issues

5. The Public Inquiry was called in order to consider whether I should intervene in respect of this operator's licence and specifically whether the operator had honoured the undertakings under section 17(3)(aa) namely that vehicles would be kept fit and serviceable, and that there would be an effective written driver defect reporting

system; whether vehicles or drivers had been issued with prohibition notices by DVSA or the police in the past five years, contrary to section 17(3)c), whether there had been a material change in the circumstances of the operator, and by reference to the continuing and mandatory requirements for a standard licence, namely repute, financial standing and professional competence. James Easdale, Ralph Roberts and Colin Napier were called separately to consider whether to make directions in respect of their personal repute if they had not exercised continuous and effective management of the transport operations.

6. The call up letter and addendums also put the operator on notice that I would consider whether it had failed to operate a local bus service under section 6 of the Transport Act 1985 or operated a local service in contravention of that section and if so whether I should impose a penalty under section 39 of the Transport (Scotland) Act 2001. The operator was also put on notice of the power to impose a condition under section 26 of the Transport Act 1985.

7. A further set of directions was made when financial evidence was not provided as per the call-up letter. A further maintenance assessment was requested, resulting in the 3rd addendum, containing a further statement from the Vehicle Examiner. The operator supplied a large bundle of documents, which unfortunately only arrived with me on 28th October 2019, but which were lodged with the office far in advance. That bundle contains 3 organograms and very short histories for the three nominated Transport Managers. I asked that the operator provide advance notice of any legal arguments it might wish to rely on and, where relevant, the factual matters at issue.

Finance

8. As indicated, following the representations made by the operator in response to the punctuality findings and the questions arising in respect of maintenance, I requested financial evidence to be produced. The operator was required to demonstrate financial standing to the prescribed sum of £2,673,550, as explained in the letter dated 10th July 2019. I was initially referred to a 'Group Strategic Report' containing 'Consolidated Financial Statement' from 2 January to 31 December 2017 but that statement, audited by Henderson & Company, was out of date for the purposes of assessing the mandatory and continuing requirement for financial

standing. I did note the reference to “profit attributable to owners of the parent” and the dividends paid out.

9. I refer to the addendum letter of 10th July 2019 as to what was required to be produced. I take account of the fact that this is apparently the first time that the legal test has been drawn to the attention of the operator.

10. For the sake of completeness, whilst the statement at page 47 appears to refer to McGills Bus Services Ltd as the parent company of Smoothie Cruisers Ltd, McGill’s City Connect Ltd, Loch Lomond Bus Services Ltd, those are different entities with separate limited liability status. There is no provision within the Public Passenger Vehicle legislation for what might be termed a group licence.

11. The operator has benefited from the delay in complying with directions, which allowed opportunity to produce audited accounts dated December 2018. As per Article 7(1) of Regulation (EC) No 1071/2009: “In order to satisfy the requirement laid down in Article 3(1)(c), an undertaking shall at all times be able to meet its financial obligations in the course of the annual accounting year”. The purpose of the requirement is spelt out, in general terms, in recital 10 to the Regulation: “It is necessary for road transport undertakings to have a minimum financial standing to ensure their proper launching and administration”. It has been held that ‘administration’ means the organisation and running of a transport business which holds an operator’s licence. In particular, the requirement is intended to ensure that vehicles can be operated safely because the operator can afford to maintain them promptly and properly.

12. The purpose and impact of this requirement is adequately explained in the leading appeal decision of 2012/017 NCF Leicester Ltd - it is a requirement that the operator must satisfy for the duration of the licence. As the Upper Tribunal has made clear the requirement cannot be satisfied by evidence which simply provides a ‘snapshot’ of the operator’s financial position.

13. In light of the above difficulties in obtaining the financial evidence I indicated a need to seek a further check as I would in similar circumstances for any operator.

The operator prefers to rely on the above provisions and supply audited annual accounts for *this* entity. I refer to the undertaking received below.

Punctuality

14. In advance of the hearing I noted that the Group Strategic Report for 2017 (page 43) records that this entity provides “urban, rural, and inter-city stage carriage bus services across a wide geographical area from Largs on the Clyde Coast through Inverclyde, Renfrewshire, East Renfrewshire, Glasgow, North Lanarkshire and South Lanarkshire”. It also records “significant productivity drops”, “worsening congestion”, “the need to use more vehicles and people to deliver the same timetable”, “longer journey times and uncertainty of arrival times”. It refers to the research carried out by KPMG on the trends in Scottish bus patronage but interestingly, even at 2017 it accepted that its business was “being stretched thin”. I was therefore interested to consider the current position.

15. As confirmed during the hearing, I considered the reports from Bus Users Scotland dated 30th July 2018, 18th September 2018, 18th December 2018, 23rd February 2019, 25th February 2019 and 6th March 2019 in the above context. Those reports detail the results of monitoring exercises carried out on various local services operated by the company. The Office of the Traffic Commissioner was informed in advance of the hearing that the evidence from Bus Users Scotland was unlikely to be controversial and pointed to the continuing relationship with that body.

16. The report from Bus Users Scotland dated 30th July 2018, received on 4th October 2018, records monitoring of the **X23 service** from Erskine to Glasgow via Renfrew, Braehead on 6 days between 10th May and 25th July 2018, in addition to two days of ‘mystery bus travel’. The service operates on Mondays to Saturdays. It is described as popular with passengers travelling to Glasgow city centre. The monitoring exercise was against the registered timetable and made 47 monitoring observations, which recorded 4 services as early, 1 late and 1 failed to operate. Those observations indicated punctuality of 87.23%. The response from Mr Napier, who is described as the “Operations Director” but appears as one of the authorised

transport managers, dated 27th September 2018 expresses disappointment at the recorded punctuality. He blames the late service on 20th July 2018 on “unpredictable, abnormal congestion on the M8”, the failure to operate on 23rd July 2018 is attributed to a vehicle breakdown. He accepts the early running on the same date but attributes the early departures from Bothwell Street, Glasgow on 23rd and 25th to quieter than normal congestion and on the traffic regulation conditions in place within Glasgow. He indicates that he would be reviewing the X23 timetable. The Bus Compliance report records that the operator introduced additional services to operate on this route from 7 July 2018 to address passenger demand, which predates Mr Napier response. My understanding from public records is that it was varied with effect from 7th May 2018 and most recently from 1st April 2019 to reflect a change in route and timetable.

17. The operator complains that the timing point used represents a small sample – 1 in 706. I have been referred to its appendix 26 to show an improving trend in this service over the last two years. I can take account of the updated monitoring exercise reported on 3rd July 2019, which reflected that improvement with punctuality put at 94.87%. The difficulty for the operator is that this was a smaller sample yet. For the reasons set out below it was disappointing to note that the operator is relying on congestion in Glasgow City Centre, on the M8, in and around Braehead and the main area of operation in Renfrew even after having attracted the maximum penalty at Public Inquiry previously.

18. The report from Bus Users Scotland dated 18th September 2018, received on 4th October 2018, records monitoring of the **906 service** from Glasgow to Largs via Greenock on 6 days between 15th August and 17th September 2018, in addition to two days of ‘mystery bus travel’. The service operates on Mondays to Saturdays. It is described as popular with passengers travelling from Greenock to Glasgow but is also relied on by students studying at West College Scotland in Greenock and schools in and around the route. The monitoring exercise was against the registered timetable and made 45 monitoring observations, which recorded 4 services to be late and 1 early. Those observations indicated punctuality of 88.89%. The response from Mr Napier dated 14th December 2018 is again disappointed by the punctuality recorded. He again refers to “intermittent, unpredictable delays due to congestion on the M8” as well as roadworks in Glasgow and Greenock centres. He refers to

investment made in services including this one over a three-year period but with the aim of a 15-minute combined headway. The Bus Compliance report anticipates and accepts the impact of distance, the potential for roadworks and congestion in Glasgow City Centre. It separately records a driver advising passengers on a journey from Port Glasgow to Glasgow of the impact of an accident on the M8.

19. I am less clear on whether the operator takes issue with this sample using a timing point which recorded 1 in 250 journeys. I observed that Appendix 30 is almost illegible but was informed that this is a table evidencing the steps taken to ensure that roadwork notifications are acted upon by the operator. I am referred to a lengthy diversion due to the closure of the A78 in Greenock. I do take account of the distance covered (which the operator has chosen to include in the single registration) and potential roadworks. Those referred to were presumably planned with a timetable notification lodged. I am less sympathetic to the references to congestion, for the reasons outlined below. Noting the on-street team dedicated to the Clyde Flyer services (901 and 906) with additional Route Managers overseeing the daily operations from pinch points in Glasgow City Centre, Greenock town centre and Braehead shopping centre, I would be entitled to conclude that any future compliance will be within the 95% target. That information will no doubt come as welcome news to the users of this service.

20. The report from Bus Users Scotland dated 18th December 2018, received on 22nd January 2019, records monitoring of the **904 service** from Paisley town centre to Bath Street, Largs on 7 days between 12th October and 12th December 2018, in addition to two days of 'mystery bus travel'. The service operates on Mondays to Sunday. It is described as popular with passengers travelling to Largs. The monitoring exercise was against the registered timetable and utilised 10 timing points to make 40 monitoring observations, which recorded 9 services to be late and 1 early. Those observations indicated punctuality of 75%. The report also recorded issues with the maintenance of vehicles (page 251). The response from Mr Roberts dated 11th February 2019 sent to the Office of the Traffic Commissioner, accepts 8 of the 10 adverse findings including the early running. He claimed that the 10:56 from Kilbirnie Cross left at 11:01 not 11:03 as recorded, and that the 12:32 from Johnstone departed at 12:36 not 12:38 as recorded. He does accept that this service has been on the operator's "hot list" for months as it requires more running time to be

inserted although he appears to contradict himself when describing the non-compliance as sporadic. He claims that the absence of a variation to the timetable is not evidence of inaction but points to “the worst cases of infrastructure issues” and “the race for survival during this period of significant downturn”. The timetable was varied with effect from 26th March 2018 and again to take effect from 11th August 2019 to implement timetable and route amendments.

21. I note the operator’s response and, whilst the route might be long, that is through the operator’s design. The sampling of 1 in 271 journeys from the Bus Users Scotland is again described as small. This route has apparently benefited from the reorganisation of the Johnstone depot arrangements, to which I refer. The operator has taken the commercial decision not to add another bus into the service, as it would become unaffordable to operate. The result is to allow longer journey times. I am unclear why this was not realised sooner than the variation, which came into effect on 11th August 2019.

22. The report from Bus Users Scotland dated 25th February 2019, received on 18th March 2019, records monitoring of the **51 service** from Paisley town centre to Oak Bank Drive, Barrhead on 6 days between 5th January and 20th February 2019, in addition to two days of ‘mystery bus travel’. The service operates on Mondays to Sunday. It was described as popular with passengers due to limited alternatives. The monitoring exercise was against the registered timetable and utilised 9 timing points to make 54 monitoring observations, which recorded 5 services to be late, 2 early and 9 services failed to operate. Those observations indicated punctuality of 70.37%.

23. Noting the above it is perhaps understandable why the operator seeks to question the level of sampling – it says 1 in 817 journeys. A service operating at ten-minute intervals should be consistent. I can allow for the exceptional circumstances which unfortunately overcame the Barrhead depot but that fact and the timing indicates the need to ensure that transport managers are discharging the statutory duty for continuous and effective management. I return to that issue below.

24. The report from Bus Users Scotland dated 6th March 2019, received on 8th April 2019, records monitoring of the **17 service** from Paisley town centre to Glasgow on 6 days between 12th January and 28th February 2019, in addition to two days of ‘mystery bus travel’. The service operated on Mondays to Sunday, at that time. The

monitoring exercise was against the registered timetable and utilised 11 timing points to make 52 monitoring observations, which recorded 9 services to be late and 1 service failed to operate. Those observations indicated that punctuality had fallen from 94.12% in April 2018 to 80.77%. The report accepts the presence of extensive roadworks on Dumbarton Road from Peel Road to Hyndland Road, as well as Sauchiehall Street, which caused the service to deviate. The service then ceased to operate on Sundays. The last variation was submitted with effect from 3rd March 2019. I am unclear to what extent those amount to extenuating circumstances as I expect to see roadworks being planned for and reflected in applications to the Office of the Traffic Commissioner, as required.

25. The response from Mr Roberts to both reports above, dated 6th May 2019, refers to an internal audit at the start of 2019, which identified vehicles having been run in service “with amber ABS and emissions lights illuminated” from Barrhead. This resulted in “vehicle availability issues” around the local policy. Mr Roberts also refers to the disruption caused by the devastating fire at the Glasgow School of Art. It is a matter of public record that temporary traffic regulation resulted in road closures of parts of Pitt Street, Douglas Street, Sauchiehall Street, Renfrew Street, Scott Street, and Dalhousie Street.

26. The report from Bus Users Scotland dated 3rd April 2019, records monitoring of the **66 service** from Paisley to Dykebar Hospital on 8 days between 26th February and 29th March 2019, in addition to two days of ‘mystery bus travel’. The service operates on Mondays to Fridays with a slightly reduced service on a Saturday. The monitoring exercise utilised 6 timing points and made 34 monitoring observations, which recorded 2 late services. The monitoring from the specific timing points indicated punctuality of 94.12% but the regular service observations indicated punctuality of only 62.5%. I acknowledge that those regular service observations were more limited in number, namely 8. The response from Mr Napier dated 3 May 2019 and yet not received until 6th June 2019, asserts that punctuality is at 97.6%. It accepts that the 13:43 to Linwood from Paisley High Street was significantly outside the window of tolerance but offered no obvious explanation. I was told in evidence that this was due to ‘heavy passenger loadings’. The last variation was received on 12th February 2019, to take effect on 1st April 2019, on a varied frequency timetable between 10 and 20 minutes during the day.

27. In representations the operator complains about the size of the sample – 1 in 183 journeys. It accepts punctuality of 87.5% with average punctuality between the regular service monitoring and specific timing point monitoring at 90.8%. Mr Hart of Bus Users Scotland relies on regular service recording on an hourly basis and not as an accumulated percentage. I explored in evidence with Mr Hart the reasoning behind this approach and understand how it allows for the targeting of bus monitoring resources. Even adopting the operator's approach this is still below acceptable levels. I registered what was termed unpredictable congestion in Paisley town centre. I do expect intermittent congestion and heavy passenger loading to be reflected in timetable planning.

28. Mr Roberts's response of 6th May 2019 refers to investment of £1 million in what is described as "state of the art scheduling and tracking equipment" with the intention of cutting down the delay caused by changing street conditions and the implementation of a solution. Heavy reliance is placed on real time information, which gives live arrival countdowns via the mobile app. He claims "we do not try to hide". Ms Caltainn of Bus Users Scotland accepts the operator's observations regarding the accuracy of data. In any event the operator decided that the **216 service** from the Coatbridge depot is uneconomic to run within the 6 minute window of tolerance and cancelled the service.

29. I compare the representations and response with the specific complaints related to the **38 service**, which is registered with the 38A to run from Spateston or Kilbarchan to Renfrew Street in Glasgow. The current registration (page 40, second addendum) was received on 31 May 2019 but was not effective until 12 July 2019. The application required the 42-day notice period before that variation could commence.

30. The bundle also contained correspondence from a Mr **[REDACTED]** which indicates that the varied timetable was introduced from 1st July 2019 and therefore without the statutory notice having been given and without authority from the Traffic Commissioner. I attempt to summarise the relevant correspondence (anonymised

where possible), which is contained in the second addendum to the Public Inquiry bundle:

Service	Date	Communication	Issues raised
38	2-11.07.19	Emails exchanges with Mr [REDACTED]	Regarding the change in services and comparing the registered timetable with that shown on the website and app.
38	13.06.19	Tweet from @xxxxxx to below	Thought the 38 was meant to be the flagship and refers to the new buses. "How many occurrences of this has to happen before apologies are not enough?"
38	13.06.19	Tweet from @Buses_McGills to below	Technical issues with the 38 service this morning.
38	13.06.19	Tweet from @xxxxxx following 03.06.19	Any idea where the Glasgow Road 8:45 went – came up on boards and then failed to arrive. App shows no buses nearby.
38	13.06.19	Tweet from @Buses_McGills to below	Technical issues at the moment. That bus encountered a fault which required the engineering department.
38	13.06.19	Tweet from @xxxxx	What has happened to the 8:23 from Paisley to Glasgow, failed to turn up and 8:28 now late
38	13.06.19	Tweet from @Buses_McGills to below	Confirms experiencing a run of bad luck with technical issues and some service disruption.
38	13.06.19	Tweet from @xxxxx	Lack of 38 service – no mention of late or cancelled buses on social media – Has been made late for work 3 days in a row.
38	13.06.19	Tweet from @Buses_McGills to below	Experiencing a run of bad luck with technical issues resulting in service disruptions during these difficult times

38	13.06.19	Tweet from @xxxxxxx	Seeking reason why 38 service, supposed to be every 8 minutes between 8:00 and 9:00 – arrived at bus stop at 8:20 but forced to get a taxi at 8:45
38	13.06.19	Tweet from @Buses_McGills to below	Having a run of bad luck with technical issues, hoping that passengers will soon notice a vast improvement.
38	13.06.19	Tweet from @xxxxxxxx	Still no 38, waited in Paisley for 40 minutes – passenger injured hip
38	13.06.19	Tweet from @xxxxxx	Identifies that 8:13, 8:18, 8:28 failed to show and 8:33 was late.
38	13.06.19	Tweet from @Buses_McGills	Will look into this and requests details
38	13.06.19	Tweet from @xxxxxxx	Yet again 3 number 38 buses from Kilbarchan failed to appear.
38	13.06.19	Tweet from @Buses_McGills to below	We have experienced a run of bad luck with technical issues
38	13.06.19	Tweet from @xxxxxxxx	Service 38 – for two weeks 8:07 has not run
38	13.06.19	Tweet from @Buses_McGills to below	Requesting details
38	13.06.19	Tweet from @xxxxxxxx	Does the 8:07 at Corrie Drive to Glasgow still run?
38	12.06.19	Tweet from @Buses_McGills to below	One bus failed to operate in accordance with the timetable and there was no spare vehicle.
38	12.06.19	Tweet from @xxxxxxxx to below	Pointed out that she had to wait 33 minutes for the service.
38	12.06.19	Tweet from @Buses_McGills to below	Refers to tracker confirming that there was a vehicle at Spateston at 7:58 and again at 8:33 but the 8:11 suffered a break down.

			NB from 7:00 this was a frequent service and the timetable indicates that a bus was due at 8:11, 8:31 and 8:51.
38	12.06.19	Tweet from @xxxxxxxxx	Reference to waiting in Spateston from 8:00 on 11.06.19, service did not arrive until 8:33. This has caused her to be late for work twice a week from 27.05.19
38	12.06.19	Tweet from @xxxxx To below	"Another breakdown??"
38	11.06.19	Tweet from @Buses_McGills to below	Advised of a breakdown. A mechanic attended at roadside.
38	11.06.19	Tweet from @xxx	For 3 rd week in a row 6:50 service from Kilbarchan to Glasgow failed to show at Papermill – for 5 th or 6 th time; 7:01 about same ratio and 7:11 shows 7 minutes late.
38	10.06.19	Tweet from @Buses_McGills to below	Apologies and referring to mechanical breakdown. Not always possible to repair or swap the vehicle over.
38	10.06.19	Tweet from @xxxxxx	Referring to McGills making her late for work – consistent at not running buses
38	10.06.19	Tweet from @Buses_McGills to below	Asking for direction of travel in order to identify the driver
38	10.06.19	Tweet from @lxxxxxx	Expresses view that McGill drivers need training as waited for 38 minutes at Beith Road in Johnstone then at 9:37 the driver goes past and waives the passenger off.
38	07.06.19	Email to Mr [REDACTED] from [REDACTED]	Admission : "going through a very difficult time and are experiencing higher than normal technical issues"

38	06.06.19	Tweet from @xxxxxxx Following 8.5.19	Comments how buses make it to the top of the village but then just park outside the primary school – “technical difficulties”
38	06.06.19	Tweet from @xxxxxxx to below	Agrees – “38 is an absolutely shocking service regardless of time or day. Complained about last Saturday stuck at Helen Street from 19:55 to 21:15 with no buses (2) turning up”
38	06.06.19	Tweet from @xxxxx to below	“That’s not what your driver just told me”
38	06.06.19	Tweet from @Buses_McGills to below	Blames higher than normal technical issues
38	06.06.19	Tweet from @xxxxx	Report two 38 buses, first jam packed, second stops at the wrong stop at Paisley Cross to avoid the queues
38	05.06.19	Email from Mr [REDACTED] to McGill’s	Reference to a period of more than 6 months 7 tweet of 12.12.18 & email 20.02.19 – hoped that delivery in March of new buses would result in a lot less breakdowns and delays. Queries the ‘real time’ information.
38	04.06.19	Tweet from @xxxxxxxxx follow on	Refers to being told that the :25 and :45 were at the bottom of Kilbarchan but then the only bus to pass was out of service. “Lies certainly do not help the situation.”
38	04.06.19	Tweet from @xxxxxxxxx to below	Corrects below – that is the bus after 17:00. The passenger boarded the bus, scanned her ticket to be told that it was not leaving – had to take a taxi.
38	04.06.19	Tweet from @Buses_McGills to below	Service suffered a delay due to peak time traffic congestion and is in Kilbarchan.

38	04.06.19	Tweet from @xxxxxxxxx to below	38 from Kilbarchan Primary School
38	04.06.19	Tweet from @Buses_McGills to below	Requests confirmation of the service number
38	04.06.19	Tweet from @xxxxxxxxx	Waiting for the 16:25 from the Kilbarchan depot since 16:15.
38	04.06.19	Tweet from @ixxxxxxxxx	Update – 13:21 appeared 10 minutes late = 40 minute wait again.
38	04.06.19	Tweet from @xxxxxxxxx	States that was the same reason given on Friday and that the 13:20 has also failed to operate.
38	04.06.19	Tweet from @Buses_McGills to below	Blames a higher than normal number of technical issues.
38	04.06.19	Tweet from @xxxxxxxxx following 31.05.19	Refers to previous tweets on Friday about the 12:40 and 13:01 Spateston to Glasgow services which failed to operate. The 13:01 then failed to appear on 3.6.19 and today.
38	03.06.19	Tweet from @Buses_McGills to below	Blames higher than normal number of technical issues.
38	03.06.19	Tweet from @xxxx	Asking whether services from Paisley to Glasgow have been cut as the last few lunchtimes he has been waiting 15-25 minutes.
38	03.06.19	Email to Mr [REDACTED] from [REDACTED]	Reason that some of our services are missing from the timetable is because we have been suffering a higher than usual number of breakdowns...recent run of bad luck with technical issues on this route.
38	03.06.19	Tweet from @xxxxxx to below	Ended up taking the 17. Refers to waiting in the cold and wet.

38	03.06.19	Tweet from @Buses_McGills to below	Refers to the 9:04.
38	03.06.19	Tweet from @xxxxxx to below	Now late even though he left plenty of time – asks when the next bus will arrive.
38	03.06.19	Tweet from @Buses_McGills to below	Blames higher than normal number of technical issues
38	03.06.19	Tweet from @xxxxxx	No 38 service for 15 minutes at Glasgow Road stop towards Glasgow
38	31.05.19	Tweet from @Buses_McGills to below	Blames higher than normal number of technical issues
38	31.05.19	Tweet from @xxxxxx	“this is ridiculous! I’ve just had to be soaked and wait 50 minutes for the bus to work because the 12:41 and 13:00 Spateston to Glasgow both didn’t show up”. Refers to this happening before
38	30.05.19	Tweet from @Buses_McGills to below	Blames higher than normal number of technical issues
38	30.05.19	Tweet from @xxxxx	“absolutely shocking service 3 rd time this week I’ve been waiting more than 20 minutes for a 38 to Kilbarchan”
38	30.05.19	Tweet from @Buses_McGills to below	Blames higher than normal number of technical issues
38	30.05.19	Tweet from @xxxxxxxxx	30 minutes late waiting for 38 or 17 from Paisley Centre to Glasgow – should have been 5 buses.

38	30.05.19	Tweet from @Buses_McGills to below	Blames higher than normal number of technical issues
38	30.05.19	Tweets from @xxxxxx	Querying when bus from Glenpatrick Road, Elderslie to Paisley will arrive. Waited 30 minutes in the rain with zero information.
38	28.05.19	Tweet from @Buses_McGills to below	Blames higher than normal number of breakdowns
38	28.05.19	Tweet from @xxxxxxxx	Then questions where the 18:03 from Johnstone to Glasgow is, waiting since 17:55. Queries the claim on the app that there is live tracking.
38	28.05.19	Tweet from @Buses_McGills to below	Apologies – due to a technical issue
38	28.05.19	Tweet from @xxxxxxxx	Question where is the 8:12 from Station Road to Johnstone as it has not turned up.
38	27.05.19	Email to Mr [REDACTED] from [REDACTED]	Comments are now being investigated by the Manager at the Johnstone Depot
38	23.05.19	Tweet from @Buses_McGills to below	Blames some technical issues.
38	23.05.19	Tweet from @xxxxxx	“Really poor service, 2 buses not showing up in a row – 11 and 11:20 on Beith Road to Glasgow”
38	17.05.19	Tweet from @Buses_McGills to below	Suffering a number of breakdowns

38	17.05.19	Tweet from @xxxxxxxxxx to below	8:30 Kilbarchan Road to Johnstone Rail station
38	17.05.19	Tweet from @Buses_McGills to below	Request for details
38	16.05.19	Tweet from @xxxxxxxxxx	Seeking explanation of why the service has not turned up at the Kilbarchan Road bus stop all week.
38	08.05.19	Tweet from @Buses_McGills to below	Refers to a “higher than normal number of technical difficulties”
38	08.05.19	Tweet from @xxxxxxxxxx to below	Four days in a row that the 8:27 from Kilbarchan failed to show. Questions whether there are still “technical difficulties”
38	08.05.19	Tweet from @Buses_McGills to below	Blames technical issues
38	08.05.19	Tweet from @xxxxxxxxxx	Questions what is happening with the 38 service as 8:07 failed to show 8:27 has still not arrived even though two buses have entered the village.
38	20.02.19	Email to Mr [REDACTED] from [REDACTED]	Every effort to run our services and when drawing up timetables make allowances for general traffic. Real time will display in green and timetable will display in black. Invested in 75 new buses, with first batch due for delivery in March.
38	13.02.19	Complaint from Mr [REDACTED]	Reference to McGill’s response to tweet 12.12.18 was that passengers would soon notice a vast improvement but reliability has not improved.
38	01.02.19	Tweet from @xxxxxxxxxx	Indicates that he has been told by McGill staff that it does not have enough vehicles in Johnstone

38	01.02.19	Tweet from @xxxxxxx	Comments that the service has only operated once during the whole week and questions how a bus can break down every day and whether it was actually required for the x23.
38	01.02.19	Tweet from @Buses_McGills to below	The service encountered a technical issue. Refers to alternatives.
38	01.02.19	Tweet from @xxxxxxx	Questioning what happened to the 15:25 from Kilbarchan to Glasgow
38A	01.02.19	Tweet from @Buses_McGills to below	The service has experienced a technical issue this morning.
38A	01.02.19	Tweet from @xxxxxxx	Questioning where the 38A from Johnstone Castle to Paisley might be – making her late for work.
38	09.01.19	Tweet from @Buses_McGills to below	Due to the cold weather some drivers have had issues with their vehicles resulting in delayed departures.
38	09.01.19	Tweet from @xxxxxx	Has been waiting at Cochranemill Road in Johnstone for 30 minutes as 3 x 38 buses failed to arrive.
38	12.12.18	Tweet from @Buses_McGills to below	Hope that passenger will soon notice a vast improvement.
38	12.12.18	Tweet from @xxxxxx	Points out that the same thing happened the day before and some days in the previous week. It is happening nearly every day.
38	12.12.18	Tweet from @Buses_McGills to below	Blames technical issue that morning
38	12.12.18	Tweet from @xxxxxx	8:11 and 8:16 failed to arrive. Question whether today will be the same as 11.12.18 when waited from 8:10 to 8:50 at Johnstone Registry Office. She is late nearly every day.

31. The operator's representations refer to a busy popular service and refer to a Bus Users Scotland monitoring exercise between 22 October and 23 November 2018. There is no comment regarding the size of that monitoring exercise, as it was observed to operate at 100%. The operator attempts to place the 80 complaints received during the year into the context of the number of journeys. That appears to presume that every passenger will complain about every late journey. The above 6 pages tweets would suggest otherwise. These comments should not simply be attributed to Mr [REDACTED] and notification of a change to the Summer timetable. For obvious reasons I attempted to understand the impact that maintenance issues might have had on operations.

Maintenance

32. On 7th December 2018, vehicle SV04 HLM was being operated by this operator when it lost a wheel in St Michael Street, Greenock. Any wheel loss represents a real danger to the driver, passengers, other road users and, in particular, any pedestrians within the vicinity. An "S" marked prohibition was issued to the vehicle by DVSA Vehicle Examiner, George Courtney, on 12th December 2018 by reference to "road wheel, missing, nearside, axle 1, hub to wheel flange complete with wheel attached detached from hub".

33. The operator's response acknowledged the incident and that the nearside front hub flange had detached from the vehicle taking with it the nearside front wheel while the vehicle was in motion. The flange bolts had apparently worked loose and screwed themselves out of the hub assembly, leading to the wheel loss. All the bolts were recovered from the location of the incident. The vehicle had been released to traffic that morning following inspection repairs that were carried out on the previous days.

34. An unannounced maintenance investigation was carried out by Vehicle Examiner, Malcolm Brown, on 28th January 2019 with compliance being assessed as unsatisfactory due to the prohibition notice. He looked into the causes of the wheel

loss incident and confirmed that the front hub flange had become detached from a vehicle following an unsatisfactory repair. His initial report can be found at pages 121-132 of the bundle.

35. On examination of the inspection document, it apparently shows that the nearside front stub pin had been renewed by a 2nd year apprentice on 6th December 2018. A subsequent investigation by the operator recorded that the apprentice failed to check whether the hub flange bolts had been cleaned, checked for damage, fitted correctly and retorqued. That apprentice should apparently have been supervised by the shift mechanic. Mr Brown confirms that the hub flange had been removed and on reassembly, the hub flange fixings had not been prepared and/or torqued correctly to ensure that the hub flange would stay in place. The loss of this component meant that as the road wheel is mounted onto the hub flange, it also becomes detached from the vehicle.

36. I also refer to the internal report prepared by a [REDACTED] dated 7th December 2018 (page 232). He also concludes that “the hub flange bolts had not cleaned before fitment and had not been retorqued or torqued correctly thus causing them to come adrift after a few hours of the vehicle being out in service”. He identifies a break down in the process of a safety critical repair audit. The Vehicle Examiner referred to the operator's response and was apparently satisfied that the operator had a robust wheel-off policy. The operator referred to a "breakdown in trust" with the engineers, which prompted the operator to introduce a further internal policy when hub flanges are removed.

37. I referred to the Guide to Maintaining Roadworthiness, which was in circulation at the time of this incident, and advises that: “The code of practice for the selection and care of tyres and wheels for commercial vehicles (developed jointly by the Department for Transport, the British Standards Institute and industry and trade associations) recommends that following road wheel removal and refitting, the wheel nut torque should be checked – after the vehicle has been standing for 30 minutes or after having travelled for between 40 km and 80 km (25 to 50 miles). All re-torque checks must be recorded and retained on file.” I compared the odometer readings on the Preventative Maintenance Inspection for 6th December 2018 (page 230) and that

recorded on the Prohibition Notice (page 234) showing a very short distance travelled. The inspection form appears to suggest that the front wheel may have been removed in order to replace a tyre with a screw lodged in it but I was assured by Mr Brown and the operator that retorque would not have prevented the wheel-off incident.

38. Mr Brown describes an under-cover maintenance facility with one pit, four sets of lifts, roller brake tester, beam tester, calibrated torque wrenches, scissor lifts etc. He also refers to a Nil driver defect reporting system, to which I return later. On that information I have some concerns as to the way in which Preventative Maintenance Inspections might have been carried out. I note that the form itself records that a roller brake test print-out should be attached to the form. I can infer from the form produced that SV04 HLM is a two-axle vehicle with the parking brake applied to the second axle. The Examiner has not produced any further print out or document but the Inspection Manual numbers on that form appear to be inconsistent with those as set out at page 100 of the Guide and therefore the testers' manual. I am also concerned to note the number of driver detectable defects left to the safety inspection, namely: insecure skirt panel, insecure rear bumper, faulty front panel security, inoperative stop lamp, the above tyre, issues with the ramp interlock. As the operator relies on a Nil driver defect reporting system, I am entitled to expect the transport managers to have identified and addressed these questions. I return to their relative position within the company below.

39. I refer to the response from Mr Roberts dated 6th May 2019 above which communicates the findings of an internal audit at the start of 2019. This identified that vehicles had been run in service "with amber ABS and emissions lights illuminated" from the depot at Barrhead, Glasgow. He refers to an unsanctioned local policy. I was therefore at pains to understand how this might have arisen with three transport managers named on this licence and jointly responsible for effective and continuous management of this transport operation. I had already noted the Immediate prohibition notice issued to YJ55 BHD in March 2018 in respect of an inoperative service brake and illuminated ABS warning lights. I was referred to the operator's adoption of a new electronic reporting system which, through effective management, should address the risks of this type of local culture developing. As

indicated, I return to the nomination of additional management below. I remain concerned that due to the operator's choice of driver defect reporting forms, only drivers working on a particular day would be aware that a defect had already been reported and/or rectified. Given the issues encountered by this operator it will be for the Transport Managers to reconsider these reporting arrangements and for the operator to ensure that those necessary changes are implemented.

40. Further to the above assessment, the Traffic Commissioner for Scotland received a letter of complaint dated 17th June 2019, (page 2, 2nd addendum) referencing examples of responses to complaints made via the operator's twitter account, to which I have referred. Those messages suggest that issues with the running of registered services might be associated with maintenance, I therefore required up to date maintenance records to be scrutinised.

41. I turn then to the updated report from the Vehicle Examiner, Mr Brown, in the third addendum. I requested that 25 files be made available to him. The selection was made by reference to adverse encounters or history recorded within the first brief, so as to include: LF61 XLC, SN59 BAA, SN59 AWY, SN05 HCZ, MX60 GXA, SV04 HLM, YJ55 BHE, SK15 HDO, GX04 LWU, RX06 WPR, LR02 BDU, YJ55 BHD, YJ09 CVO, YE08 EBF.

42. The Examiner outlines in his statement that he and a colleague were able to assess 6 of the 25 vehicle files and to provide detailed comments on 3. His statement, dated 15 August 2019, indicates unsatisfactory compliance due to weaknesses in the driver defect reporting system and rectifications at the Preventative Maintenance Inspections. He refers to repeat faults over a period of May to December 2018 in relation to vehicle SN05 HCY, to an immediate prohibition being issued to SN59 BAA on 14th May 2019 for a continuous fuel leak from the engine area, and in respect of BF67 WKM he identifies concerns including a defective emergency window being left whilst parts are on order in July 2019 and brake reports relying on maintenance staff to calculate brake readings but using unladen weights. He produces roller brake print outs which refer to axle imbalances, one of which shows an imbalance of 93% on the off-side of axle 1. On the notice issued to SN05 HCY the Examiner notes that a similar defect was reported by the

driver three days previously but gives the 'benefit of the doubt' to the operator. The Examiner is rightly critical of defect reporting where rectification or roadworthiness has not been recorded. I would add that drivers appear to use fleet numbers rather than the vehicle registrations, for some reason. The Examiner makes the recommendation to audit these systems.

43. I refer to Statutory Document No. 3 and would expect this to have already been undertaken by the nominated Transport Managers. I went through paragraph 54 in some detail with the operator, although Mr Easdale had the benefit of sitting behind. The written representations from the operator's solicitors suggest that this should have been the case, although I am confused by the apparent contrast with the reference to an "enhanced brake performance section" and the output described by the Vehicle Examiner. Rolling Road Brake testers are apparently available at three of the five Operating Centres, with a fourth to be installed. The operator is said to be committed to brake performance results of 65%, 25% and 25% against items 71, 72, 73 in the Inspection Manual.

44. I do take account of pages 164-165: in the last 5 years, the operator received 38 prohibition notices including that imposed on 14th May 2019 with reference to SN59 BAA, with a prohibition rate of c. 21%. In the last 2 years, the operator has received 21 prohibition notices giving a prohibition rate of 29%. Looking at the list on page 229, those notices record a mixture of internal defects with more significant maintenance issues. The one S marked prohibition notice was issued on 6 December 2018 (pages 233-4). In the last 5 years, the operator has had 1309 vehicle tests with 1221 passes and 44 passed after rectification. 44 failures have been recorded. The initial failure rate is 6.72% with the final failure rate of 3.36%. The national initial failure rate is 14.48% with the national final failure rate of 8.77%. In the last 2 years, the operator has achieved an initial failure rate of 7.66% at annual test. The test results are at pages 134-160 and 170-224.

45. The timetable for directions was not complied with but I can give some credit for openness, for instance in referring to the January 2019 internal audit. I am asked to accept that there are adequate systems in place for dealing with tyre safety and wheel removal. I have seen the relevant appendices (16 and 17) produced on behalf

of the operator. In addition, it was impressed upon me the relative age of the fleet and the sums expended on vehicles and their maintenance. I can and do accept the recent development of a programme to address staff shortages within the industry as a whole, but also noted the references to these issues in 2015. I have noted the interest of HRH the Duke of Rothesay, and the references to working with the Prince's Trust, Glasgow Training Group and Stagecoach. I also heard from Mr Napier and Mr Roberts on the way in which the operator has invested significantly in the training and development to introduce new personnel to the industry. The operator is currently considering other innovations.

46. Miss Aitken's decision in 2010 records some of the history. At that stage Mr Roberts was about to join the business. I was sorry to learn of the passing of the Engineering Director in 2015. I was presented with the new Engineering structure at the Public Inquiry. I was referred to an Action Plan at Appendix 20.1. This appears to be an acceptance of previous weaknesses in driver defect reporting also. The operator usefully provided representations in advance of this hearing, which described established governance procedures, including four-weekly Board meetings where strategic KPIs are monitored together with operating performance. Those representations refer to day to day management at depot and department head level. Reference was made to quarterly depot reviews to exercise oversight at a local level. I was repeatedly referred to the level of investment made in the operations. A full engineering policy manual was to be produced describing the audit of every repair and safety critical component. I compare that with the brief observations of the Vehicle Examiner but also noted the presence of the Operations Director and his deputy at the various depots on a weekly basis. I understand that Mr Henderson, the new Engineering Director, will adopt a similar approach to the engineering facilities. I expect that to happen.

47. In assessing the probability of future compliance, I can take additional assurance from the proposed involvement of Lloyd Morgan auditors. The proposal to report directly to the Managing Director offers a further insight to the issues facing this operator. I am satisfied that the operator has demonstrated a level of commitment to compliance and I noted its interaction with DVSA after the wheel-loss. My concern is the level of supervision which is evident from the events and findings to which I have

referred. Mr Roberts is of course one of three transport managers. He is the Managing Director, the other is a Director, the last is an Operations Director. None of these gentlemen has a position which is devoted solely to the tasks of transport manager. None of these gentlemen is at a level within the operation to directly influence every-day decisions. They can put in place high-level systems such as those that I have been referred to, but they must be left to others to implement. There is a reason for the starting points set out in Annex 1 of Statutory Document No. 3 and that is to allow sufficient time and capacity for a transport manager to meet the statutory duty. That duty is to exercise effective and continuous management, which the Statutory Guidance and case law distinguishes from the concept of oversight (which falls to the statutory Directors). The provision of transport managers may have been sufficient when Miss Aitken considered the operator at Public Inquiry 9 years ago, but the level of authority has far outstripped those arrangements with a current authority of 600 vehicles. The coloured organograms suggest an obvious alternative. At present it is only the three nominated transport managers which I can hold accountable. If I were to make adverse findings then it would also have an inevitable consequence for the licence as a whole, due to their relative positions. As the Upper Tribunal indicated in Arnold Transport, Director fitness is an essential element of an operator's repute. Something must now change.

Undertakings

48. I have taken account of the following undertakings:

- Finance review by 31st October 2020.
- Full Compliance Audit to be submitted to the Office of the Traffic Commissioner in Edinburgh by close on 30th April 2020. The audit content pro-forma is to be supplied with the decision letter;
- Two additional CPC holders to be appointed as Transport Managers by 31 December 2019;
- New PMIs forms to be introduced which meet all the Inspection Manual numbers as set out in the Guide to Maintaining Roadworthiness.

Considerations

49. I record adverse findings under section 17(3)(aa), 17(3)(c), and a failure to notify changes in breach of 17(3)(b). I have been invited to take a holistic approach to the consideration of any deterrent action. The Upper Tribunal has reaffirmed the relevance of deterrence action in the recent appeal of 2019/025 John Stuart Strachan t/a Strachan Haulage, at paragraphs 51-53. I quote: “one of the aims of the regime is deterrence, both for the appellant and for operators as a whole, who might be tempted to flout the system”. Reference was again made to the Court of Session decision in Thomas Muir (Haulage) Ltd v Secretary of State (1999) SC 86, page 92, and to 2013/047 Dundee Plant. Other operators with knowledge of this case might well ask why this operator appears to be getting away with incidents of non-compliance.

50. The Upper Tribunal explored the approach to be taken by traffic commissioners in respect of repute in the leading case of 2009/225 Priority Freight. That decision makes clear it takes more than promises and good intentions and operators must actually manage the compliance which they undertook to deliver when applying for a licence. On the basis of the above, with the added assurance of independent checks by Lloyd Morgan, I am satisfied that the operator is likely to comply with all O/L requirements in future. However, the incidents to which I have referred have tarnished the repute of the operator. The three named transport managers are formally warned accordingly: there can be no repeat of the identified shortcomings and no recurring impact on the running of registered services.

51. As the operator is well aware, traffic commissioners have powers to take regulatory action against operators who do not operate services in accordance with the registered particulars. Section 26 of the Transport Act 1985 enables the traffic commissioner to attach conditions prohibiting the operator from running certain local services or local services of any description. Matters of bus compliance are considered under sections 6 and 26 of the Transport Act 1985, it is the question of penalties which is devolved and covered by the terms of section 39 of the Transport (Scotland) Act 2001.

52. Section 39 of the above Act provides that the traffic commissioner can impose a penalty on the operator where it has failed (without reasonable excuse) to operate a local service or has operated a local service in contravention of that section. It also provides that traffic commissioners can order:

- that the operator expends a sum of money, limited to the provision or improvement of local services or facilities;
- that the operator provides compensation to passengers; etc.

53. The Practice Direction, which applies in Scotland is not as up to date as the equivalent for England and Wales. The principles are essentially the same:

it is accepted that traffic and other hazards, such as road works, can cause short-term problems, and Commissioners therefore accept that a bus may be delayed in these circumstances....In accepting that there will be short-term difficulties that may cause delays, Commissioners nevertheless believe that operators must construct their timetables to take account of known peaks of congestion etc. This may require different running speeds on particular sections of a route, or at different times of day, or on different days of the week.

An operator always has the opportunity to persuade a Commissioner that there was a "reasonable excuse" for a bus failing to run to its registered timetable, but the Commissioner will be particularly interested in patterns of timekeeping and whether the operator had taken all reasonable steps to ensure buses run to their published times. Commissioners are of the view that it is more important to offer passengers a timetable that can normally be achieved rather than one which in theory relies upon clock face headway "which is easy for the public to remember" but which rarely achieves its aspirations. Operators are of course free to vary their registrations to meet changing circumstances, and Commissioners consider that where known problems regularly exist it is appropriate to vary the registration to reflect what is achievable and actually happening rather than retain an unworkable aspiration.

Commissioners will therefore consider the detailed circumstances of each route that is brought to their attention at a Public Inquiry. Operators should however be clear that Commissioners expect timetables to be realistic in the knowledge of the individual circumstances, including congestion, which affect each route. By allowing an operating bracket (see paragraphs 9 to 11 above) Commissioners are already building in a degree of flexibility, and would thereafter expect a properly constructed timetable normally to be achievable.

54. There is a risk that appendices such as 26 might be interpreted as an attempt to avoid responsibilities which are implicit in the decision to register a service. Having heard from the operator I am satisfied that this is not the case but a recurring feature

of the representations and operator's case was the apparent reliance on statistics – impressing upon me the numbers of wheel removals annually (14,000, I was told) or the number of registered services and punctual journeys. That approach might offer some reassurance as to the ability of the operator to achieve compliance in the majority of cases but it risks ignoring the intent behind the two statutory strands namely that road users in Scotland are entitled to be free from risks presented by this operation, and bus users are entitled to expect that the operator will run services to the timetable, which the operator has published, allowing them to plan their work and other important commitments.

55. I have noted the operator's comments regarding the size of sampling and the detailed comments at paragraphs 7.54-7.63 of the representations. To summarise the Court of Appeal, in *Ribble Motor Services Ltd v Traffic Commissioner for the North West Traffic Area* [2001] EWCA Civ 172 17: if a Commissioner is entitled to regard a sample of journeys monitored as sufficient and representative of an Operator's operation as a whole, then it will be appropriate to make a comparison and extrapolate from it. The Court of Appeal concluded (paragraph 57 of the judgment) that it was important that the statutory powers should not be emasculated by an over-elaborate approach to the investigation or an unnecessary attention to detail. This was the approach demonstrated by Miss Aitken in the previous Public Inquiry, which she bluntly described as broad brush. I refer to the approach approved in 2015/008 *Diamond Bus Ltd, Ribble Motor Services Ltd* (as above); 2003/300, 2003/301 and 2003/302 *Andrews (Sheffield) Ltd, Yorkshire Traction Company Ltd and Barnsley & District Traction Company Ltd* etc. and have resisted any suggestion which might engage in an over-elaborate investigation or unnecessary attention to detail. The traffic commissioner jurisdiction is intended to be inquisitorial rather than adversarial in nature. The Court of Appeal has stressed the importance of traffic commissioners considering the question of the adequacy of monitoring in the round by adopting a global approach.

56. I have attempted to record my approach in respect of each of the targeted exercises carried out by Bus Users Scotland. As the operator records, a number of routes are long, taking in both rural and urban services. I have included follow up reports from Bus Users Scotland, which were of benefit to the operator. However, an

operation should not be able to avoid scrutiny because of its total size particularly where, even the operator relies on improvements in punctuality spread over a two year period. I am therefore satisfied that the findings of the monitoring exercise are generally representative and can be extrapolated but they are also to a degree now historic. I have taken all those factors into account when deciding into which bracket the case falls.

57. The Upper Tribunal has confirmed that the burden of proof to establish reasonable excuse is on the operator. However, traffic commissioners are entitled to look at the overall result, rather than being compelled to assess every single reason advanced for the failure of a particular service to operate compliantly. The operator therefore assumes the responsibility of satisfying me that a reasonable excuse should not already have been taken into account in setting the timetable and, but for those excuses, the services run would have come within the set window. In the view of the Upper Tribunal, matters that improve the compliance rate but do not bring it within the target cannot amount to a reasonable excuse but are relevant to the question of penalty.

58. I refer to paragraph 89 of the decision of my former colleague, Miss Aitken, dated 28 June 2010 (first bundle page 119) in respect of this operator. In that decision she refers to the unsatisfactory haste demonstrated when taking over lucrative routes so that the operator had no reasonable excuse for the established non-compliance. She referred to the guidance and relevant Practice Direction when she imposed the maximum penalty in that case multiplied by the total authority. That was a different case to this one but the operator was put on notice of the need to monitor and manage its punctuality. I want no misunderstanding as to what the operator is expected to deliver. I am not here to consider the views on matters of general policy, as the senior Judge for traffic commissioner recently indicated in 2018/050 Diamond Bus Ltd. My decision is concerned with the alleged shortcomings of the service. The Upper Tribunal referred to the Statutory Document No. 14 on bus punctuality. In the matter of cases decided in Scotland, the current Practice Direction applies but each document summarises the law and it is now well established that the question of reasonable excuse is built in to the analysis right from the beginning – everyday or

regular occurrences are already allowed for through the application of the 6 minute window.

59. I was concerned by the reference in the operator's representations, which refers to work to achieve the maximum achievable reliable service *within the context of the operating environment*. To paraphrase the Upper Tribunal - the window of tolerance takes account of many of the day to day problems which operators can face, and operators can, reasonably, be expected to have contingent plans to deal with other, foreseeable, problems. Services must come within the bracket of up to 1 minute early and up to 5 minutes late, for 95% of the time; reasonable excuse has been applied so that they are not required to achieve 100% compliance. The representations appear to suggest that congestion and road works cannot be planned for, but even repeated illegal parking requires some analysis. I acknowledge the operator's evidence in respect of its own monitoring at individual stopping points. I am less impressed by the qualified commitment to punctuality as suggested by paragraphs 6.5 – 6.16. They do not accord with the lofty aspirations communicated elsewhere and particularly in relation to communication. As the Upper Tribunal has indicated, the window of tolerance and 95% punctuality target is a sensible and pragmatic approach to *short-term problems causing congestion* beyond which the issues should have been taken into account when setting the timetable. The operator suggests that the market should provide sufficient incentive to ensure punctuality but again, I return to the reports from Bus Users Scotland and the summary of complaints around the 38 service. The operator referred to its open customer survey results, which highlight the importance of reliability. The purpose of the legislation is essentially to ensure that proper weight is given to punctuality when put into the round (such as the operator's diagram at its appendix 22) with other commercial considerations.

60. That said, the established case law and processes allow a traffic commissioner to discount the findings presented to them by the relevant body and to give the operator the benefit of the doubt in certain circumstances. I have attempted to summarise the relevant considerations above. For the avoidance of doubt, I have noted that the X23 service, which was first registered in September 2009 was varied with effect from 7th May 2018 to reflect a change to the route and timetable. In

respect of the 904 service, this was registered in March 2012 and was varied with effect from 26 March 2018 to reflect a revised timetable. It was varied again in June to take effect from 11th August 2019 as a result of a timetable and route adjustment. The 17 service was registered in May 2015. It was varied in March 2018 prior to the monitoring exercise in January and February, which reported on extensive roadworks on Dumbarton Road, from Peel Road to Hyndland Road, as well as Sauchiehall Street, which caused the service to deviate from the registered route. In his response, Mr Roberts refers to a variation being submitted shortly afterwards. A variation was submitted with effect from 3rd March 2019. I also take account of the tragic events which overtook the Glasgow School of Art and which continue to impact the City of Glasgow. I am aware that a Temporary Traffic Regulation Order was put in place through Strathclyde Partnership for Transport.

61. I give considerable weight to the customer information service, which was set out in some detail. (Customer service did not run to heating on the 904 service on occasions, according to Bus Users Scotland.) I was also referred to the use of the Ticketer system and the data, which is used to inform timetable changes. I understand the reluctance of the operator to engage in constant timetable changes and the wish to allow services to bed down. I listened to the explanations given by Mr Roberts and Mr Napier as to how different service conditions and environments have changed. Routes have different characteristics and challenges. I noted the importance of the on-street personnel and route managers in providing a context for the data collected. This is more challenging on routes taking in the M8, for instance, when additional monitoring can only take place from the vehicle.

62. I refer to paragraph 8.2 of the representations, the operator may position itself as a high-quality operator; that is a laudable ambition, but it must be reflected in the monitoring exercises. It is fair to record that this is a large operation. The operator accepts the potential benefits but must also meet the obligations upon which a large number of people rely. As I explain above, this is not a case where a broad brush is applicable; the situation is different to that encountered in 2010 but it is not yet within the window of tolerance. Even on the operator's average of averages suggested at appendix 53, which refers to all the monitoring by Bus Users Scotland over the last 2 years, average punctuality is below 90%. There can never be an acceptable excuse

for a bus running early, although I take account of the two qualifications suggested by Mr Roberts. It is therefore necessary to take deterrent action in the interests of punctual operations going forward. The situation around the 38 service might suggest some kind of compensatory order but I have discounted that approach for the reasons outlined at paragraph 31 above. I revert to the overall percentage of monitoring exercises as a guide. Taking all of the issues set out above, I find that the case falls within the second starting point for potential penalties, although I set that at £125.00 per vehicle. The total penalty is therefore set at £75,000.00 to be paid to the Scottish Government to be paid by 23:45 on 28.11.19.

Richard Turfitt
Traffic Commissioner
31st October 2019