



Neutral Citation Number: [2019] UKUT 222 (AAC)

Appeal No. T/2019/24

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER
TRAFFIC COMMISSIONER APPEALS**

**IN AN APPEAL FROM THE DECISION OF
Niick Jones, Traffic Commissioner for
Wales dated 27 February 2019**

Before:

**Her Hon. Judge J Beech, Judge of the Upper Tribunal
Stuart James, Specialist Member of the Upper Tribunal
Michael Farmer, Specialist Member of the Upper Tribunal**

Appellants:

**THE SKIERS LODGE LIMITED trading as TSL
TSL (WALES) LIMITED
ANDREW MARTIN
EXPRESS AIRPORT TRANSFERS (EUROPE) LIMITED trading as EAT**

In attendance: Mr Backhouse of Backhouse Jones solicitors on behalf of the Appellants with Mr Martin in attendance.

Heard at: Field House, 15-25 Bream's Buildings, London, EC4A 1DZ

Date of hearing: 11 June 2019

Date of decision: 16 July 2019

DECISION OF THE UPPER TRIBUNAL

IT IS HEREBY ORDERED that the appeal in respect of the disqualification of Andrew Martin under s.85 of the Transport Act 1985 be ALLOWED to the extent that the period of disqualification of two years from the date of the public inquiry held on 4 October 2018 be set aside and replaced with a period of disqualification of eighteen months from 23.59 on 1 April 2019, the date of the Traffic Commissioner's decision. All other appeals are DISMISSED

SUBJECT MATTER:- Adequacy of evidence to establish unlawful use of an operating centre; good repute; proportionality of orders of revocation and disqualification.

CASES REFERRED TO:- 2009/225 Priority Freight & Paul Williams; 2002/217 Bryan Haulage No.2; Bradley Fold Travel Ltd v Secretary of State for Transport [2010] EWCA Civ 695

REASONS FOR DECISION

1. This is an appeal from the decision of the Traffic Commissioner for Wales (“the TC”) made on 27 February 2019 when he:
 - a) Revoked the operator’s licence of The Skiers Lodge Limited trading as TSL (“TSL”) under s.17 of the Public Passenger Vehicles Act 1981 (“the Act”) with effect from 0001 on 18 March 2019;
 - b) Refused the application for an operator’s licence made by TSL (Wales) Limited (“TSL Wales”) under s.14 of the Act;
 - c) Disqualified Andrew Martin (“Mr Martin”) from holding or applying for an operator’s licence for a period of two years under s.85 of the Transport Act 1985 with effect from 4 October 2018;
 - d) Disqualified Mr Martin as a transport manager until he re-qualified by passing the transport manager CPC qualification;
 - e) Disqualified John Alan Jackson (“Mr Jackson”) as a transport manager until he re-qualified by passing the transport manager CPC qualification (this determination is not the subject of appeal);
 - f) Revoked the operator’s licence of Express Airport Transfers (Europe) Limited trading as EAT (“EAT”) under ss.14 and 17 of the Act with effect from 1 April 2019.

The Background

2. The background relevant to these appeals can be found in the appeal bundles, the transcript of the hearing, the written decision of the TC and is as follows. TSL was granted a standard international PSV licence on 18 November 2003 in the West Midlands traffic area authorising 10 vehicles with 10 discs in possession. The sole director was Mr Martin who was also the transport manager. The operating centres were The Former Grange Centre in Shrewsbury (“the Shrewsbury operating centre”) and more recently, Gledrid Truck Stop in Oswestry (“the Oswestry operating centre”) was added to the licence. The maintenance contractors notified to the Office of the Traffic Area (“OTC”) were Hartshorne Motor Services and Fleetserve Engineering Limited (“Fleetserve”) and the PMI frequency on the licence was six weeks. TSL operated under the easyBus branding and operated four registered bus services including service 64.
3. TSL was called to a preliminary hearing before the Traffic Commissioner for the West Midlands on 29 March 2017 due to the cancellation of a registered

service prior to the 56-day notice period. The explanation apparently given was that a member of staff had cancelled the wrong registered service. No action was taken against the operator's licence.

4. A maintenance investigation was conducted in December 2017 which was presumably marked as unsatisfactory (the report not having been included in our papers) as the Traffic Commissioner issued a warning letter to the company on 10 January 2018.

Relevant Registered Services

5. On 1 April 2017, TSLI began operating registered service 64 from Llangollen to Llanarmon DC under the easyCoach branding (the fourth registered bus service operated by the company). It was a rural route, servicing communities within Wales that did not have access to other means of public transport. The service also provided transport for pupils attending Ysgol Dinas Bran in Llangollen. The route was operated under contract with Wrexham Council. As a result of complaints received from Wrexham Council, Nesta Jones, Bus Compliance Officer for Bus Users UK Cymru, commenced a monitoring exercise for 11 days between 10 April and 2 June 2017. She made 47 observations and calculated that service punctuality was 77% with 15% of the buses running early, 4% running late and 4% either failing to operate or running off route. A copy of the report was sent to Mr Martin. Ms Jones then re-monitored the route between 5 June and 21 July 2017 achieving 25 observations. She did not find any issues with the route and the company was sent a "*well done*" letter by Bus Users Cymru on behalf of the Traffic Commissioner. The company did not respond to the monitoring reports or contact Ms Jones.
6. In January 2018, further complaints were received about service 64 and so Ms Jones commenced a further monitoring exercise on 29 January 2018 but only completed three days before injury caused her to be absent from work for two months. She then recommenced the monitoring exercise. She achieved 75 observations over eleven days and found 4% of the buses to be running early, 7% running late, 21% failing to operate or operating off route. The overall punctuality figure was 60% and 73% of the buses observed were displaying incorrect destinations which was caused by two vehicles having faulty destination displays. Instead, the vehicles had an A4 size piece of card with "64" written on it which was stuck inside the windscreen. As there was no destination displayed and as the route involved three loops, it was not possible to guess which direction the bus was travelling in at certain locations. During the period of monitoring, Wrexham Council received sixteen reports of vehicles breaking down or failing to operate to the registered route from either passengers or the school. An email from the Council informed Ms Jones that despite multiple requests, the company had failed to notify the Council of service updates or issues when incidents had taken place.
7. Ms Jones noted that TSLI had registered four further routes: services 2, 2D, 44, 42. All but service 2 operated entirely within Wales and operations were scheduled to commence between 27 and 29 June 2018.

8. A copy of Ms Jones' report was sent to Mr Martin who responded, expressing concern and disappointment with service 64 particularly in the light of the 100% compliance figure achieved in July 2017. He blamed complacency on the part of the regular driver on the route and his/her decision to miss stops. Mr Martin was unaware that this was taking place and had issued the driver with a final written warning. Improvements had been made in the tracking systems used which had previously only monitored the two end points of a journey. Mr Martin apologised for the inconvenience suffered by passengers and stated that the company was working with Wrexham Council to review the route timings which should improve timeliness. He invited Ms Jones to monitor the service during the summer to ensure that the improvements "*translate into reality for the passengers*". As for the faulty destination blinds, there was an intermittent fault in both vehicles and these had now been rectified and the drivers spoken to about the need to report faults.

9. On 17 July 2018, Andrew Mytton, Public Transport Officer for Wrexham Council, sent an email to Ms Jones concerning service 64. He highlighted that the service was a fully tendered service and as such, with a timetable that met the transport requirements of local students, utilisation of this service was made by the council for student transport. Due to poor timetable compliance and numerous complaints from concerned parents, local elected members and representatives of the school, the council had recently been forced to remove qualifying students from the service and provide dedicated alternative school transport arrangements. This had resulted in unnecessary additional cost to the council. Officers had been in continued dialogue with TSSL concerning the service, both informally and formally but despite reassurances given concerning future performance, there had been no marked improvement to the disappointment of the council and those communities affected. This was the only local bus service serving those communities.

10. In the meantime, on 27 June 2018, in line with standard procedure in respect of new services, Ms Jones commenced monitoring of services 2, 2D, 44 and 42 over a period of five days to 10 July 2018. She made 84 observations and found that 3.5% of the buses were early, 20.5% were late, 17.25% failed to operate or were off route and that overall punctuality was 56%. She noted that the buses were operating out of an unauthorised operating centre on Park Road, Rhosymedre, Wrexham ("the Rhosymedre site") for the entire period of observation. A copy of the report was emailed to Mr Martin on 11 July 2018 to which Mr Martin responded that all of the buses were satellite tracked and he had asked his staff at his Shrewsbury operating centre to compile a report comparing Ms Jones' records with the company's. He added "*I am not sure that sending any report to the Traffic Commissioner at this time serves any real benefit, for either Bus Users Cymru, or the travelling public. Especially when we have had neither the opportunity or time to tweak or adjust rosters and running boards to accommodate any timing or failure issues that we have experienced in the first 10 days of operation. .. of course, if there is an agenda running behind the scenes that I am unaware of, then please do let me know ...*" Mr Martin concluded by stating that he would

revert back to Ms Jones the following week, although she did not receive any further correspondence from Mr Martin.

11. On 17 July 2018, Ms Jones recommenced monitoring of the four new services to establish whether there had been any improvements in punctuality and reliability and to allow for possible initial teething problems to have been dealt with. She monitored the services until 8 September 2018. In the meantime, on 22 August 2018, Mr Martin applied to cancel all five registered services operating in Wales with effect from 9 September 2018 and gave advance notice to the OTC of his intention to surrender the operator's licence of TSSL.
12. Ms Jones made 116 observations and found that 14% were late, 29% failed to operate giving an overall punctuality/reliability rate of 57%. She noted that only three of the five services continued to operate until the last day of registration. The operating centre at the Rhosymedre site continued to be used until 8 September 2018.
13. It is relevant at this stage to interpose some detail about TSL Wales. The company was incorporated on 23 April 2018 with Mr Martin as sole director. On 4 June 2018, an application for a standard international PSV licence was made to the Welsh traffic area requesting authorisation for 20 vehicles. The proposed operating centre was the Rhosymedre site. The transport manager was Mr Jackson and its maintenance contractor was Fleetserve with a workshop address of Unit H, Vanguard Way, Shrewsbury ("Unit H").
14. That application took the usual course with requests for further information from the OTC and more unusually, a letter of concern was sent to Mr Martin arising out of an article in the Wrexham Daily Post on 18 June 2018 which included an interview with Mr Martin. The article was entitled "*Budget bus operator launches in Wrexham with a promise about fares*" and pictured Mr Martin at the Rhosymedre site which had been painted in the easyCoach colour and branding. The article referred to the new services that Mr Martin had registered (as set out in paragraph 10 above) and went on to quote Councillor Bithell who stated that Mr Martin had already relocated his easyBus depot from Shrewsbury to Wrexham with the creation of local jobs. The OTC relayed the TC's concerns that neither TSSL or TSL Wales had a Welsh operator's licence entitling them to operate Welsh services. In email correspondence to the OTC, Mr Martin explained that his businesses were moving to the Wrexham area where other bus companies had recently failed and that Wrexham Council and the Welsh Government were supportive of Mr Martin's endeavours. By incorporating a new Welsh company and establishing an operating centre in Wales, TSL Wales could gain access to government support. Upon grant of the new licence, the authorisations on the TSSL licence and the EAT licence would be reduced and the registered services would be transferred from TSSL to TSL Wales.

The DVSA investigation - Maintenance

15. TSSL first came to the attention of Vehicle Examiner (“VE”) Williams when on 6 February 2017, a minibus operated by the company became engulfed in flames in Wrexham whilst on a service run to Manchester Airport. He made reference to the previous maintenance investigation undertaken in December 2017 (see paragraph 4 above) and noted that since that investigation, the drivers defect reporting system had changed, the Rhosymedre site was in use as an operating centre and additional services in the Wrexham area had been registered by the company. Further, the maintenance provider was different.
16. On 6 July 2018, at 5.50, VE Williams, VE Bramham and VE Griffiths along with Traffic Examiner (“TE”) O’Brien and Senior Traffic Examiner (“STE”) Jenkins made an unannounced visit to the Rhosymedre site. The purpose of the visit and subsequent investigation was to:
 - a) check the condition and roadworthiness of the vehicles being operated;
 - b) check the maintenance arrangements and procedures in use;
 - c) follow up multiple prohibitions issued to vehicles over the previous 16 months (seven immediate, two delayed and one advisory notice). The PG9 rate for the previous five years was 44% compared to the national average of 17%;
 - d) confirm that the Rhosymedre site was being used as an operating centre when not authorised for such use.

The DVSA officers found five vehicles being prepared for the working day by Mr Jackson, the proposed transport manager for TSL Wales. All five vehicles were inspected and two were clear of defects. Two PG9s (one immediate and one delayed) and an inspection notice for two items were issued to the other three vehicles (bringing the total of PG9’s issued in a period of sixteen months to twelve). VE Williams was told that the forward planner and the vehicle records were kept at the Shrewsbury operating centre. There were, however, driver defect reporting cards in an office at the Rhosymedre site.

17. On 12 July 2018, VE Williams and TE O’Brien attended the Shrewsbury operating centre for a pre-arranged meeting with Mr Martin. A maintenance agreement with Fleetserve was produced dated 7 February 2018 which was for the provision of maintenance for vehicles identified in schedule 1 of the agreement. However, neither schedule 1 nor any other part of the agreement contained a list of vehicles to be maintained by Fleetserve and the section entitled “safety inspection interval” was blank. Mr Martin told VE Williams that he was very pleased with Fleetserve as four vehicles had been prepared for annual test by them and had passed without advisories. VE Williams subsequently checked the annual test data available for the vehicles he was aware were being used by TSSL and between the date that Fleetserve had become the maintenance contractor and 12 July 2018, there had been eight vehicles presented for test with six passes and one fail (pg 82 of appeal bundle).
18. Mr Martin was asked to produce vehicle files for the five vehicles VE Williams had inspected at Rhosymedre. The file for SJ53AWX was missing. Mr Martin thought that it might be at Rhosymedre because the vehicle was undergoing repair at that site after a PG9 that had been issued for a leaking fuel tank on 3

July 2018. Two of the files contained only one PMI sheet each which had been completed as part of the annual test preparation of the vehicles and included the test card and brake test printout. Mr Martin explained that both of the vehicles had only recently gone into service. VE Williams questioned this in his report as one of the vehicles, MX05ELC, had been encountered in Shrewsbury on 8 November 2017 whilst being operated by TSSL. A prohibition had been issued in respect of a cracked windscreen. Further, whilst no vehicle file had been produced for SJ53AWX, that had been encountered on 1 February and 3 July 2018 whilst being operated by TSSL. VE Williams concluded that Mr Martin's statement about the vehicles having only entered service recently was incorrect. Further, no explanation had been forthcoming in respect of the loss of the vehicle file for SJ53AWX.

19. VE Williams described the driver defect reporting system as "*very comprehensive*" although he found examples of cards where drivers had failed to record dates and full registration numbers and the "nil defect" reporting was incomplete, contrary to the procedures set out in the company's drivers handbook. There was no forward planner at the Shrewsbury operating centre. Mr Martin had explained that some of the vehicle maintenance was carried out at Unit H (one of his sites). VE Williams visited the premises later that day and viewed it from the outside only. It appeared to be a retail outlet and not wholly suitable for large vehicle maintenance.
20. During the course of the visit, Mr Martin was "*keen*" to discuss the PG9 issued on 3 July 2018 to SJ53AWX. He stated that the vehicle had been left unattended and that when the driver returned, there were two DVSA officers on site and a pool of diesel under the fuel tank of the vehicle. He "*insinuated*" that the DVSA officers had sabotaged the vehicle and showed VE Williams a photograph on his mobile phone which showed a rusty object with a large hole in it. Mr Martin stated that the vehicle had been repaired by the roadside earlier in the day and a fan belt replaced. Had the fuel leak existed at that time, the fitter/s would have noticed. VE Williams was of the view that as the fan belt was located at the rear of the engine on the vehicle and not in the vicinity of the fuel tank, that was not necessarily the case. VE Williams attached a picture taken at the time the PG9 was issued which shows a large pool of fuel on the road. He inspected the fuel tank on 19 February 2018 at the Rhosymedre site and concluded that the hole had been caused by corrosion and that it had been enlarged as a means of establishing whether a repair was possible. He noted evidence of some form of adhesive present which possibly indicated an attempt at a previous repair. A new fuel tank was fitted.
21. Mr Martin also discussed a PG9 issued for the absence of legal lettering on the rear emergency window following its replacement. Mr Martin was of the view that it was responsibility of the glass company to transfer the stickers to the new glass although in the experience of VE Williams, that was the responsibility of the operator (and this was later confirmed by the TC during the public inquiry).

22. On 13 July 2018, VE Williams visited the Rhosymedre site and spoke to Mr Jackson who stated that he did not have the maintenance file for SJ53AWX and that the files were kept at Shrewsbury. The maintenance providers were not at Rhosymedre but were expected at 10.30. VE Williams returned to the site at 10.30 to find the site was locked. He waited until 11.15 before leaving.
23. On 19 July 2018, VE Williams was informed by an anonymous member of the public that a vehicle in easyCoach branding had been involved in a wheel loss incident on A483 dual carriageway at about 18.00 on 18 July 2018. The incident had not been reported to the DVSA in accordance with PSV112 (which not only requires notification but prohibits operators from undertaking any maintenance work on the vehicle concerned until it has been inspected by the DVSA). VE Williams attended the Rhosymedre site at 12.30 and spoke to Neil Jones, the acting transport coordinator for TSL Wales. He confirmed that there had been a breakdown the previous evening and thought it was a tyre. Mr Jordaan of Fleetserve was on site. VE Williams noted that three vehicles were in the workshop at Rhosymedre, including SJ53AWX which was waiting for a replacement fuel tank. He concluded that MX07JOU had been the vehicle involved in the wheel loss incident and it was apparent that the wheel had run loose as the wheel stud holes were worn and elongated and the mating surfaces were bright, indicating movement had been present. Further, the outer wheel had deep marks in the centre consistent with wheel contact at the end of the half shaft as it left the axle. It was apparent from the driver defect report that on 16 July 2018, the driver reported smoke coming from the nearside rear wheel arch and as a result, the wheels had been removed and the rear hub oil seal and disc pads had been replaced on the morning of 18 July 2018. The wheels had then been replaced and torqued to 400NM as per manufacturer recommendations. The fitter then requested that the vehicle be road tested and re-torqued. However, the vehicle had been returned to service as the route it served was too tight for the larger vehicles. Mr Jordaan confirmed that Fleetserve had not been given a forward planner and that all paperwork was sent to Shrewsbury.
24. Mr Jones informed VE Williams that Mr Martin had had a meeting with the driver of MX07JOU (Nicola Benson) on the morning of 19 July 2018 about the wheel loss. VE Williams informed Mr Jones at 13.50 that the wheel loss should have been reported to the DVSA. At 14.30 VE Williams received an email from Mr Martin enquiring as to the method of reporting the wheel loss to the DVSA.
25. VE Williams then attended Wrexham bus station to speak to Nicola Benson. She stated that she had repeatedly reported smoke coming from the rear nearside hub of the vehicle and had eventually refused to drive the bus on 16 July 2018. The vehicle was returned to her mid-shift on 18 July 2018. She reported a rumbling from the rear of the vehicle at about 17.00 and was asked if she could limp the vehicle back to the depot. The wheel then detached but remained close to the vehicle which VE Williams took to be evidence that the vehicle was travelling at low speed at the time.

26. VE Williams checked the details held by Companies House for Fleetserve Engineers Ltd and found that the company had been dissolved on 26 June 2018. Whilst the Rhosymedre site building was big enough to house six large PSVs, he was concerned that the set of four wheel lifts which were in use on site were not suitable for conducting checks of the steering mechanism while under load. His concern was supported by the fact that when SJ53AWX was presented for prohibition clearance on 27 July 2018, it failed and a delayed PG9 was issued for a loose axle king pin.
27. Some aspects of the operation gave VE Williams cause for concern. Over the past eighteen months, the company had used six different maintenance contractors; two of the contractors, including Paul Leek Commercial, had not been paid satisfactorily for carrying out PMIs and repairs. VE Williams included a letter dated 5 July 2018, from Paul Leek to that effect.
28. On 8 August 2017, a 16 seat minibus which was undertaking an airport shuttle service, was the subject of a roadside check. The rear row of seats had been removed to allow for luggage. This was an unauthorised alteration of the vehicle which resulted in a tripping hazard created by raised seat fixing lugs. There were holes in the floor surface and seat belts were unrestrained. There was no means of securing luggage in the rear of the vehicle. A PG9 was issued and this was appealed by Mr Bryce (transport manager for EAT). Senior Vehicle Examiner (“SVE”) Garlick re-inspected the vehicle the following day and found that some of the items had been altered in an attempt to undermine the prohibition. The prohibition was not set aside.
29. VE Williams emailed the PG13F&G to Mr Martin on 20 July 2018. He did not respond. The outcome of the investigation was unsatisfactory because:
 - a) Only two vehicles of five were clear of defects when inspected;
 - b) VE Williams was unable to determine inspection frequency inspections due to vehicles entering service in June 2018 and one maintenance file could not be located;
 - c) No forward planner was seen either at Shrewsbury or Wrexham and it was not with the maintenance provider;
 - d) The maintenance agreement did not specify vehicles or inspection frequency;
 - e) There was a noticeable lack of large workshop equipment at Rhosymedre;
 - f) The Rhosymedre site was being used as an operating centre when not authorised (see below);
 - g) The number of prohibitions issued;
 - h) The wheel loss incident on 18 July 2018.
30. On 3 August 2018, Neil Jones wrote to the OTC making allegations about the operation of TSSL and TSL Wales and the standard of maintenance. Ultimately, these allegations did not form part of the evidence the TC considered during the course of the public inquiry.

The DVSA investigation – the use of Rhosymedre as an operating centre

31. TE O'Brien's investigation commenced following the advertisement of the four new registered services being operated by TSL. She was concerned about the operation of those services from Rhosymedre when no operator's licence had been granted for those services to be operated from that site.
32. On 28 June 2018, TE O'Brien, accompanied by TE Daniel and VE Williams attended Wrexham bus station to carry out routine vehicle inspections. They encountered three vehicles liveried as "easyBus" and displaying operator licences in the name of TSL with legal lettering in the name of "*TSL LTD*". All three drivers were spoken to and they confirmed that their duties started at Rhosymedre where they collected the vehicles and that they returned the vehicles back to that site. They took their instructions from Mr Jackson, the proposed transport manager for TSL Wales. Later in the day, an easyCoach vehicle was seen at the main car park in Llangollen. The driver was spoken to. He said that his duties had commenced in Shrewsbury but that he had then been asked to attend Rhosymedre to collect a vehicle and drive on the service 64 route. At the end of his duties, he would return the vehicle to Rhosymedre and return to Shrewsbury in his own vehicle.
33. When TE O'Brien attended Rhosymedre on 6 July 2018 in the company of other DVSA officers (see paragraph 16 above), she noted that in addition to the five vehicles parked at the site, a sixth was leaving and a seventh was parked to the side of the main building with a "VOR" notice displayed. There were a further three vehicles parked inside the building awaiting mechanical work. Mr Jackson was interviewed. He denied that he "*has any dealings*" with the TSL licence although he presumed that TSL paid his and the drivers wages. He had started as a Transport Manager at the Rhosymedre site at the beginning of June 2018 and his responsibilities were to keep an eye on the fitters; to tell them when the PMIs were due; to keep a wall planner (forward planner) although one did not exist at the time of interview; to oversee drivers' hours and records and everything to do with the licence. VED was the responsibility of Mr Martin. He confirmed that the Rhosymedre site had been in use for two weeks and the drivers for services 2 and 42 were based at Rhosymedre. The drivers for service 64 were based in Shrewsbury. He accepted that all drivers spoken to at the Wrexham bus station on 28 June 2018 had started and finished their duties at Rhosymedre and further confirmed that none of the vehicles used at Rhosymedre returned to Shrewsbury as "*there is no need for them to go back there*". As for the use of Rhosymedre when TSL Wales had not been granted an operator's licence, Mr Jackson stated "*the boss just said to take them all up there*", referring to Mr Martin and the vehicles.
34. VE Williams' evidence about Rhosymedre was that Gledrid truck stop in Oswestry was a specified operating centre although he could find no evidence of TSL using the site. VE Williams visited the operating centre on several consecutive Sundays when it was known that TSL did not operate services and no TSL vehicles were parked there. He had in fact found that the premises at Rhosymedre was where TSL parked its vehicles. He said the maintenance of the vehicles was carried out at Rhosymedre by two fitters and the driver defect sheets were handed in to the office on site. He thought that

the maintenance paperwork for the vehicles was kept by the fitters in their van. The daily defect sheets were looked at on a daily basis by the fitters at Rhosymedre.

35. On 12 July 2018, Mr Martin was interviewed by TE O'Brien. He confirmed that he was a qualified transport manager although he had not undertaken any refresher training. Mr Jackson was the proposed transport manager for TSL Wales although he was not functioning in that capacity at the time of interview. He was paid by TSL. The drivers for service 64 were based in Shrewsbury and the drivers for services 2, 2D 42 and 44 were based in Rhosymedre and were paid by TSL. The site had been in use since 25 or 26 June 2018 and of the six buses based there, two or three had returned to Shrewsbury although four had not. He maintained that the vehicles were being rotated. There were eight discs in use at Rhosymedre. The vehicles were using the site because Fleetserve were based there (as opposed to Unit H) although the vehicles were normally kept in Shrewsbury. Whilst the TSL Wales licence was awaited, TSL had entered into an agreement with TSL Wales to operate the four new routes on a temporary period of four weeks and in that contract, TSL had confirmed that the vehicles had been kept at Shrewsbury for the previous 26 weeks and would return to Shrewsbury at the end of the period. Plan B was the use of the Oswestry operating centre should the contract come to an end and the operator's licence for TSL Wales had not been granted.
36. Mr Martin produced a document entitled "*Contract for the provision of passenger transport services*" and was signed by Mr Martin as director of TSL and as director of TSL Wales and was dated 26 June 2018, the day before the first of the four new services began to operate. Under its terms, TSL (the contractor) was required by TSL Wales to:
- a) provide vehicles;
 - b) provide drivers;
 - c) ensure that the vehicles were maintained and insured;
 - d) operate the four new services (which were registered to TSL not TSL Wales);
 - e) pay to TSL Wales the sum of £600 per operating day on a minimum subsidy basis, whilst retaining the fares.

The use of Rhosymedre as an operating centre was dealt with in this way:

"the contractor may have temporary access, for its vehicles and drivers utilised under this contract, to the premises of TSL (Wales) Ltd at ... Rhosymedre ... for the following purposes only:

1. *The day time or night time maintenance ... by Fleetserve ..*
2. *The temporary parking of its vehicles whilst used on this contract.*
3. *The temporary parking of private vehicles owned by its drivers ..*
4. *The temporary storage and supply of its own road diesel.*

For the avoidance of doubt, nothing in this paragraph, or entire contract, creates the existence of a Vehicle Operating Centre for the Contractor”.

37. The contract then went on to require TSSL to confirm that during every period of 2 weeks, vehicles used under the contract must return to their registered operating centre at least once and further confirm that all vehicles used under the contract have been normally kept at their registered operating centre for at least the previous 26 weeks at the commencement of the contract and would continue to be normally kept at the registered operating centre for at least the subsequent 26 weeks following the ending or termination of the contract unless otherwise disposed of.
38. As Mr Martin was relying upon this contract to demonstrate that Rhosymedre was not being used as an operating centre, TE O'Brien forwarded the document along with Mr Martin's interview to the DVSA policy team which responded by stating that the parking of vehicles at the site, the deployment of drivers from there and with maintenance being carried out at the site made Rhosymedre an operating centre which was unauthorised. That information was forwarded to Mr Martin on 18 July 2018 although TE O'Brien acknowledged that it was for the TC to make a formal decision upon the issue.
39. In her public inquiry report dated 1 April 2019, TE O'Brien noted that even on Mr Martin's own account, four vehicles had failed to return to Shrewsbury for a period of 16/17 days contrary to provisions of the contract. It was the opinion of the DVSA that Rhosymedre was being used as an operating centre for the reasons stated in paragraph 38 above. Further, the advertisement on the company timetables gave the address and telephone number of the Rhosymedre site to contact for information and enquiries.
40. On 6 August 2018, the OTC wrote to Mr Martin reminding him that vehicles being used on registered services registered to the TSSL licence should be returning to the authorised operating centre when not in use. The site at Rhosymedre was not authorised for that use.
41. On 8 August 2018, there were two DDA checks on TSSL vehicles at Wrexham bus station and inspection notices were issued. It was confirmed by the drivers that the Rhosymedre site was still being used as the place where buses were being parked overnight and where drivers collected them at the start of their shift.
42. By an undated letter received by the OTC on 13 August 2018, Mr Martin gave advance notice of the surrender of TSSL operator's licence with effect from 9 September 2018 which was the date that all registered services were due to be cancelled. On the same day, the OTC received a further letter from Mr Martin withdrawing the application for a licence made by TSL Wales. Neither the surrender or the withdrawal of the application were accepted by the TC.

Other concerns of TE O'Brien

43. On 28 June 2018, MX07JOU was found to have been registered as SORN on the DVLA system. It was therefore being operated without VED having been paid. On 6 July 2018, the vehicle was still registered as SORN and yet was being prepared for service again. The issue was raised with Mr Jackson on that day and the vehicle was then taxed. Mr Martin thought that as the vehicle had come from another operator, Lew Jones, there had been some confusion when tax checks were undertaken.
44. Also on 28 June 2018, MX07JOJ was found to be displaying a void operator's licence disc (and had been since 27 July 2017). The same disc was then removed and displayed in SJ53AWX on 3 July 2017. During interview, Mr Martin stated that he was not aware of this issue. No record was kept of discs either at Shrewsbury or Rhosymedre.
45. On 12 July 2018, TE O'Brien asked Mr Martin to provide an insurance certificate for the TSLL vehicles by 18 July 2018. He did not do so. She also sent him a copy of her record of his interview and requested that he sign it. He did not do so.

Express Airport Transfers (Europe) Limited

46. EAT was granted a Standard International PSV operator's licence on 13 June 2017 authorising 13 discs. Mr Martin was the sole director of the company and Stephen Bryce had been the transport manager but had resigned in December 2017. Notification of his resignation was not notified by him to the OTC until 16 April 2018. On 24 April 2018, an application was received by the OTC nominating Mr Martin as transport manager. On 27 June 2018, Mr Bryce made some serious allegations about Mr Martin as a director of EAT. Ultimately, the allegations did not form any part of the evidence considered by the TC at the conjoined public inquiry.
47. Whilst EAT did not have any regulatory history, the company was called to the public inquiry as a result of its connections with Mr Martin (whose nomination as transport manager was also going to be considered), TSLL and TSL Wales and because of Mr Bryce's allegations which were later excluded as evidence at the public inquiry.

The period leading up to the Public Inquiry

48. By letters dated 29 August 2018, the three companies, Mr Martin and Mr Jackson were called to a public inquiry listed for 4 October 2018.
49. On 3 September 2018, Mr Martin wrote to the OTC "*requiring*" all DVSA officers and Ms Jones to attend the public inquiry hearing as it was "*imperative*" that they be available for cross examination and he confirmed that he would also be cross-examining Mr Jackson. Mr Martin reminded the OTC of his right to a fair hearing and that as a result, he required a two-day hearing and demanded that Mr Bryce and Mr Jones be issued with call up letters. Prior to the hearing, Mr Martin filed 1,190 pages of evidence with the

OTC, the relevance of most of which was unclear and remained so even at the date of the appeal hearing.

The Public Inquiry

50. In attendance at the hearing as witnesses was VE Williams, TE O'Brien and Ms Jones. Mr Martin and Mr Jackson also attended and were unrepresented. SVE Garlick and STE Jenkins attended as observers. The TC dealt with the issue of financial standing first. Whilst Mr Martin had given notice that he was surrendering the TSSL licence and withdrawing the TSL Wales application, he was in fact content to have the TSL Wales application proceed upon the basis of a five disc authorisation and in respect of EAT, a reduction to eight vehicles. Mr Martin further confirmed that he now wished to be the transport manager for TSL Wales as well as the transport manager for TSSL and EAT. He told the TC that he had been operating PSV's for thirty years and had sold his operation in France in December 2017. He had taken his CPC examination in 1998 or 1999 but had not attended any refresher training since. He was booked on a two-day course in October 2018 (although the booking confirmation was for a one-day course).
51. The procedure for the hearing of evidence adopted by the TC resulted in topics and issues being dealt with in a rather piecemeal fashion. During the evidence of the DVSA officers and in particular, VE Williams, the TC either asked Mr Martin for his response to a particular aspect of the evidence or permitted him to interject and give his own account or make a statement. Mr Martin was then quite properly allowed to cross examine but the result was that topics were covered in a rather unsatisfactory and disjointed way with some being returned to on more than one occasion. As a result, we have summarised the evidence topic by topic in order to provide a meaningful summary.
52. It is appropriate to note at this stage that whilst Mr Martin insisted that TE O'Brien and Ms Jones attend the hearing for cross examination, he did not in fact take issue with their evidence at the hearing. Further, he did not take issue with the evidence of Mr Jackson.

The use of Rhosymedre as an operating centre

- a) VE Williams confirmed that it was his view that the vehicles repeatedly seen by himself, TE O'Brien and Ms Jones were being kept at the site and that when he attended on 6 July 2018, the engines of all the vehicles that were being prepared by Mr Jackson for service were cold, confirming that the vehicles had not been driven there from Shrewsbury at the beginning of the day. This was confirmed by STE Jenkins from the back of the hearing room.
- b) Mr Martin told the TC that the only reason why vehicles were parked at Rhosymedre was because that was where Fleetserve was based and that the vehicles would have been taken to Rhosymedre from Shrewsbury for

maintenance, although he accepted that vehicles were parked at Rhosymedre on occasions without maintenance being planned.

- c) VE Williams stated that whilst the maintenance records were not kept at Rhosymedre, the driver daily defect reports were. Mr Martin told the TC that this was because the fitters needed to see them. The TC pointed out that if the vehicles were not normally kept at the site, then only that day's reports should be at Rhosymedre.
- d) VE Williams told the TC that he had visited the Oswestry operating centre on several consecutive Sundays when none of the registered services were operated and did not see any vehicles operated by TSSL at the site. He had also visited Rhosymedre on two or three Sundays and found the vehicles parked there. Mr Martin took issue with this as no photographs had been produced of the Oswestry operating centre or indeed of Rhosymedre taken on a Sunday. Mr Martin asserted that VE Williams did not include in his report evidence which did not suit VE Williams' purpose. VE Williams stated that he had photographs of both operating centre taken on the same Sunday (15 July 2018) to illustrate his evidence. He was prepared to return home where his DVSA camera was and print out the relevant photographs. Ultimately, Mr Martin did not require him to do so.
- e) TE O'Brien produced the document entitled "Contract for the provision of passenger transport services" ("the agreement"). Mr Martin's response to that was that it was an arrangement which was no different to any situation where a company with work, hires in another company to undertake that work on the latter's operating licence. Rhosymedre was where the vehicles were being maintained and he accepted that Rhosymedre was being used as an operating centre "*for a period*". He described the agreement as a temporary solution pending the grant of an operator's licence to TSL Wales. He accepted that his "*interpretation*" of the law had been incorrect and it looked like TSSL had been operating illegally "*for a period*". He was fully expecting the operator's licence to be granted by the 28 June 2018 (even though the application was not submitted until 4 June 2018). The letter from Stephen Bryce had delayed the application process and Mr Martin would use what had happened "*as a learning process*". It was TSSL operating from Rhosymedre without an operator's licence rather TSL Wales.

The fuel leak

- a) Mr Martin denied that he intended to insinuate that the DVSA officers had sabotaged the fuel tank. All that he had said was "*someone has sabotaged the vehicle and it is coincidence that it happened whilst the vehicle was parked up and the driver was on his break, and coincidence that DVSA staff just happened to be there at the moment ..*". The DVSA officers had misinterpreted his words. Whoever did sabotage the fuel tank contacted the DVSA straightaway. The TC considered that even upon that version, the perception of the DVSA officers would be that Mr Martin was insinuating that they had sabotaged the tank.

Forward Planner

- a) VE Williams denied that that he had been told by Mr Martin that a forward planner existed and that it was kept at Unit H. Mr Martin had told him that Fleetserve had it. Mr Jordaan later confirmed that they did not. VE Williams could not recall Mr Martin offering to take him to Unit H and that he had declined the invitation as it was unnecessary (TE O'Brien could not recall the invitation either). If such an offer had been made, VE Williams would have accepted as he would have been interested in seeing the unit. In fact, the Vehicle Examiner who had undertaken the maintenance investigation in December 2017 had also stated that he would be interested in seeing the unit as he did not do so during his investigation. VE Williams had asked to see the forward planner and it had never been provided to him. He did accept that Unit H had planning permission for the repair of vehicles and Mr Martin produced photographs of the unit in use.
- b) Mr Martin asserted that VE Williams did not want to see a forward planner so that he could put into his report that the company did not have one.

Fleetserve and maintenance

- a) Mr Martin denied that Fleetserve Engineering Ltd had been dissolved but rather that it was "*alive and kicking*" and accused VE Williams of being "*selective*" in the evidence that he had given. Mr Martin asserted that there had been an administrative error on the part of Companies House and as a result, the company had been dissolved and then reinstated straight away. A separate maintenance agreement with the second entity was therefore not required.
- b) The Company House documents were looked at. The present company was incorporated on 22 June 2018 and the original company (which held the maintenance contract) was dissolved on 26 June 2018. The company numbers were different and the registered addresses were different. It followed that they were separate legal entities.
- c) VE Williams confirmed that he was concerned about the vehicle lifts being used at Rhosymedre because the vehicles were lifted on their wheels and it was difficult to check the steering by rocking it, which would be unsafe. SVE Garlick agreed from the back of the hearing room. VE Williams was also concerned that a mobile unit such as that used by Fleetserve for carrying tools may not carry all those which were necessary.

Previous maintenance providers

- a) Mr Martin took issue with VE Williams' evidence about the number of previous maintenance providers used by TSL. The company had in fact had four, not six in the relevant period and changes had been notified on line.

- b) VE Williams told the TC that when he attended the vehicle fire on 6 February 2017, he was surprised when GK MOT and Tachograph Centre attended rather than the specified maintenance provider, Paul Leek. Mr Martin pointed out that an operator was entitled to have more than one maintenance provider at any one time but accepted that the TC must be informed. As for GK MOT etc, Simon Puttock, son of the owner had been imprisoned for issuing 300 false MOT certificates through the company and Mr Martin considered that this was a good reason for TSSL moving on from that company.
- c) Mr Martin asserted that VE Williams had included the history of previous maintenance providers in order to discredit him and that he had failed to mention one who had confirmed that whilst the TSSL account had to be put on hold/stop a number of times, the company did pay its bills.

Wheel loss incident

- a) It was Mr Martin's case that it was Neil Jones, a qualified transport manager who had asked the driver to limp the vehicle back once she had reported the fault. Mr Martin accepted that the vehicle should not have been on the road and that it was ultimately, his responsibility.
- b) However, he took issue with the reference in VE Williams' report that he had been told by Mr Jones that Mr Martin had had a meeting with Nicola Benson on 19 July 2018 following the incident as he was in hospital at the time. He accused VE Williams of lying. Mr Martin produced a letter confirming an overnight hospital stay on 18/19 July 2018 and an email from the driver in which she confirmed that she did not have a meeting with Mr Martin although she commented in that email that Mr Martin should have made it his business to speak to her face to face about "*the harrowing episode*".
- c) Mr Martin questioned the truthfulness of VE Williams' statement in his report that the wheel loss incident had been reported by an anonymous passer-by. That person must have had the telephone number of VE Williams to be able to report the incident and send him a photograph. He implied that VE Williams was in some way complicit in this incident.

Missing records

- a) VE Williams was concerned by Mr Martin's explanation for the absence of records in maintenance files which pre-dated the annual test record found therein and in particular MX05 ELC which Mr Martin had claimed had only been in operation since June 2018 when a PG9 had been issued to it on 8 November 2017 when being operated on the licence of TSSL.
- b) Mr Martin stated that he had no knowledge of the PG9 because he had been away and it had not been his intention to give VE Williams inaccurate information in an attempt to deceive him.

- c) VE Williams confirmed that the vehicle file for SJ53 AWX had not been provided to him. Mr Martin asserted that the file had gone to Rhosymedre and that it had been removed by Neil Jones. VE Williams commented that this explanation had not previously been given to him.

Prohibition for removing seats from HN16 VEA

- a) SVE Garlick was asked to comment upon the appeal of this prohibition at the hearing. He stated that he went to the Shrewsbury operating centre and met Mr Bryce and Mr Martin. To stack luggage in the area created by the removal of the row of seats was dangerous. When asked what attempts had been made to conceal or change the state of the vehicle, he recalled it was the positioning of the matting (although VE Williams had stated that matting was in place at the time the prohibition was issued). The issue of whether attempts had been made to alter the vehicle so as to have the prohibition lifted was not resolved.
- b) Mr Martin asserted that the vehicle was designed to allow for the removal of the rear row of seats by the provision of quick release mechanisms. SVE Garlick commented that had the vehicle been constructed to carry luggage in that area, some sort of luggage restraint would have been provided and that had the seats been designed to be quick release, then he would not expect to see studs sticking out of the floor but rather some kind of rail mechanism.

The integrity of VE Williams where not otherwise mentioned

- a) Mr Martin put to VE Williams that he had been “groomed” by Stephen Bryce.
- b) He had deliberately stated in his report that Mr Martin had mentioned the figure of 4 vehicles that had been prepared for test by Fleetserve when in fact the figure given by Mr Martin had been 10. VE Williams looked at his notes of the meeting and informed the TC that Mr Martin had in fact given him the registration numbers of 6 vehicles.

Evidence of TE O'Brien on issues other than the use of Rhosymedre

- a) TE O'Brien adopted her report. Mr Martin told the TC that the reason why MX07JOU was being used whilst declared as SORN on 28 June 2019 was that he had bought three vehicles and when an employee checked whether the vehicles were taxed, the employee had mistakenly typed in the same registration twice (MX07JOJ) which was taxed. Mr Martin thought it a “*little harsh*” for TE O'Brien to state in her report that it was clear that the work of that employee was not being checked.
- b) As for the void disc, Mr Martin did not dispute that it was being used.

- c) As for the VOR sign in a vehicle parked at Rhosymedre on 6 July 2018, Mr Martin did not authorise this action and he did not know why the sign was in place. The TC pointed out that if a vehicle is VOR'd, then it should be at its operating centre (which of course, Mr Martin ultimately accepted was Rhosymedre).

Evidence of Nesta Jones

- a) She too adopted her reports. Mr Martin queried the number of complaints she recorded as having been made about service 64. Barclay Davies, Director for Wales Bus Users Cymru confirmed during the hearing that he had received four or five complaints in around June and July 2018 although complaints were usually made to the local authority.
- b) Mr Martin stated that the company had not "*set out to run rubbish services ... and I recognised over the summer that I was very ill, was not as fully in control as I should have been ...*". Mr Martin paused and then apologised. It is clear from the transcript that Mr Martin had become upset as the TC asked him if he wanted some water. Mr Martin continued "*I was in and out of hospital like a yo-yo so this was not at the forefront of my mind*". The TC then indicated that he could see that Mr Martin had become agitated and that he would hear Mr Jackson to give Mr Martin some time.

Alan Jackson

- a) He did not take issue with the evidence of either of the DVSA officers or of Ms Jones and confirmed that he had been working as transport manager at Rhosymedre whilst it was being used as an unauthorised operating centre.
- b) Mr Jackson also confirmed that he knew that Mr Martin should not be operating from Rhosymedre but questioned "*is it my position to tell him?*" He said that he had not wanted to lose his job.
- c) His statement in interview that there was no forward planner for the maintenance of the vehicles was not challenged by Mr Martin.

Andrew Martin

- a) At the conclusion of Mr Jackson's evidence, the TC commented that he could see that Mr Martin was feeling better and invited him to give evidence. He told the TC that he had held the TSSL licence since 2003 with an unblemished record until December 2016. It was then that Mr Martin delegated responsibility to Mr Bryce and that was when vehicles started attracting prohibitions. It was only when Mr Martin took back control in June 2018 that the prohibitions stopped. The MOT rate was excellent with 16 passes.
- b) The intention was to move to Wales once the Welsh licence had been granted at the end of June 2018 and he would have had more direct control but because of his illness he was not able to do so. He employed

Mr Jackson and Neil Jones. There were the issues identified by Nesta Jones and Mr Bryce had sent forty seven malicious communications about Mr Martin to various authorities and Mr Martin was having to deal with that as well. He accepted that he *“took his eye off the ball”*. He was in hospital and *“the wheel came off the bus because Neil Jones deliberately orchestrated that it would happen”*. Mr Martin then realised that he needed to stop the business and he applied for short notice cancellation of all the registered services. He gave the drivers more notice than was required by statute and they did not then turn up for work which resulted in the last few days of service without buses being operated although the reliability of services 42 and 44 improved. It was for these reasons that he had decided to surrender the TSSL licence (the TC interjected to indicate that surrender was not going to be accepted).

- c) Mr Martin understood the TC’s position. He was seriously considering leaving the industry although in July 2018 he had booked himself on a transport manager refresher course. He had already recognised that he needed to improve his knowledge of the current regulations. There had been no issues with the EAT licence. All the issues related to registered bus services. He had offered an undertaking if the TSL Wales licence was granted, he would not operate registered bus services. If his reputation was lost, then he asked for time to find an appropriate person to take his place. He submitted that disqualifying him from holding or obtaining a licence would be a disproportionate response when neither he nor the companies he operated had not been before a public inquiry before. He had committed to refresher training; had offered the surrender of the TSSL licence (the TC indicated that the licence was going to be revoked); a licence reduction on the other licences. All he wanted to do is move to Wales although he may have gone about it the wrong way.

The Traffic Commissioner’s decision

53. The TC adjourned for a short while and upon his return, he advised that he had had some very serious IT issues and it was likely that the final written decision would take some time. He had decided to outline the *“likely”* decision he was to come to so that VE Williams was aware immediately that the TC rejected the attacks made by Mr Martin upon his integrity and that where the evidence of VE Williams diverged from that of Mr Martin, he preferred the evidence of VE Williams whom he commended for remaining calm and measured in the face of some very difficult questioning.
54. The TC was unimpressed with Mr Martin’s lack of professionalism. The fact that he had not taken basic legal advice and he had not kept up to date with transport law. He was particularly concerned by Mr Martin’s attack on the integrity of VE Williams which was wholly unjustified. Whilst Mr Martin had suffered from ill health and had had some fundamental disputes with former employees, the issues he had raised went to the issue of trust. So that Mr Martin could plan for the future whilst waiting for the written decision, the TC advised him that the application for a licence by TSL Wales would be refused

and the licence of TSLL would be revoked. The TC was also considering disqualifying Mr Martin so that he could reflect and learn and that if he intended to return to the industry, he would be able to demonstrate that he was capable of accepting constructive enquiries from DVSA examiners in the future.

55. In the days following the public inquiry, Mr Martin sent to the TC 20 pages of questions he had prepared to cross examine VE Williams at the hearing which he felt he had been unable to put because of feeling unwell.
56. The TC produced his written decision on 27 February 2018. He noted the “*remarkable change in tone*” of Mr Martin after the lunchtime break. In the morning, Mr Martin had made substantial challenges to the veracity of the DVSA evidence and made aspersions in respect of the independence and professionalism of the examiners. Mr Martin’s tone was one of confrontation and challenge. In the afternoon, Mr Martin’s demeanour and tone changed and he became visibly upset, requiring the TC to take evidence out of turn to allow Mr Martin to compose himself. Eventually, Mr Martin accepted a number of factual issues. The 20 pages of questions that Mr Martin had prepared for the cross examination of VE Williams and which he had submitted after the hearing, cause the TC further concern. The questions included allegations of untruthfulness with the words “*lie*” or “*liar*” appearing on a number of occasions. It was clear that Mr Martin felt that VE Williams was part of a conspiracy against him.
57. The TC observed that Mr Martin was not unintelligent and the paperwork he submitted demonstrated a detail of preparation. He was also hard-working and tenacious as illustrated by him continuing to undertake work from his hospital bed on 19 July 2018. Unfortunately, his evidence demonstrated a woeful lack of understanding and appreciation of the PSV licencing regime in Great Britain. Matters were made worse by his failure to seek legal advice. The TC was prepared to accept that Mr Martin genuinely believed that he was acting properly when he drafted the agreement which purported to suggest that premises at Rhosymedre were not an operating centre when they were. The TC had no hesitation in finding that the operating centre was being used by Mr Martin without lawful authority. If Mr Martin had sought specialist legal advice, he would have learned that the device he utilised to circumvent the need for an operating centre in Rhosymedre was unlawful. Over the lunchtime adjournment, it was clear that Mr Martin had reflected upon the position and accepted that Rhosymedre had been used as an operating centre and this contributed to Mr Martin’s change of demeanour. Neither did Mr Martin appear to have sufficient appreciation of the principle of ostensible authority, blaming others for matters which had gone wrong, including those that went to the safety of the travelling public. It was Mr Martin who had appointed those he blamed.
58. The TC was also concerned by Mr Martin’s lack of appreciation of the role of bus compliance officer and his lack of appreciation of his responsibility in relation to timetable failures. This was illustrated by his comments in his response to Ms Jones’ email of 11 July 2018 (see paragraph 10 above). The

TC expected operators to have undertaken effective research including local traffic matters prior to registering a service. The TC accepted the evidence of Ms Jones.

59. With regard to the challenges made by Mr Martin to the evidence of VE Williams, in every respect, the TC preferred the evidence of the examiner and in particular in relation to:
- what VE Williams had been told about Nicola Benson having a face to face conversation with Mr Martin,
 - where the responsibility lay for legal lettering,
 - the issue of the prohibition for the removal of seats in a mini-bus particularly as Mr Martin had failed to produce any evidence from the manufacturer,
 - the reasonableness of looking into the number of maintenance contractors used by TSL which demonstrated that Mr Martin had at times, had a poor relationship with providers (his challenges also illustrated Mr Martin's lack of appreciation of the role of vehicle examiners);
 - the discussion about MOT pass rates;
 - the use of Unit H and the existence of a forward planner. Mr Martin's comments about VE Williams not really wanting to see one were unjustified and illustrated Mr Martin's poor judgment and again, his lack of appreciation of the role of DVSA examiners.
 - The evidence of parking arrangements on Sundays between Rhosymedre and Oswestry.
60. In undertaking the balancing exercise, the TC had regard to Mr Martin's successful bus operations in France and that he has operated successfully in Great Britain. He had also received a "*well done*" letter when service 64 had been monitored on the second occasion. The most positive feature was Mr Martin's own evidence at the hearing. Whilst Mr Martin had a "*pitifully inadequate understanding of compliant PSV operator licensing within GB*" he was not a rogue. The positive features were easily offset by the fact that the TC could not trust Mr Martin to run a compliant PSV business as his failings were far-reaching. The vehicle hire agreement illustrated the fundamental problem with Mr Martin. He came across as someone who was very much used to confrontation.
61. The TC could not trust Mr Martin going forward. He referred to 2012/034 Martin Joseph Formby t/a G&G Transport and 2006/277 Fenlon which emphasised the importance of trust. He reminded himself of the real commercial advantage in operating without an authorised operating centre in Wales and he repeated paragraph 9 of NT/2013/028 Arnold Transport and Sons Limited v DEONI which describes the impact of unfair competition and referred to 2007/459 KDL European Ltd and the importance of making an example of an operator so as to send a warning to the industry as a whole and the stay decision in Highland Crushers Ltd which warned of the risk of the licensing system being undermined by poor conduct which was then copied by other operators. He answered the Priority Freight question in the negative

and the Bryan Haulage question in the affirmative. The TC's decision to revoke existing licences and to refuse the new application was an obvious one. Mr Martin's repute as a transport manager was lost, his specialist knowledge and competence falling woefully short of the minimum required. It was in his interests and that of the PSV industry generally that he re-qualify as a transport manager and was disqualified from holding or applying for a transport manager position until he had done so. As for the disqualification of TSL and Mr Martin under s.28 of the Transport Act 1985, the company had operated in Wales illegally and the registered bus services were neither safe nor compliant. Mr Martin's failure to take advice reflected a level of arrogance that made it necessary to keep him out of the operator licensing system for a period of time. He had caused considerable reputational damage to the PSV industry and he was personally responsible as sole director of all the legal entities before the TC. There had been an abject failure to comply with minimum standards in relation to road safety and basic legal principles. The unwarranted confrontational demeanour to DVSA examiners was unacceptable. Having considered paragraph 100 of the statutory document number 10 "The principles of decision making and the concept of proportionality", the TC concluded that a period of disqualification of two years from the date of the public inquiry was appropriate (so back dated by over four months). Whilst EAT did not have a regulatory history, its sole director and transport manager had been disqualified. However, it was proportionate to allow some time before revocation of the licence to allow for the assets to be sold or a different director and transport manager to be appointed.

The Appeal

62. At the hearing of these appeals, Mr Backhouse appeared on behalf of all the Appellants and submitted a detailed skeleton argument for which we were grateful, particularly as the grounds of appeal previously lodged, amounted to nothing more than a discourse extending to thirty eight paragraphs which did not clearly identify grounds of appeal. In addition, the TC had provided copies of the audio recording of the five-hour hearing that had taken place before him so that the Tribunal could judge the change in Mr Martin's tone between the morning and the afternoon of the hearing. We should state at the outset that whilst Mr Martin put some serious allegations to and about VE Williams, he did not do so in an aggressive or inappropriate manner and we did not discern any notable difference in his tone, save when Mr Martin became upset after lunch and appeared to be more accepting of his failings. The hearing generally was well mannered and polite.

63. Mr Backhouse's first point was that the approach to the issue of unlawful operation of vehicles in Wales by VE Williams and the TC was fundamentally flawed as they did not apply the correct test when considering whether the Rhosymedre site required an operator's licence. S.12(3A) of the Act provides:

" ... a PSV operator's licence authorises the holder to use anywhere in Great Britain a vehicle which has as its operating centre an operating centre specified on the licence".

It follows that the holder of an operator's licence can operate vehicles in any traffic area and can, from time to time, park those vehicles at places other than the operating centre. The definition of operating centre is contained in s.82 of the Act and provides:

“operating centre”, in relation to a vehicle, means the base or centre at which the vehicle is normally kept;”

It was submitted that the test of “operating centre” was vehicle specific, yet no attempt had been made to track the location of individual vehicles which were being operated from Rhosymedre to establish where they were being normally kept and that exercise should have included not only the Rhosymedre site and the Oswestry operating centre but also the Shrewsbury operating centre. The question of where individual vehicles had been or were normally kept could not be answered on the basis of the evidence before the TC. The life of each individual vehicle was not followed.

64. Mr Backhouse submitted that the peak vehicle requirement for the operation of services was five and that is the number of vehicles being prepared for service on 6th July 2018. The fleet itself consisted of no more than ten vehicles. There were ample opportunities to rotate the vehicles as Mr Martin asserted and that assertion needed to be examined. There is nothing wrong in principle for an operator to temporarily relocate a fleet to perform work in a different traffic area or even a different EU country.
65. We are satisfied that the TC's approach to the issue of whether Rhosymedre was an operating centre is not open to criticism. The evidence that Rhosymedre was being used as an operating centre by TSSL was overwhelming and in the circumstances, the detailed analysis of vehicle movements contended for by Mr Backhouse was not required:
 - a) The Rhosymedre site was a bus depot developed by Mr Martin and painted in the livery of easyCoach. It was where the maintenance of the vehicles being operated on the registered services was being undertaken and it was where the daily driver defect reports were kept;
 - b) The Wrexham Daily Post article published on 18 June 2018, in which Mr Martin featured, heralded the move of Mr Martin's operations to the Rhosymedre site. We are satisfied that this was not a mistaken statement and if it had been, we would expect to see some evidence that Mr Martin had attempted to rectify it in view of the agreement that had been drafted to give the impression that Rhosymedre was not an operating centre (see below);
 - c) Ms Jones repeatedly monitored the registered services operated by TSSL and on each occasion that she attended the Rhosymedre site, she took photographs of PSV vehicles parked in line against the boundary fence;
 - d) TE O'Brien did the same as did VE Williams and he gave clear evidence that he had visited the Oswestry operating centre on several consecutive Sundays and did not see any TSSL vehicles parked there whereas when he passed the Rhosymedre site on several Sundays, vehicles were parked

there. He had taken photographs on one Sunday at both sites to illustrate his findings. We do not agree with Mr Backhouse that in his evidence, VE Williams “*back peddled*” from the contents of his report about the number of observations he had made;

- e) The drivers who had been spoken to by TE O’Brien all said that they collected their PSV vehicles from Rhosymedre and dropped them off to the site at the end of their shifts. There was no evidence produced by Mr Martin at the hearing to demonstrate that the vehicles were being rotated;
- f) The engines of all of the vehicles examined on 6 July 2018 were cold;
- g) The unchallenged account given by Mr Jackson to TE O’Brien was that the vehicles did not go back to Shrewsbury as there was “*no need*”. He also confirmed that Rhosymedre was being used as an operating centre;
- h) The agreement entered into by TSL with TSL Wales was clearly a device utilised in an attempt to circumvent the need for an operator’s licence in Wales until TSL Wales had been granted a licence. It was pure fiction, not least because by the agreement, TSL was undertaking to operate its own registered services on behalf of TSL Wales and paying for the privilege to do so. The very existence of the agreement demonstrates that Mr Martin was aware that some form of device was needed to give the appearance of lawfulness;
- i) Even on Mr Martin’s own initial explanation to TE O’Brien on 12 July 2018 and in apparent breach of the above agreement, some of the vehicles had not returned to Shrewsbury within the previous fourteen-day period. There was no evidence produced at the hearing that any of them had returned;
- j) Mr Martin ultimately accepted that he had been operating from Rhosymedre unlawfully “*for a period*”. We disagree with Mr Backhouse that this concession was the result of the TC giving Mr Martin an incorrect interpretation of the statutory provisions.

We are satisfied that this is a clear case of unlawful use of a site as an operating centre and the TC was plainly right to come to that determination.

66. Mr Backhouse’s next point concerned the way in which the public inquiry was conducted. He submitted that the TC inadvertently but substantially inhibited the conduct of Mr Martin’s case during his questioning of VE Williams. It was “*a bit strong*” to describe Mr Martin’s questions as an attack on the integrity of the DVSA officer. Mr Martin was simply asserting that the report of VE Williams did not “*paint the full picture*”. It was a misleading report and Mr Martin was entitled to suggest that it was either wrong or incomplete. Mr Martin whilst intelligent, had no experience of public inquiry procedure and his questioning of VE Williams must be considered in that context. VE Williams had lacked candour in the way he had presented his evidence not least about the use of the Oswestry and Rhosymedre sites and Mr Martin was entitled to question VE Williams on the issues. His questioning was proportionate. However, the TC criticised Mr Martin’s cross examination in all respects. Mr Backhouse was further critical of the introduction of “*new evidence*” from SVE Garlick during the hearing in relation to the prohibition for the removal of the minibus seats. In introducing evidence in that way, it was difficult for Mr Martin to respond to it. The hearing should have been more structured. Further, it was obvious that Mr Martin’s state of mind was affected by his

serious medical condition (which remains unspecified). All in all, Mr Martin's approach to VE Williams' report and his evidence did not go to the issue of trust.

67. We have already described the procedure adopted by the TC as being rather piecemeal but his role is inquisitorial in nature and it was for him to determine how best to conduct the hearing. In this case, there were in excess of 1700 pages of documentation with significant evidence to be given by two DVSA officers and a bus compliance officer. The TC cannot be criticised for adopting the approach that he did although it transpired that it was not ideal. It did not prevent Mr Martin from asking relevant questions nor questions probing the veracity of VE Williams' report. It became clear at an early stage, that Mr Martin was making serious allegations about the conduct of VE Williams and was attacking his truthfulness and integrity and it was perfectly proper for the TC to confirm by interruption, whether that was Mr Martin's intention and by pointing out the seriousness of the allegations he was making. Those interruptions and those informing Mr Martin that he was for example, making a statement rather than asking a question, were proper. As for the introduction of evidence from SVE Garlick, it is often the case that an observing senior DVSA officer who has had some input into the case, is asked to confirm or clarify matters. He did not materially contribute to the evidence already given by VE Williams. And in any event, in respect of the minibus prohibition, the onus was on Mr Martin to produce some evidence that the manufacturer of the minibus had designed the rear row of seats so that they could be removed. He did not do so.
68. The next ground raised by Mr Backhouse concerned the decision-making process adopted by the TC, which he contended, was fundamentally flawed. First of all, the TC announced the revocation of the TSSL operator's licence during Mr Martin's submissions without giving himself time to consider the *Priority Freight* and *Bryan Haulage* questions and without any obvious balancing exercise having been undertaken. The TC then retired for a short period so that he could reflect upon the evidence and then returned to announce his decision without proper reasons, balancing exercise or demonstrating that he had asked himself the relevant questions. The procedure he adopted was procedurally unfair although that may not have been his intention. He was then obliged to confirm the oral decisions that he had made denying himself the opportunity to reflect. Mr Backhouse was further critical of the TC's balancing exercise then set out in his written decision. He had not mentioned Mr Martin's period of ill health and that there were no prohibitions prior to 2017 and then none that were "S" marked". There was an evidential basis for saying that Mr Martin could be trusted in the future and that he did not deserve to be put out of business. Further, revocation of the operator's licence of EAT was not inevitable and a period of grace could have been given to find an alternative transport manager.
69. This Tribunal has previously warned TC's of the danger of delivering oral decisions in serious cases when their reasoning may not be as finely honed as otherwise would be the case if distilled into a written document and that in all such cases, an oral decision must be followed by a full written one. It is

preferable not to give an oral indication in serious cases involving significant regulatory action save in exceptional circumstances. The difficulties that the TC was having with IT and his desire to put VE Williams' mind at rest amounted to exceptional circumstances.

70. There will be many cases where after a long hearing, the answers to the relevant questions, the result of the balancing exercise and the resulting outcome will be obvious to the TC without any or any significant period of reflection at the end of a hearing. In this case, the TC had heard evidence over about five-hours and had considered the documentation beforehand. We do not consider the TC's announcement made prior to retirement that the TSSL licence would be revoked was either unfair or procedurally wrong. Neither do we consider that the TC's announcement of his decisions for the benefit of VE Williams and because of the likely delay in publication of his decision, are open to criticism, particularly as he made it clear that his decisions would not take effect until he had published a written decision. This was an obvious case. There were significant failures in maintenance, very significant failures in the operation of registered bus services, the unlawful use of an operating centre and Mr Martin had demonstrated, by virtue of his stance towards VE Williams' evidence and his unfounded attack on VE Williams' integrity and truthfulness that he was a man who could not be trusted in the future to co-operate with DVSA officers or be compliant within the regulatory regime without considerable reflection and further education. The TC's determination that the evidence of VE Williams was preferred over that of Mr Martin is not plainly wrong. He was in the best position to assess the credibility and truthfulness of the witnesses. It was inevitable that the operator's licence of TSSL would be revoked and the application of TSL Wales would be refused. Further, the TC's approach to EAT was perfectly proper in allowing that company time to sell its assets or to appoint a different director and transport manager. Disqualification of Mr Martin and TSSL was a proportionate response to make in the circumstances for the reasons given by the TC.
71. The final ground of appeal concerning the start date of Mr Martin's disqualification succeeds. The TC should not have ordered that the disqualification of Mr Martin be backdated to the date of the public inquiry. The effect of that retrospective order was that during the period of delay before the decision was published, Mr Martin would have inadvertently and unknowingly been in breach of the order (not yet made) whilst he managed the affairs of TSSL and EAT. That simply cannot be right. In the circumstances, we vary the order of disqualification so that it commenced at 23.59 on 1 April 2019 (the date of revocation of the EAT licence) for a period of eighteen months.
72. The appeals are otherwise dismissed.



Her Honour Judge Beech
16 July 2019