



**DECISION OF THE
DEPUTY TRAFFIC COMMISSIONER
FOR WALES**

**FIRST CYMRU BUSES LTD
PG0000421**

In the matter of the

**Transport Act 1985 (“the 1985 Act”)
and
Public Passenger Vehicles Act 1981 (“the 1981 Act”)**

23rd October 2019

At

Swansea Magistrates’ Court

Decision

On a finding that the operator has failed without reasonable excuse to operate in accordance with the registered timetable under Section 6 of the 1985 Act, the operator is required to pay a penalty of £50 per authorised vehicle, giving a total penalty of £20,600. The penalty is payable to the Welsh Assembly within 28 days of this decision.

Background

1. First Cymru Ltd, (“the operator”), is the holder of a Standard National Operator’s licence granted on 14th April 2008. The licence authorises 412 vehicles with 241 local bus service registrations across 9 operating centres.
2. On 13th February 2019 the Traffic Commissioner for Wales issued a formal warning in respect the bus services 27 and 28 which were found by Bus Users Cymru monitoring to be operating with overall punctuality of 67% and 78% in November/December 2018.
3. On 4th April 2019 a formal warning was issued in respect of services 16, L1, L2, L3 and L4 which a monitoring exercise by Bus Users Cymru found to be operating with 85% punctuality.
4. Following customer complaints and a Wales Online article about cancelled services, Bus Users Cymru Compliance Officer, Michael Anderson, conducted a bus monitoring service on service 4 and services 11, 12, and 13 in April 2019.
5. Service 4, which operates between Morryston, City Centre and University, was monitored over 91 observations between 2nd April and 7th May and found to be performing with 91.67% reliability.
6. Services 11, 12 and 13, from May Hill and Town Hill to Swansea City Centre, were monitored between the 1st and 8th April 2019 over 316 observations and found to be operating with 69.94% punctuality.
7. As a result of the unsatisfactory performance the operator was initially called to a Preliminary Hearing before the Traffic Commissioner. This was subsequently amended to a Public Inquiry.

The Public Inquiry

8. At the public inquiry the operator attended through Managing Director, Andrew Sherrington. Also present were Transport Managers, Mr Pasquale Balzano, Andrew Carnell, Owen Williams and Mark Jacobs and a number of other

representatives of the company. Mr Andrew Banks, Solicitor, attended to represent the operator.

9. The factual basis for the inquiry was not in dispute and I heard evidence from Mr Andrew Sherrington to supplement a full file of evidence which was submitted before the hearing.
10. Mr Sherrington's evidence outlined the extensive engagement work carried out by the operator with key partner agencies including Bus Users Cymru, Local Authorities, Transport for Wales and Swansea University.
11. He explained driver training, disciplinary and recruitment policies and complaints and customer social media initiatives.
12. His statement contained reference to industry-wide technical issues with engines on the Wrightbus Streetlite and with suspension on the Alexander Dennis Ltd. Enviro E200 and E300, which have been documented in the trade press and are well known to me. The operator depot had a high reliance on these vehicles.
13. In addition the Ravenhill depot had experienced performance-related issues in the engineering department which had resulted in failings in the non-safety related servicing of vehicles and a consequent higher than normal breakdown level. Recovery of the service plan had taken priority in April 2019 and this would have impacted on the observations around that time as would a Health and Safety Executive directive on in-house welding.
14. Evidence was given of the investment in the Ravenhill depot including a new roof for the garage at a cost of £1.2million and a satellite workshop at Ammanford at a cost of approximately £200,000.
15. Bus timetable registrations were monitored and reviewed continuously and examples were given of variations made as a result.

Considerations and Decision

16. In considering my decision in this case I have had regard to the Senior Traffic Commissioner's Statutory Document No. 14 – Local Bus Services and the 2005 Practice Direction. I have also considered the cases of Ribble Motor Services v

Traffic Commissioner for the North West Traffic Area (2001)EWCA 267; First Manchester Ltd. (2012) UKUT 270(AAC) and Diamond Bus Ltd. T/2015/08.

17. The Senior Traffic Commissioner's Statutory Document No. 14 sets out an expectation that 95% of a bus operator's services will operate no earlier than one minute before or 5 minutes after the timetabled departure. The window of tolerance provided by the 95% target and the 6 minute allowance takes account of the normal day to day problems operators face such as fluctuations in traffic flow and operational (bus, staffing and passenger) issues.
18. I am pleased to note the positive maintenance and traffic compliance history and give credit for the fact that this is the first public inquiry on this licence. I also recognise that the case was originally deemed suitable for a Preliminary Hearing where penalties would not have been available until admissions were made about the maintenance issues/unreliability of some of the fleet.
19. Policy and training materials produced by the operator demonstrate that they appreciate the inconvenience, distress and potential cost to passengers of early, late and non-running. There is acceptance by the operator that the current punctuality performance is not up to standard and I am satisfied from the evidence of Mr Sherrington, that there is a genuine commitment from the operator to improvement and innovation. There is also a recognition of the important role which the operator's business has within the local community both as a provider of vital services and a major employer.
20. Bus Compliance Officer, Michael Anderson, had conducted a monitoring exercise on the relevant routes shortly before the Public Inquiry and this revealed the following generally improving performance:
 - Service 4 – 89.19%, a slight deterioration from 91.67%;
 - Services 11,12, and 13 – 95.79% between 27th June and 19th August , a radical improvement from 69.94%, and, 90.63% between 2nd September and 22nd October ;
 - Service 28 – 86.11%, an improvement on 27/28, 67.86%/78.82%;

- Service 16 – satisfactory.

21. In considering appropriate regulatory action against the operator having regard to the findings above, I weigh in the balance the positive aspects of the operator's business some of which are summarised above. Taking all matters into consideration I am satisfied that no regulatory action needs to be taken against the licence by way of conditions preventing or suspending the use of vehicles under section 26 of the 1985 Act.
22. My objective is to focus minds so that the statutory objectives are achieved and the travelling public achieve a punctual, reliable and comfortable bus service. The cited complaints illustrate the frustrations of the public when services do not run as timetabled and confidence in public transport is vital if targets to reduce private car usage, alleviate road congestion, boost economic development and reduce environmental damage are to be achieved. The operator's investment in clean-air technology is a positive indicator of the contribution which it is making to reduced pollution and saving scarce resources.
23. The operator should have been aware of the technical issues affecting the fleet and the engineering issues at Ravenhill. The longer that known business challenges exist for an operator without resolution in terms of their impact on services, the harder it is to claim that those events amount to exceptional circumstances or a reasonable excuse for not meeting punctuality targets. The operator also has a duty to proactively manage the impact of those challenges on the expectations of their customers. Whilst there is evidence of extensive internal monitoring by the operator there is insufficient evidence of urgent and effective remedial action in response to the public complaints and the known non-running. It is to the operator's credit that the Managing Director openly and candidly admitted that customers in the Swansea area were let down in the relevant period and he apologised for that.

24. I consider it appropriate to mark the failure to meet the needs of the travelling public as to punctuality and reliability by a financial penalty under section 155(1A)(a) of the Transport Act 2000.
25. The STC's Statutory Document No.14 suggests a starting point of £400-£550 per authorised vehicle for under 80% compliance which was the case for services 11,12 and 13 at the time of the monitoring exercise. Service 4 was operating at 91.67% which would be in the band of £100-£250 per authorised vehicle. Accepting that punctuality has been around 90% overall on the operator's figures, I place the operator at the lower end of the £100-£250 per authorised vehicle. I have regard to the positive steps taken to address the failings.
26. The Statutory Penalty is based on a multiplier of the number of vehicles authorised on the licence. The operator has 412 vehicles authorised and 241 Local Bus Service registrations, although only 320 discs are held and vehicle numbers have been reduced as part of the plan to improve reliability and standards. The issues in this case concern one of the 3 business units and I am informed that reliability problems are far less prevalent in the East and West business units.
27. In those circumstances, I further reduce the penalty to £50 per authorised vehicle, to reflect the relative small scale of the sample against services operated on the licence, giving a total penalty of £20600. I am satisfied that this penalty is at a level that will not inhibit the ability of the operator to invest to meet the demands of providing a punctual service to its existing and potential customers. The penalty is payable to the Welsh Assembly and shall be paid within 28 days of this decision.

Anthony Seculer
Deputy Traffic Commissioner,
Welsh Traffic Area.
25th October 2019.