

Filed on behalf of: - Complainant

Name of Complainant: - Philip Higgs / Catch22Bus

No. of Affidavit: - 1<sup>st</sup>

Date affirmed: -

**FAO SIR ALISTAIR MACDUFF**

**RE :**

**COMPLAINT AGAINST SENIOR TRAFFIC COMMISSIONER BEVERLEY BELL MADE  
ON 16 MARCH 2015 AND ESCALATED IN DECEMBER 2016**

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**AFFIDAVIT OF PHILIP KARL HIGGS**

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1. I, Philip Karl Higgs of 11 Admiral Heights, 164 Queens Promenade, Blackpool, FY2 9GJ make oath and say as follows:
2. I make this affidavit based on my personal knowledge, unless otherwise stated, and that the following facts and matters are accurate to the best of my knowledge and belief.
3. Please note that I will refer to the following in this affidavit:  
Mrs Beverley Bell, the Senior Traffic Commissioner, as "STC".  
Office of the Traffic Commissioner as "OTC".  
Mr Simon Evans, the Deputy Traffic Commissioner as "DTC".  
Catch22Bus Ltd (formerly Oakwood Travel Services Ltd) as "Catch22Bus" or "the Company".  
Backhouse Jones Solicitors as "the Solicitors".
4. I am a director of Catch22Bus Ltd and sole shareholder.
5. I was involved in a public inquiry which occurred over multiple hearings

involving two Traffic Commissioners, initially the DTC who heard the matter in full but recused himself prior to making a decision and subsequently the STC who effectively reheard the matter over a series of hearings between 1 July 2014 and 22 May 2015. A decision was given by the STC on 30 June 2015 and issued to the Company and me shortly thereafter to revoke the Operator Licence, find that both Frank Steele (Transport Manager) and myself personally had “lost repute” and banned me from holding a licence for 7 years, which is towards the maximum penalty that can be imposed.

6. The decision has been appealed both in relation to me personally and in relation to the Company. A Notice of Appeal, including the Grounds for the appeal, was filed with the Upper Tribunal by my Solicitors, dated 16th of July 2015. The appeal was agreed by the consent of all parties on 15 April 2016, the timing excusing the STC from a requirement to respond to my original affidavit that had been submitted as part of the appeal papers.
7. A timeline showing the chronology of events is provided as Appendix A.
8. This affidavit is written to assist in the investigation of my complaint against the STC. The points made are in the order presented in my questions raised with Duncan Price at the Department for Transport in an attempt to summarise the grounds of complaint.
9. The initial complaint of misconduct was made to the Secretary of State for Transport on 16 March 2015, but no action was taken because the case was considered to be “live”. Even after the STC made her adverse decision and then recused herself from any further dealings in June 2015, the complaint was not progressed. The complaint was escalated by me in November 2016 to the SoS, though still not investigated.

## **The Complaint**

10. I have made a complaint about the conduct of the STC in carrying out her regulatory functions during a series of Public Inquiries into Catch22Bus and myself. This affidavit is set out to support my complaint. In it I will show that

the behaviour of the STC was so prejudicial as to amount to misconduct. It prevented fair consideration of the facts and denied me justice.

### **Background: Blackpool Transport / Blackpool Council allegations**

11. In the summer of 2012, Classic Bus North West and Oakwood Travel Services (now Catch22Bus) commenced a joint venture of operating a heritage bus service along Blackpool Promenade for the summer months, using mainly red London buses. This would operate in competition with buses and trams operated by Blackpool Transport Services, a company 100% owned by Blackpool Borough Council.
12. Both Blackpool Transport Services (BTS) and Blackpool Borough Council were very hostile to our operation. The BTS Managing Director, Trevor Roberts had been openly hostile to me personally prior to 2012 as a result of my previous employment as a Business Development Director at transport consultants TAS Partnership Ltd. The work at TAS, undertaken for companies where Mr. Roberts was employed, had impacted on his employment on more than one occasion before he ended up on my doorstep in Blackpool. His employment at Blackpool Transport Services was terminated in March 2014 and with it, the stream of allegations against my operation ended.
13. On the day prior to operations starting, we were contacted by telephone by a Mr. Joe Hegarty, Transport Officer of Blackpool Borough Council, and warned not to start our competing bus operation "or there would be serious consequences". We ignored the threat and in any case buses had been prepared, services registered with the Traffic Commissioners and staff recruited.
14. It is perhaps worth commenting that under the Transport Act 1985, the Council is under a duty as a transport authority to treat all bus service operators equally and at arms' length.
15. In the following months my drivers reported that BTS officers were actively

monitoring our services., whilst Blackpool Council refused to display bus timetable information at bus stops (despite this being a statutory duty for a Transport Authority). We also discovered that Blackpool Council had instructed Lancashire County Council to withhold payments of Concessionary Travel reimbursement due to our operation (this is reimbursement for the journeys made by pensioners etc. that travel free with their bus pass).

16. Although we were unaware of this at the time, Blackpool Council also made allegations about our operation to the DVSA and the Traffic Commissioners through 2012, 2013 and into 2014. It was not until after we had been called to Public Inquiry early in 2014 that we became aware of these allegations in a report compiled by the DVSA.

### **The VOSA/DVSA report**

17. The prompt for regulatory action against my operations was based around complaints made by Blackpool Council (and their wholly owned operating company Blackpool Transport Services Ltd) back in September 2012. However, a Subject Access Request to the DVSA to obtain a copy of this original complaint has produced the response that it "no longer exists" so cannot be included within this affidavit.
18. The DVSA officer Brian Newton conducted investigations in September and October 2012 but, although the DVSA continued to be in dialogue with Blackpool Council and BTS concerning other allegations throughout 2013 and into 2014, the DVSA failed to bring any of these complaints to our attention.
19. A Report was written by the DVSA officer Brian Newton on 22 March 2014 , some 18-months after he had conducted investigations in 2012. This report contained significant and substantial errors, but was nevertheless submitted to the Traffic Commissioners for inclusion in the call-up papers for Public Inquiry. However, a statement of fact is that the report was written AFTER we

had already been called to Public Inquiry to answer the allegations. We were not called to Public Inquiry until 14 March 2014 (see **page 9** of bundle).

20. A specific request in the investigation of this complaint is to establish why the DVSA report was not written until March 2014. Bearing in mind the report was the prompt for regulatory action, to what extent was the OTC / STC aware of the allegations **BEFORE** the report was compiled to prompt calling our Company to Public Inquiry?
21. Upon cross-examination at Public Inquiry by the DTC and later the STC, the DVSA officer Brian Newton claimed that he took his instructions from his line Manager. But, in a subsequent written disclosure in September 2017 from DVSA Chief Executive Gareth Llewellyn, the latter stated *"he [Brian Newton] informs me that due to the complexity of the case, he sought advice from the OTC on the best way to proceed at that time. This guidance was delayed for a number of different reasons and the monitoring was then formally written up when the OTC requested Brian's Public Inquiry statement report in March 2014"*.
22. The statement given at Public Inquiry by Brian Newton and that given to the Chief Executive are contradictory.
23. Following my receipt of a copy of the DVSA Report in late March 2014, I emailed Brian Newton on 31 March identifying many significant factual and interpretive errors in the report, with evidence where possible. This gave the DVSA sufficient time to correct their report before its formal deployment, but regrettably this was not done. Indeed, over the course of nine Public Inquiries, the DVSA continued to rely on the "dodgy-dossier" and at no time produced a corrected statement or even acknowledged that the facts in it had been challenged.
24. It was, however, retracted as a true record at the very first Public Inquiry in April 2014, in front of DTC Simon Evans, again at the hearings presided over by the STC, and latterly at the November 2016 hearing in front of DTC John

Baker. Thus, the DVSA, knowing the case was still “live” had 2½ years to produce a corrected report but failed to do so.

25. This flawed report taken at face-value gives a completely false view of our compliance with the bus operating regime and it was not until November 2016 that DTC John Baker finally concluded that the document had no merit, that the original allegations made by Blackpool Council / Blackpool Transport Services were without a basis of fact and that we had been operating in compliance with the bus operating regime. This was in complete contrast to the findings of the STC in her 30 June 2015 adverse decision.
26. In my view, the continued submission of the flawed DVSA report at further hearings after it was retracted at the first Public Inquiry, knowing it to be an untrue record and used in judicial proceedings, perverted justice.

#### **STC’s handling of the DVSA report**

27. The DVSA report was critical to my Company being called to Public Inquiry. But, the STC failed to discuss or take evidence on the DVSA report at either the 28 June or 25 July 2014 hearings, despite saying that “she was considering matters afresh”. I initially assumed that the STC must be aware that the report had been retracted by the DVSA at the 28 April Public Inquiry.
28. At the close of the 25 July 2014 hearing, the STC informed DVSA examiner Brian Newton that he would not be required at the reconvened Public Inquiry scheduled for 03 September 2014 and she asked if he still maintained that his report was true and accurate.
29. Both Brian Newton and myself informed the STC that the contrary was the case and the STC subsequently conceded that he did therefore need to attend the 03 September hearing. A copy of an email I sent the following day confirming this exchange is appended to this affidavit, but note that the exchange does not appear in the published transcripts or PI recordings. I assume the recorder had been switched off as this dialogue took place at the very end of the 25 July hearing.

30. The comments made by the STC were surprising in terms of case management and justice. In my opinion either the STC was aware that the report had been retracted and therefore did not require Brian Newton to attend, or the STC was not aware but by concluding that Brian Newton was not required, she would be denying the opportunity for Brian Newton to present his report and our cross-examination of his findings.
31. Neither of these in my opinion is consistent with "considering matters afresh" and the fact that this report was the catalyst for our being called to Public Inquiry.
32. A question to consider is whether the STC did or did not know that the DVSA Report had been retracted?

### **Why did DTC Simon Evans recuse himself?**

33. DTC Simon Evans originally handled our case and the hearing was conducted very professionally by him. The DVSA report was discussed but retracted and the only matters outstanding at the end of the first hearing was updated financial information to ensure that we met the requirement of "Financial Standing". The information we had supplied needed to be resubmitted in a specific format and we were informed that once we had provided this, the DTC would make his decision within 28-days.
34. We did not receive this decision in writing but instead were called to a further Public Inquiry on 28 May 2014. At this hearing, DTC Simon Evans announced that he was recusing himself and no further evidence was heard. He provided no reasons for recusing himself.
35. The next hearing was conducted by the STC Beverley Bell. Please see **page 795** of the bundle at the beginning of the hearing on 1st July 2014 (**paragraph C and D**) where the STC asserts that she has taken over the case following the DTC who recused himself. STC then goes on to say, "*he does not go into the*

*detail with me as to why he had to recuse himself, but I am now dealing with it afresh."*

36. Please see **page 839, paragraph H**, the STC said to me in cross examination that the DTC had recused himself *"Because of all the information that kept coming in, he felt it appropriate to recuse himself."* Even if this were true, this does not appear to be adequate grounds for recusal.
37. It is quite clear to me that the STC was aware of the reason why the DTC had recused himself, she admitted this (namely because of all the further representations he had received). The above evidence from **page 839** shows that the DTC must have discussed the situation with the STC or she would not have been in a position to make a statement as to the DTC's reasoning for his recusal. This is in clear contradiction to what the STC stated at the outset of the case, as evidenced by the reference on **page 795** of the bundle.
38. The STC only revealed this information, about her discussions with the DTC, during a heated dialogue which had gone on for some time about the conduct of the Inquiries.
39. I still do not know why the DTC recused himself. I do not know whether the DTC recused himself and told the STC the reasons why or whether, indeed, the DTC was guided to recuse himself by the STC. My subsequent experience gives me the strong impression that his recusal was linked to his preparedness to find the case in our favour.
40. According to a Subject Access Request the DTC did not make any formal note concerning the reasons for his recusal, which I would have thought was odd. The reasons remain contradictory.

**What information did the STC hold about me personally or my operating companies that was withheld from the Inquiry process?**

41. The STC had before her evidence which was not disclosed to me and which influenced her view of me, my position as a Director for the Company and,

therefore, the Company itself.

42. The reason why I believe that information was being withheld is evidenced in two ways throughout the process of this case.
43. It became evident over the months before her June 2015 adverse decision that the STC had received information from members of the public weeks and sometimes months before disclosing it to myself and my company.
44. A clear example of this is where the STC received correspondence following the hearings in September 2014 yet the Company and I were only made aware of this correspondence in and around April 2015. We were only made aware, in fact, because our newly appointed Solicitors, Backhouse Jones, arranged to discuss the decision-making process with the STC. The process had by this time been very much delayed and during that telephone hearing the STC referred to this further material.
45. A further example is that the STC was clearly aware of material that led her to consider regulatory action in 2012/13 against companies that I was involved in, yet she refused to give me the details of her concerns even when I directly asked for them.
46. It was also apparent to me that this information and correspondence had influenced the STC given her tone and the areas of interest that she chose to pursue during the hearings in 2014/15 and from her requirement both in hearing and by letter that I answer the issues raised in the correspondence.
47. When I enquired as to the source of the correspondence we were informed that it had either been given anonymously or that the identity of the author will not be given.
48. I appreciate that the STC says in her decision that she was not influenced by the correspondence received. I still believe, however, that it was apparent throughout the hearing that her line of questioning and interest in my business came from information that she had obtained from those letters and other information that she held, but had failed to disclose. I cannot envisage

how the STC cannot have been influenced by the material she held and had read and which affected the content of questioning.

49. Furthermore, the STC showed great interest in the financial arrangements and structures of my various operating companies, by alleging that she had concerns about their set up. It was clear to me that these allegations, which were in fact substantially inaccurate, were brought to her attention through a third-party.
50. It is my firm belief that she was heavily influenced by information she received but failed to disclose and that that it tainted her view of me as an individual specifically and, by virtue of my role as a Director, the Company.
51. The points raised above will be apparent on the face of the transcript and the bundle of documents which the Upper Tribunal had before them but even so I make this affidavit to identify the point that I got a very strong sense during the hearings, and in the manner in which they were dealt with, that the STC did not trust me and that she was influenced heavily in that respect by anonymised correspondence or discussions.
52. I am still not sure as to how much information the STC possesses that concerns me or the Company. I am not entirely sure that all the communications that the STC had about my case from anonymised sources, and indeed from the previous DTC, have been disclosed to me.
53. By way of illustration, as referred to above, the STC indicated that she had previously considered regulatory action against my operating companies in 2012/13, because of concerns she had. I believe that she was referring to Classic Bus North West Ltd. However, she never revealed to me what those concerns were even though I asked her directly in the hearing to tell me, nor did she reveal the source of the allegations that led to those concerns.
54. This old information was clearly in her mind during the hearings. The STC clearly regarded the evidence as adverse; she was considering regulatory action on the back of it.

55. The effect of that consideration by her of our regulatory position in 2012 (although we were entirely unaware of any concern or issue at the time) was to substantially delay applications we had made and which were in progress, thereby inhibiting our expansion and business development.
56. Subsequently, a Subject Access Request to the DVSA revealed a substantial number of documents that I understand were shared by the DVSA with the OTC but which I had never previously seen. It is reasonable to assume that the STC has seen these in the context of considering regulatory action against my companies.
57. Much of this documentation appears to be further accusations from Blackpool Council and Blackpool Transport Services about my compliance as a bus operator. None of these allegations or concerns were ever shared with my Company before or during the STC's handling of my case.
58. From her lengthy experience of bus market regulation, the STC should have been aware of the ease by which an operator, instead of competing on street as the legislation intended, can impede and delay a competitor's service development by making allegations directly or indirectly to the OTC which their competitor will then be forced to spend significant time and effort rebutting. During this time, their competitor's applications, e.g. for discs for additional vehicles, will be put on hold. Such an approach would clearly be an abuse of the regulatory process. It is accepted that it is difficult to counter, particularly where the allegations come from an operator with significant status. Nevertheless, understanding and allowing for the context of material that arrives in this way must be a critical function of an STC.

**Why did the STC not allow us to call up specific persons to PI to be cross-examined?**

59. In an email to the STC on 09 July 2014 we requested that specific persons be

invited to the next PI to allow them to give evidence and us the opportunity to cross-examine them.

60. In particular, it would have been useful to invite Mr Hegarty from Blackpool Council to the PI. We knew that his original allegations that resulted in the DVSA report were untrue and Brian Newton from the DVSA conceded at the very first PI that the allegations were found to have no basis of fact. It would therefore have been useful from our perspective to understand the concerns or motives that resulted in these allegations being made. The application was denied in an email reply from Corrina Bielby of the OTC on 21 July 2014.
61. Similarly, we were aware that some disgruntled former employees who had been dismissed were taking the opportunity to write anonymous letters. This had even extended to writing malicious letters to my son's school. But clearly, we did not (and still do not) know who was saying what about me or the Company to DVSA or the OTC. That evidence was withheld by the STC.
62. I felt at a huge disadvantage that I was not able to cross examine the witnesses who were making these allegations against me, which were in the vast part untrue, and furthermore that I was not even able to know who the authors of the allegations were so that I could have put forward evidence to the STC which would have identified their motives for spreading malicious gossip about me and my businesses.

### **Inviting "hostile persons" to Public Inquiry.**

63. The injustice of refusing to allow "hostile" persons to be called to Public Inquiry to provide formal evidence was compounded by the OTC actually inviting some of these people to attend to observe future hearings. Mr. Hegarty from Blackpool Council was present at every hearing, including the Directions Hearings that we were informed were to be held in private.
64. I had submitted to the STC prior to 03 September 2014 that "*over the last 6-12*

*months we have been in receipt of many anonymous letters making ill-informed allegations against myself and my business that is causing considerable stress and relationship problems with our stakeholders and staff. Letters have been sent to local newspapers, Blackpool Pleasure Beach, Blackpool Council, Blackpool councillors and even my son's school."*

65. All attendees at the 10 September hearing, which was called by the STC at very short notice, were invited by the OTC despite the fact that at the previous hearing we had discussed these hostile persons and their actions and the resulting stress on me and my staff.
66. I believe that the STC was in full knowledge of this and it was an attempt by her to humiliate me in public.
67. Why, therefore did the STC actively engage with the audience at PI and why did she refuse not to explore the authors of these letters by either disclosing their identity or allowing them to be give their evidence orally and be cross examined?
68. Given the barrage of anonymous allegations, and the significance of anonymous or un-attributable evidence in this case, and her statement that this material would not influence her one way or the other, plus the discussion about hostile persons at the previous hearing, it would have been reasonable for me to expect, given that she had made it clear that she was aware of some of the individuals in attendance at the hearing, that she would have made a public statement that she would be discounting such evidence and inviting anyone who wished their evidence to be considered to provide this formally. The approach she actually took had the effect of strengthening the view of the 'hostile' persons that their actions in making malicious allegations against me were having an impact.

## Undisclosed documents

69. An example of information which the STC had prior knowledge of, but which had not been disclosed to me, was that the STC had had concerns in 2012 and was considering taking regulatory action .
70. The effect of that consideration by her of our regulatory position in 2012 (although we were entirely unaware of any concern or issue at the time) was to substantially delay applications we had made and which were in progress, thereby inhibiting our expansion and business development. This was initially raised in a discussion with me which is evidenced at **page 795 paragraph H** to **page 797 paragraph B**. The Traffic Commissioner states in terms *"but I have the documents on my file, which obviously I cannot disclose to you at this stage because they are sent to me in accordance with my role as Traffic Commissioner, but from May 2012 I was considering whether or not to take action against your licence for....., and therefore I am not minded to accept the surrender."*
71. Again, the STC is confirming that she has evidence which in some way criticises an operation which I was involved in. The STC confirms that she has information on her file but further states that it cannot be disclosed *"because they are sent to me in accordance with my role as the Traffic Commissioner..."*. I do not understand why at least the factual content of the information could not be disclosed nor does her explanation seem to justify why it cannot be disclosed to the person whom it clearly concerns, either directly or indirectly, namely me. I believe this to be inherently unfair.
72. I ask you to consider the above in the context of the statement given by the **STC at page 808, paragraph G**. Here, the STC confirms to me that she is duty bound to tell the operator if they receive information about an operator which could result in them being considered for regulatory action. The quote states *"Well if we receive something about an operator..... and we are considering regulatory action, we are duty bound to tell you about it" "It would be wholly*

*inappropriate for me not to tell you I had got it. That would be manifestly unfair."*

### **The Classic Bus / Oakwood Travel joint venture in 2012**

73. A dialogue had commenced between the STC and me on the issue of how we interworked the number 12 service in 2012 with Classic Bus North West Limited and Oakwood Travel Services. At that time the two businesses operated bus service 12 in partnership.
74. This was not a formal partnership but more an informal joint venture. I had accepted that we did not have formal documentary evidence of this relationship but both Mr Steele and I were answering her questions to the best of our abilities about how we operated those services.
75. Please see **page 818, paragraph H**, of the bundle, which gives a series of questions and discussions between the STC, myself and Mr Steele during which the STC was asking questions about the joint venture and the financial relationship.
76. Further, **page 820, paragraph E**, shows my answer to the STC's question relating to why the turnover for the joint venture work was only being revealed in Classic Bus North West Ltd accounts. I explained to her that this was because the revenue for the service went through Classic Bus North West Limited's account, giving evidence to the joint nature of the venture. Further evidence of Classic Bus North West Ltd's participation was that they had applied for, but had not yet been granted, additional discs to add to their capacity in respect of this service.
77. The STC asserted that "*Oakwood had authority and if Oakwood is operating the vehicle then Oakwood should be receiving the payment?*"
78. I responded by asking the question "*why?*" and the STC said "*because they are the operator*". I asked the question "*Well, it doesn't matter where the money ends up, does it?*"

79. The STC responds "*Yes, it does*" (according to the transcript) but on the oral recording she actually says, fairly aggressively in my opinion at the time, "**yes it damn well does**".
80. I then compared the situation with other companies, for example National Express (where revenue accrues to National Express even though the services are operated by partners) and the conversation continues. At **page 822, paragraph G**, in the bundle I say to the STC "*but I think the accusation would be that we were lending licenses, right?*"
81. The STC responds "*No, I'm not accusing you at all, I'm simply seeking to find the facts*". The STC then goes on to explain that the disc must be used correctly or an offence is committed, she finishes by saying "*if you are saying to me that Classic Bus was operating the vehicles on the basis of using Oakwood Travel's licenses then that is potentially an offence*". To which I responded "*No, I don't think that was the case*".
82. The STC then asks a series of questions, and I accept completely that this is a legitimate line of enquiry on her part, to explore the nature of the relationship, albeit this was not a basis upon which we had been called to Public Inquiry.
83. At the end of **page 821, paragraph H**, of the bundle the STC then says "*thank you. That, Mr Higgs, is a clear admission of operation of the services by Classic Bus without any authority whatsoever.*"
84. It was clear to me at that point that she had a preconceived view that the relationship between Classic Bus North West and Oakwood Travel Services was unlawful and that the STC was seeking to obtain information from me in an attempt to prove that this theory was correct. I believe that it is quite clear the STC was not open-minded to me or my explanation for the nature of the relationship at all, and she did not explore the operating relationship in the context of the regulations.
85. From the evidence I had offered, I believe that the STC could have viewed the

situation as lawful but untidy, or in the alternative as unlawful but inadvertently so. However, it is my conclusion that the STC had taken the view that I had deliberately been deceitful in relation to this issue. The STC took this stance in spite of the fact that the only reason she was aware of this relationship was because I told her about it.

86. At this point I asserted that I believed it to be legal which is evidenced through to **page 824, paragraph C to F**, when the STC says, confirming my previous point, *"yes. That was the deception. That was the deceit."*
87. I again believe that it is clear that the STC has already formed her view in regards to this point. The dialogue goes on to discuss other relationships between the two companies and the STC says, out of the blue, **at page 825, paragraph A**, in the bundle *"...all right. Let us not get too hung up on that. The position now is that we wrote to you and asked you for a fleet list and.. -"*, the STC clearly wanting to move the conversation on and in my mind was hinting at the fact that she was perhaps open-minded about the legality of the nature of the relationship, in view of the further evidence that she had heard from me.
88. However, the STC changes her approach again when I wish to continue with the discussion, on the same page. I wanted to continue the point as I was clearly concerned by the suggestion that the company had been, in 2012, operating unlawfully when she added *"Mr Higgs, the inefficiency of any regulatory authority are no legitimate excuse whatsoever for illegal operation. Do you understand?"*
89. The STC is then stronger in her assumptions on **page 826, paragraph A**, of the bundle, where she says *"that is the way to deal with it, not to operate illegally without authority"*. To which I respond immediately *"But I didn't consider we were operating illegally"*
90. To which she then responds, *"you have admitted that you were"*. I re-asserted my position by *"no I didn't admit that we were..."* it was my understanding

that I had been answering general questions in an attempt to solve the issues and find a conclusion. Ultimately, it is clear to me that throughout the entire dialogue the STC had already formed the view that the set up between Classic Bus North West and Oakwood Travel Services was unlawful. She was even going so far as to suggest that I had admitted that it was unlawful, even when on several occasions I had specifically asserted that it was not in my view unlawful. This is supported by the transcripts.

91. I believe that one of the reasons why the STC took this view was because she had a jaundiced opinion of me personally based on information she had received from other sources, information which goes back to 2012. This is information the STC had been given but none of which I had been informed or told about.
92. The STC returns to the issue of unlawful operation at **page 863 paragraph E** when she says "*what they cannot do is vote with their feet and start to operate illegally which is what you have admitted you have been doing. That is the difficulty. You are asking me to condone a previous illegal activity. I'm not minded today to increase your fleet on your 8 vehicles to Oakwood.*"
93. It is clear from this statement that it is the STC's ultimate position that the Oakwood/Classic Bus arrangement was unlawful. This position was reached on an incorrect assessment, namely that I had admitted to operating unlawfully – which I had not – and ignored completely the fact that this was a "directions hearing" at which she was not supposed to make this type of final determination.

### **Frank Steele's non-attendance**

94. The next hearing was on 25 July 2014. I accept that the hearing on 25 July 2014 was an abortive hearing for two reasons.
95. First, Mr Frank Steele (former Transport Manager) chose not to attend the hearing on 25 July 2014 and the STC insisted that he must be there. **Page 972,**

**paragraphs A to E**, in the bundle sets out the exchange I had with the STC about Mr Steele's non-attendance. It was apparent through this conversation that the STC was extremely angry with the fact that Mr Steele was not there.

96. I did not understand at the time that the STC cannot require the attendance of any one person at a hearing and as Mr Steele had **not** received a calling in letter, had resigned as Transport Manager earlier in July, and was not present, I offered to call him to see if he would turn up later in the afternoon. The STC threw down her pen (approximately **paragraph C**) and responded extremely aggressively toward me in relation to this. It was not my fault that Mr Steele had chosen not to come to the Inquiry - that was entirely a matter for him. I was merely trying to assist the STC as to the reason that he had given.
97. Secondly, and in any event, Mr Hughes was also not able to attend the hearing as he had been admitted to hospital the previous day.
98. I would like to make the point that my objective at the previous hearing and this hearing was to get the hearings concluded. I wanted the matter to proceed and made that point forcefully from the outset of this hearing. There was no merit or advantage to me or my Company in prolonging the Inquiry process. You can see the start of that discussion at **page 972** when the STC invites me to request an adjournment and my response was in the negative.
99. After a short adjournment during the hearing, on the 25 July 2014, the STC becomes extremely upset with me as she has discovered, presumably from one of the parties at the back of the hearing room passing her this information, although she never reveals to me how she was given the information, that I met Mr Steele at McDonald's (approximately a quarter of a mile from the Public Inquiry building) that morning in order that he could hand some accounts for the Company to me.
100. This exchange, which starts on **page 996, paragraph E, till page 998**, culminates with the STC asserting that she has bent over backwards to try and deal with the case with patience (sic) which she confirmed was not her strong

point. I found the exchange, specifically, towards the end and her remarks about how she dealt with her children when she was disappointed in them to be highly patronising.

101. I had at no time asserted anything to the effect that I had not recently met or spoken to Frank Steele. Rather, I had told her quite accurately, at the beginning of the hearing, that Mr Steele would not be attending as he did not want to and did not believe he had to as he had not been invited. At no time had I lied to her or misled her about his intentions, as far as I was aware of them. She had not asked me when I had last seen or spoken to Mr Steele and I had not asserted that I had not seen or spoken to him that day.
102. In effect the STC accused me of lying to her which I strongly deny. I gave the STC the information she asked for; at no point did I lie. The STC's patronising tone with me in relation to that issue is in my submission a continuation of her underlying view that I was unreliable and untrustworthy.

### **The exchange over Administration of Classic Bus North West**

103. There was a dispute between the STC and myself over whether I had intentionally misled her about the amount that I repaid the administrators of Classic Bus North West for the acquisition of the business from them and its transfer into Catch22Bus.
104. This information was not supplied to the STC by myself or my company or the administrators. It did not feature in the call-up papers and so must have been supplied to the STC by a third-party.
105. Leaving aside arguments about whether this was in fact relevant, given that the administrator had no issue with the current state of payments in relation to this matter, I do not believe that I deliberately misled her.
106. I identified at **page 1174, paragraph D**, that I believe that I had made payments in the sum of £6,500 to the liquidators. This was obviously a small proportion of the £25,000 which was the original consideration. I pointed out

that I did not have the bank statements before me, the STC had them, and I explained that I could highlight the payments on the bank statements if she so wished.

107. There is an exchange where the payments were being examined and I made the point on page 1174, paragraph E, that "**I think**" the first payment was made in May of 2014 but I could not be sure as I did not have the bank statements in front of me. I was not certain about the dates and I tried my best in remembering but inevitably I got the dates wrong and the STC makes an unkind remark on **page 1175, paragraph H** and forward, where she says, "***you are as slippery as a fish, Mr Higgs.***" I assert that I was not.
108. The STC's response, "*Yes, you are. As you gave me clear, incontrovertible evidence of the months that, well you initially said about 3 1/2 and then you said £6,500 was paid yes, 6 1/2 thousand etc.*"
109. At no time did I give her incontrovertible evidence and I believe that she was trying to get me to agree to making a statement based on a false assertion. I said 'I think' May was when I made the first payment and but 'if' I had the bank statements in front of me I could highlight them for her as I would recognise them.
110. I accept that I miscalculated the amount by £1,000 but again I was working from memory rather than from having the bank statements in front of me, I simply miscalculated. I did apologise for that as soon as I did the calculation with her as can be seen towards the top on **page 1176**, I was not "changing my evidence", I made an error in relation to calculating £6,500 instead of £5,500 and was one month out as to when the payments were made.
111. In my view it was an immaterial point in any event. The fact is, it was a small proportion of the original consideration and as I said to the STC, Leonard Curtis who were responsible for the administration knew that and accepted the position in all the circumstances.
112. The STC directly tells me that I was telling her lies. This is not true. In order for

me to have told her lies in relation to this I would have to have a motive. I was only £1,000 out, clearly a miscalculation, and it made no difference one way or another to the perception of the level of payments made as compared with the total consideration. Furthermore, I was only one month out in relation to the payments. I had told her that I did not have the statements in front of me and that I was not certain about the dates.

113. In my opinion she was simply seeking to catch me out in an error and then treat it as a lie. The factors concerned were irrelevant and immaterial but the fact that she was treating it as a lie and putting it to me directly in my submission is strongly indicative of her approach to me throughout this case. All she was seeking to do was to confirm for her that I was an unreliable and untrustworthy individual based on her preconceived view, because I believe she had absorbed information which she had access to and had not been disclosed to me.
114. Indeed, at **page 1177, paragraph C and D** I specifically said again that I had previously said to her *"but I did actually say that I've not got the bank statements before me."* To which she responded *"no, no, no, no, you... I am not arguing with you any more there is no point."* She was not prepared to listen to anything that might upset her preconceived view that I had deliberately sought to lie when it was quite clear that I had not.
115. The STC repeats at **page 1176, paragraph G** that I gave clear incontrovertible evidence that two payments were made in May and June. In relation to both months I said, "I think", under no circumstances could that be described as clear and incontrovertible evidence.
116. Taking it a step further, when the STC suggested that I had given her incontrovertible and clear evidence **she was herself** deliberately misleading me in her cross examination of me as it was apparent that my evidence had been anything but clear and incontrovertible on the specific dates and figures. I had specifically qualified it with the phrase "I think" and reminded her on

two or more occasions that I could give her the best answers if I had the bank statements in front of me which I did not, but she did.

117. In her written decision, the STC then makes as a finding of fact that the *"evidence of Philip Higgs with regard to the payments to Leonard Curtis was dishonest, equivocal and inconsistent."* This is a perversion of the truth.

### **The Blog hearing**

118. The final hearing in relation to this matter was on 10 September when the STC considered a blog which I had briefly published and then retracted. It criticised the history of this case and expressed my frustration with the Public Inquiry process.
119. The STC's attitude towards me was very hostile throughout and in this hearing. I do believe that I am entitled to express a view as to the functions and the processes of the OTC when dealing with applications and hearings. I do not believe that what I said in the post was wrong or inaccurate as it was founded on my own experience of the processes. With hindsight, I do regret posting the entry and I did retract it a short time after having posted it. I stated the same to the STC during the hearing.
120. In my opinion the STC, who had called me before her to discuss the blog, was considerably and personally aggrieved at the content of the blog. As I said above I do regret posting the blog but as I said to the STC I was frustrated by the delays in the case and acted in haste. I did retract the blog, unprompted, in a very short period of time but unfortunately it had had some views over that period.
121. The STC dealt with the issues in a peculiar way in my view. I made the point that I was concerned that press reporting in relation to the previous Public Inquiries was presenting me in a difficult light. I was referring specifically to RouteOne Magazine (a bus industry weekly publication). In the middle of my submissions/evidence the STC suddenly interrupted and asked her clerk, Miss

Brown, to go and obtain a media officer who works for her to come in and listen.

122. Mr Curry attended the hearing and the STC discussed the matter with him in due course; at no point did I understand why she wanted to do this. In my mind there clearly was a motive for wanting the STC's press officer to listen to my evidence and my concerns about the reporting in RouteOne Magazine.
123. I do not accept her assertion at **page 1212/1213, paragraph E**, that "*any reporting of the Public Inquiry proceedings are a matter completely outside my control.*"
124. I find this statement to be inaccurate, especially as the STC has a press officer and that press officer is tasked with notifying the press about hearings, decisions etc. and therefore she does have some control over the reporting of Public Inquiry proceedings in which she is involved.
125. In fairness, my point was less the fact that the proceedings were being reported at all, but more that the reports accurately reflected the prejudicial way in which the STC was dealing with my Company and me personally. The STC knows full well that comments made about my honesty during the hearings (and before any decisions are made) are likely to be reported.
126. The STC's attitude was very aggressive and highly personal about the impact of the criticism of her in the blog post and she quotes from it on **page 1219, paragraph H**. This continues on **page 1220** when she asserts at **paragraph E** "*that the TC was concerned about you not telling me the truth about Mr Steele's non-attendance at the start of the Public Inquiry and that is factually correct.*" This is disputed and was disputed at the time. I did not lie to the STC about Mr Steele's non-attendance at the Public Inquiry on 25 July 2014
127. The Traffic Commissioner also conceded at **page 1220/1221, paragraph B** that the attack was seen by her as personal. She says "*now do you see how that is an attack on my personal credibility?*". This is inconsistent with her 30 June 2015 written decision where she says "*she did not take the blog personally.*"

128. Furthermore, on **page 1224, paragraphs C to D** the STC asserts that it was Mr Steele's non-attendance which led to the adjournment and therefore the ultimate delays in the case. I strongly disagree with this statement.

### **Recusal and bias**

129. It is my contention that the grounds for recusal existed before the STC's first hearing in July 2014.
130. I understand that the STC sat on various bus industry panels with Mr. Trevor Roberts, Managing Director of Blackpool Transport Services who was also serving as a Director of the trade industry body Confederation of Passenger Transport. I find it inconceivable that the STC and Mr. Roberts never exchanged dialogue about my operation, given the extent to which Blackpool Transport Services were making allegations about my Company's operational compliance.
131. The Guide to Judicial Conduct indicates at paragraph 7.2.3 "*A current or recent business association with a party will usually mean that a judge should not sit on a case.*"
132. Even assuming that presiding over the hearings was legitimate despite the above, the STC should have recused herself after the "blog hearing" on 10 September. This was the culmination of a series of hearings characterised by hostile behaviour towards me, as is confirmed by a close reading of the transcripts and certainly from the oral recordings. The manner with which these hearings were conducted by the STC demonstrates increasing short temper and animosity towards me. When she admitted "*now do you see how that is an attack on my personal credibility*" that should have made the appropriateness of recusal beyond doubt. But it did not.
133. During the period of her delayed decision, I made a formal complaint to the Secretary of State for Transport with concerns of misconduct against the STC, in accordance with the Traffic Commissioners own Complaint Protocol. This

was made in March 2015. It must be stressed that this was in no-way a “tactical” complaint but one that concerned a lack of justice at its very core.

134. At the 27 April 2015 Public Inquiry, our newly appointed Solicitors made a plea to the STC to recuse herself on a number of grounds, not least that we had made a serious complaint to the Secretary of State. I do not have access to this transcript but the STC commented words to the effect of *“I am aware of the complaint, but I have not seen it...and I am not minded to recuse myself”*.
135. Following a disclosure from the OTC in January 2018, a faxed copy of my original complaint is included that was sent to the “Private Office” of the North West Traffic Commissioner – i.e. the STC. It again appears inconceivable that the STC had NOT read the complaint and the Department for Transport had indeed sent the STC a copy in line with the OTC’s own complaints protocol.
136. It is my contention that the test for apparent bias is satisfied at this hearing and that, in the knowledge that a complaint had been made, I cannot conceive how the STC expected to continue the case with judicial objectivity particularly given the nature of previous exchanges.
137. I would suggest therefore that it is critical to understand whether the STC had indeed seen the complaint prior to making her adverse decision in June 2015. After making her decision, the STC did finally announce that she would recuse herself and the North West Traffic Area Office from all further dealings with me personally or my operating companies.

### **General attitude and bias**

138. Throughout the hearings, I felt that the STC was very aggressive to me. There were periods when I believe the STC was personally attacking me rather than being interested in the evidence that I wished to give to the Inquiry in an objective way. Evidence for this is set out below.
139. As a first example, please see **page 978 paragraph B through to D**. When the

STC finishes by saying: *"either you were not very good [as a former transport consultant] or you are pulling the wool over my eyes. I do not yet know which it is."*

140. I responded that *"I think neither of those."*
141. It is clear to me from this that the STC does not like, trust or believe me. However, as these first two hearings were simply directions hearings, she should not have formed this adverse view of me at such a preliminary stage and I believe had no reason to do so apart from the fact that she had read so much adverse comment about me in the correspondence she had received.
142. This tone of aggression towards me is further evidenced at **page 980 paragraph E to F** when the Traffic Commissioner said *"I do not want you to renew that. I want you to show me the bank statements. You have chosen not to. That makes me suspicious."*
143. I responded that she had already had the requested bank statements back in April and there followed an exchange relating to this, this exchange continued on to **page 981** during which I found her tone to be very argumentative.
144. In a short discussion about the proposed regulatory action against the companies for which I was responsible back in 2012/13, I asked the STC directly on **page 987, paragraph B**, what was the reason for the regulatory action being proposed. The STC identifies what she was considering by way of regulatory action i.e. revocation, suspension or curtailment but she would not tell me what it was I or the Company were supposed to have done wrong in 2012/13, even though I asked the STC this specifically. At **paragraph D** she says *"there were allegations made at the time. There were allegations made at the time that your company, Oakwood travel... Sorry, Classic Bus Northwest, was not operating in compliance with the legislation. I'm duty bound to investigate that."*
145. The STC knows that I am about to ask a further question when she then states *"I have already made my decision. If you are unhappy with it, then you can*

*appeal.*" I invite you to remember we are still in a directions hearing at this point - the substantive hearing did not start until 3 September 2014.

146. The STC is completely aware at this point of what the allegations against me and the businesses were in 2012/13, and yet she is not prepared to even give me a summary of what the issues were or the allegations of non-compliant operation.
147. I had asked her a direct question, which I felt was appropriate in the circumstances, and she point-blank refused to give me the information, which I knew she held as it had been referred to when we were going through the file as set out above. This was adverse information which had influenced her opinion of me and which I was denied the ability to either see or to respond to.
148. The STC further referred to a personal Individual Voluntary Arrangement (IVA) that I had been involved with following the voluntary liquidation of Classic Bus North West Ltd – principally to satisfy some personal guarantees. The liquidation was partly caused by a cash flow crisis relating to the withholding of concessionary fares reimbursement at the behest of Blackpool Council and also by delayed payments from the Department of Transport's Bus Service Operators' Grant scheme which I also understand resulted from exchanges with the DVSA directly related to the allegations about how we were operating our bus service in competition with Blackpool Transport Services.
149. I was straightforward in dealing with this issue. However, I am very concerned as to how she became to be aware of my personal IVA. This is a personal matter for me, is not public knowledge, and in my opinion has nothing to do with my operation of buses in compliance with the requirements of a PSV Operator's Licence. This information was not supplied by me nor presented to me as evidence in relation to her lines of inquiry.
150. From this point onwards, I felt that the STC was adopting a deliberate tactic of undermining my credibility and confidence by seizing on any lack of clarity and

turning it into an example of deliberate obfuscation or deception. I found this humiliating.

151. For example **at page 1123, paragraph H**, she states *"... because I must admit, when you have set out in your statement what an expert you are-' I reply " I've never set out that I'm an expert, madam."*
152. At the bottom of the page the transcript says *"Here you are. There you are."* The conversation continues over the next page when the STC reads out a statement which comprises my background in the bus industry.
153. Further attempts to undermine me personally are evidenced at, **page 1131, paragraph F**, the STC again engages with the audience during my submission and behaves far more aggressively towards me, in that she tells me that *"you're making the audience laugh now."*
154. This was intended to effectively humiliate me in front of the audience when the conversation continues and **on page 1132, paragraph E**, she again identifies that the audience were nodding.

### **Delay in written decision**

155. At the close of the 03 September 2014 hearing, the STC said that the decision would be given in approximately 7 weeks from the hearing date and that because it was a complex case she would need to refer to the transcripts to form her written decision.
156. Over the coming months, we chased the OTC for a decision, initially being told she was working 7-days a week, then only 1-day a week and then there was confusion over a transcript that she needed to finalise her decision.
157. Two further hearings took place following our appointment of Solicitors to represent us, on 27 April and 22 May 2015. These were conducted in a much more professional way although at 27 April hearing our Solicitors had asked the STC to consider recusing herself.

## The 39 facts

158. On 30 June 2015 the STC's adverse decision was issued and the STC directed *"pursuant to section 28 that the operator Oakwood Travel Services now known as Catch22Bus Ltd is disqualified in all traffic areas for a period of 7 years. Whilst my Statutory Guidance Document 10 states at paragraph 74 that a period of 1-3 years may be appropriate for an order after a first public inquiry it also states that orders for 5-10 years or for an indefinite period will be appropriate in serious cases. This is an **exceptionally serious case** which strikes at the very heart of operator licensing. I also direct pursuant to section 28(5) that Philip Higgs shall be disqualified for a period of 7 years to reflect the order with regard to the limited company as he is or was the brains and controlling mind of all the entities"*.
159. Leaving aside the arguments of why this was an "exceptionally serious case" and proportionality, this affidavit deals with the accuracy of the 39 facts that the STC relied upon to make her adverse decision. Out of 39 facts, at least 34 are factually wrong and NOT supported by the transcripts or other evidence before the STC when making her decision. Each point is analysed separately and my answer, referring to page numbers in the bundle where appropriate, is appended to this affidavit.
160. The scale of the factual errors is horrendous and all the more concerning because:
- a. The STC stated at the close of the 03 September hearing that she would need to *"get a transcript of what happened, what was said"* and *"As I work from what was said, I will not revisit it, but I will work from it"* – **see page 1150**. This was as a result of me disputing what the STC was appearing to present to me as findings of fact or what she thought I had given in evidence at previous hearings.
  - b. The STC responded to the reasons for delay in completing her written

judgement that she had to plough through the transcripts

- c. In a subsequent letter in 2015 (by which time we should have received the STC's decision) the OTC advised that a copy of the 03 September transcript was required for her to make her final decision.
- d. The STC confirmed that before making her decision "I look at the transcripts". **(See page 1319)**

161. It is often commented that "there is no hiding place in a transcript". The transcripts in this case do not support the findings of fact made by the STC.

### **Aftermath and DTC John Baker review**

162. The decision of the STC was successfully appealed but was in effect only agreed by the consent of all parties to dispose of the proceedings and refer the matter to another Traffic Commissioner. Because the STC announced that she recused herself from all further dealings with either me or my operating companies, the case was referred to the South East region of the OTC.

163. This hearing was conducted on the 07 November 2016 and presided over by Deputy Traffic Commissioner John Baker. His written decision included the commentary that "*The initial report presented by (DVSA) Traffic Examiner Newton identified a number of failings in relation to the operation of bus services, but his evidence was amended to neutralise all those points. Other ancillary matters such as the circumstances surrounding the administration of a previous company, a previous maintenance investigation and complaints reportedly made by Blackpool Council into the operation of the present company have been either dealt with previously or were not included in my bundle of papers.*"

164. Basically, with the same information that had been before the DTC Simon Evans at the first hearing in April 2014, DTC John Baker found no adverse compliance issues and he found that the complaints made by Blackpool

Council and Blackpool Transport Services were not upheld.

165. If the DTC John Baker can conclude from the documents in front of him that the allegations of unlawful operation were not upheld, then this must mean that the STC either had access to some other information OR had allowed herself to be prejudiced by the antagonistic nature of the hearings over which she presided.

### **DVSA – Subject Access Request Disclosure**

166. During the summer of 2017, I made a Subject Access Request to the DVSA to obtain information they held relating to the allegations made by Blackpool Council and Blackpool Transport Services Ltd, and any other information relating to either my company or me personally.
167. In the DVSA disclosure, though heavily redacted, there is evidence of significant correspondence between Blackpool Transport Services, our competitors, the DVSA and the OTC. There are cases where the DVSA confirms that the information they have supplied has been passed to the OTC. However, we have never seen this correspondence before and none of the documents were presented either in the call-up papers or disclosed during hearings.
- 168.** From the limited material that has not been redacted and disclosed by the DVSA, it appears that there is open dialogue between DVSA, OTC, Blackpool Council and Blackpool Transport Services about me personally, my company and our compliance as an operator. This includes emails intimating or announcing that my company was to be the subject of a Public Inquiry before we were informed. **(See pages 6/Part2[email dated 31/01/2014] and page 14/Part2 [email dated 14/01/2014] and page 10/Part1 [email dated 27/02/2014] of the redacted DVSA disclosures.** We were not informed by the OTC that we were being called to Public Inquiry until 14 March 2014 **(see page 9 of Tribunal bundle).**

169. The DVSA, right up until my response of 31 March 2014 thought that Blackpool Council's / Blackpool Transport's allegations were credible, supported by its own flawed monitoring. In fact, it could not have been more wrong and this resulted in prejudicial action against us - including the delay of BSOG payments (effectively fuel duty rebate which bus operators can claim back from the Department for Transport) and the attitude of the Traffic Commissioners. The delay in BSOG payments was one of the significant factors that resulted in Classic Bus North West being forced into administration.
170. If I accept the DVSA's point that "*I should like to assure you that there was no inappropriate dialogue between DVSA and other organisations relating to your business*", then why did the bias against us continue after we had corrected Brian Newton's flawed report and the first PI when he withdrew his submitted statement as not being "true and accurate" in front of DTC Simon Evans?
171. Evidence in the DVSA disclosure includes such comments as "*but I am concerned that Mr.Higgs is submitting registration applications at all....having observed him during the course of the PI hearings, I'm afraid that this is indicative of the kind of person he is (12/09/2014)*", and "*Given the TCs decision, the operator has done exactly as I predicted and has appealed against it. ?? has granted a stay pending the outcome of the appeal, so we're still not done yet! (31/07/2015).*"
172. These comments are hardly commensurate with an organisation that accepted it had "made genuine errors" and has accepted this with humility. A highly prejudicial attitude against my company continued.
173. I would ask that in reviewing this complaint that the Judge has full access to the full, un-redacted, disclosures from DVSA. I am positive that the STC's view of me was prejudiced by the poor intelligence from the DVSA but there must have been substantial dialogue between the DVSA and OTC in the period prior to our call to Public Inquiry and it will be critical to understand the stance of the organisations involved. We do know that we were called to Public Inquiry

before the DVSA had drafted its report that was supposedly the catalyst for being called.

174. I understand from a retired Blackpool Transport Services Director that the STC served on a "Bus Punctuality" forum with the former BTS Managing Director, Trevor Roberts whom I believe was the motivating factor behind the false allegations made by BTS to the DVSA/OTC.
175. I understand that the STC and Mr. Roberts were very friendly and I find it inconceivable that there was no dialogue between them on the competition that existed between Blackpool Transport Services and my operation, particularly given the complaints made by them.
176. A copy of the responses from the Chief Executive of the DVSA are attached.

### **The Complaint process**

177. The original complaint to the Secretary of State for Transport about the conduct of the STC was made, by the time that this inquiry gets underway, three years ago. As I stressed early in this statement, it was not a tactical complaint.
178. I do not consider the OTC's complaint process to be fit for purpose in dealing with a complaint against the STC. Upon receipt, the DfT was required to send a copy of the complaint to the STC (although the STC denies knowledge of the content). At this time, the STC was still presiding over our case.
179. The DfT states that "it is the practice of the Department not to investigate a complaint about the STC acting in her capacity as a traffic commissioner if there is a case ongoing or an appeal outstanding" but yet it did share the complaint with the STC whilst the case was ongoing.
180. It is my contention that any observer of these facts would conclude that the DfT had an opportunity for intervention in the process, to force recusal, but instead by simply sharing the complaint with the STC they created a scenario where the test for apparent bias is satisfied.

181. The STC recused herself from all dealings with myself or my operating companies after her adverse decision on 30 June 2015. I do not understand why the DfT did not then take this opportunity to start the inquiry into my original complaint.
182. In February 2017, the lawyers for the Secretary of State fully supported our grounds for appeal and the DfT subsequently, on 02 March 2017 wrote to me, effectively inviting me to withdraw my complaint against the STC. Upon my refusal, on 07 April 2017, the lawyers for the Secretary of State did a complete U-turn on their position in respect of supporting our appeal.
183. A summary of the reasons for delay in commencing the inquiry into the complaint against the STC is appended to this affidavit, by Duncan Price from the DfT.

## **Summary**

184. One of the few areas where I agree with the STC is that this has been a complex case, but only because it was made complex by her. It appears to start with Blackpool Council and Blackpool Transport Services making false allegations against my operation of bus services, and our compliance within the operating regime defined by the Traffic Commissioners, to the DVSA and the OTC. These allegations were not upheld but many other allegations that appear to be within the redacted content of the DVSA disclosure have never been put to us.
185. Coupled with their interference of our Concessionary fares reimbursement, the warning from them not to start operating and a failure to advertise our bus timetables, I would ask the Judge, within the context of this complaint, to consider whether the relevant officers of Blackpool Council / Blackpool Transport Services Ltd have undertaken a course of conduct likely to pervert the course of justice, in this case to damage a competitor.
186. I understand it may appear out of scope of this complaint inquiry, but it did feed into the material that the STC had to consider. It may, at its very extreme,

amount to conspiring to pervert the course of justice once the content of the redacted DVSA documents are disclosed. It may also indicate violation of the Competition Act and Blackpool Transport should be called to account for their actions.

187. The background is further complicated by the flawed investigation and report handled by the DVSA. Even allowing for “genuine errors” the DVSA had the opportunity to either withdraw their report or submit a corrected statement, which would neutralise the allegations made by Blackpool Council and Blackpool Transport. Instead, the DVSA continued to submit a statement that they knew to be false into the judicial process at multiple hearings.
188. The grounds for recusal of the STC existed – knowledge and access to information not shared with myself, the blog hearing, the intemperate behaviour, my complaint to the Secretary of State, and the appearance of bias – all should have put the matter beyond any doubt. That it failed to do so suggests misconduct and a determination to proceed to an adverse conclusion.
189. I am concerned at contradictory statements made by the STC – such as the reasons for DTC Simon Evans’ recusal, her knowledge of the complaint made against her and reaching conclusions based on manipulating what I had given in oral evidence. In her own statutory guidance on Public Inquiries it is noted that *“Evidence is not given under oath, but witnesses are required to tell the truth at all times. Furthermore the giving of false evidence .... could result in the matter being referred to the police and criminal charges could follow”*.
190. There is no hiding from the transcripts or recorded oral evidence and neither support the STC’s findings of fact but do support her contradictory statements, intent on an adverse decision to revoke my licence and find against my repute.
191. I know misconduct when I see and hear it. A summary of the misconduct I have witnessed and referenced in this affidavit include:

- In determining the process to follow, she relied on unproven and untested allegations from mostly anonymous (or at least anonymous to me) complainants.
  - She kept the content of these allegations hidden from me despite a specific request.
  - She continued to rely on a flawed DVSA report despite this being withdrawn in a previous hearing in front of the DTC.
  - She allowed a professional relationship with the then Managing Director of Blackpool Transport Services to blind her to an obvious explanation for the unfounded allegations – a means of damaging legitimate competition. The Guide to Judicial Conduct indicates "*A current or recent business association with a party will usually mean that a judge should not sit on a case.*"
  - She specifically recorded me as having publicly admitted deliberate deception in the face of my stating the exact opposite.
  - She refused my request to call-up a key witness to the Inquiry.
  - She conducted the hearings in a consistently hostile and adversarial manner with a focus on my personal credibility.
  - Despite the clear causal impact that the delay in the whole process was having on my business there was no attempt to expedite, thus providing the very result that those making the unfounded allegations were hoping for.
  - Ultimately, the decision that she reached was almost totally unsupported by the transcript evidence on which it was stated that it should be based. No reasonable person could reach her factual conclusions from this evidence.
  - At some point it should have become clear to her that there was a risk of bias to her decisions, reflecting the personal animosity that she expressed towards me. Despite a specific request by Solicitors, and despite her having received a copy of a formal complaint against her, she determined not to recuse herself.
192. It is my contention though that the STC not only failed to display the integrity, maturity, sound temperament and objectivity required of a Traffic Commissioner, but that in addition to performing the balancing act of "judge, jury and executioner" she also assumed the role of the prosecution too.
193. If this complaint was based on taking too long to deliver a judgment or of inappropriate behavior/comments then my grievance would be limited to

professional conduct issues. I would submit, however, that the STC's actions go beyond misconduct. Specifically, the STC:

- a. Withheld evidence from me that was informing her decision-making, and referenced this material when she herself was effectively giving evidence against me.
- b. Attempted to make me agree to statements containing material known to be untrue within the proceedings.
- c. Put accusations to me in her cross-examination on the basis of false assertions.
- d. Made contradictory or false statements, such as the reasons for recusal of the DTC, her knowledge of the complaint to the SOS and her reaction to the blog posting.
- e. Made an adverse decision that was not supported by the evidence before her in the transcripts, which would have the impact of putting me out of business.

194. The scale of the errors, the information she held that had not been disclosed, the areas of interest she explored at the hearings, the general intemperate attitude towards me, the manipulating of evidence and the adverse decision (or false verdict) which contained assertions of fact she knew to be false, suggest to me not only misconduct, but a course of conduct intended to misdirect the direction of justice.

Sworn at .....	)	
this ..... day of ..... 20 ...	)	
before me .....	)	.....
at.....	)	(Signature of deponent)
.....		
(Signature and official seal of consular officer)		

