



**IN THE NORTH WEST OF ENGLAND
THE DECISION OF THE TRAFFIC COMMISSIONER**

**OAKWOOD TRAVEL SERVICES LIMITED
PC1067540**

&

FRANK STEELE – transport manager

**UNREDACTED VERSION NOT TO BE ISSUED TO THIRD PARTIES WITHOUT THE
SPECIFIC CONSENT OF THE TRAFFIC COMMISSIONER**

In issuing this decision, it is necessary for me to refer to two related operator licences, namely Totally Transport Community Interest Company, PC1068146 and Classic Bus North West Limited PC110889.

Totally Transport

1. On 12 April 2007 Totally Transport Community Interest Company ('Totally Transport') was granted a standard national operator's licence PC1068146 for 2 vehicles to operate from Brinwell Road in Blackpool. The directors were John Fitzgerald Godfrey ('John Godfrey') and Philip Karl Higgs ('Philip Higgs'). The transport manager was John Godfrey. The trading name of the company was Classic Bus. Throughout the life of the licence there were a total of 7 registered services (not 22 as my briefing papers state).
2. Philip Higgs, the director, has links with Classic Bus North West Limited, PC1108899, Oakwood Travel Services Limited PC1067540, Classic South Down Omnibus Limited trading as Classic Yellow Buses PH1080381 and Red Rocket Bus Ltd PC1122529.
3. On 24 September 2012 the operator wrote to the Central Licensing Office seeking to surrender the licence on the basis that the company had ceased trading and would be liquidated in the near future. Regrettably this application to surrender was not actioned by the Central Licensing Office at that time.
4. On 31 May 2013 my office at Golborne wrote to Totally Transport asking for evidence of financial standing, together with details of any overpayments of Bus Service Operator Grant (BSOG) and any outstanding County Court or High Court judgements. The operator replied on 3 June 2013 stating that the company had ceased trading 'some time ago', that winding up proceedings were imminent and that the licence had been surrendered and registered services cancelled on 24 September 2012.
5. Furthermore, the operator received a circular letter dated 22 October 2013 sent to all PSV operators of registered local bus services. The operator responded on 17 December 2013 referring to the letter of 24 September 2012, advising that the licence was surrendered and that all services had either expired or been cancelled. The letter also advised that John Godfrey was no longer acting as a transport manager. The Central Licensing Office replied to the letter from the operator advising that in order for the surrender to take place, all open bus routes would need to be cancelled. The forms were attached.

6. A Companies House search revealed that the company was dissolved on 11 February 2014.

The call up letter for Totally Transport

7. On 14 March 2014 a call-up letter was sent to the operator convening a public inquiry on 24 April 2014. This original public inquiry was dealt with by deputy traffic commissioner (DTC) Evans who for reasons unknown to me recused himself. The matter was subsequently listed for public inquiry on 1 July 2014 and on that date I made an order for revocation with immediate effect pursuant to Section 14ZA(2)(c) of the Public Passenger Vehicles Act 1981 on the basis that the operator had no financial standing due to the liquidation of the company.

Oakwood

8. It is to be noted that 13 days after the licence was granted for Totally Transport, Oakwood Travel Services Limited (Oakwood) were granted a standard international PSV operator's licence on 27 April 2007, PC1067540, for 8 vehicles. The original director was Frank Steele and this entity operated from the Merseyside area. The operator was called to public inquiry on 2 July 2008 as a result of concerns regarding maintenance and drivers' hours and tachograph regulation breaches. I recall dealing with this public inquiry and I recall dealing with Frank Steele. I heard financial evidence in camera regarding Frank Steele's personal financial circumstances and I concluded that Frank Steele had tried to 'grow' the business and the licence too quickly. I concluded that maintenance had been addressed but that more needed to be done with regard to the drivers hours. I made no adverse finding regarding repute, financial standing or professional competence but I did find that Section 17(3) of the Public Passenger Vehicles Act 1981 applied in that the operator had failed to comply with statements of intent and undertakings and that prohibitions had been issued to vehicles authorised on the licence. I recorded an undertaking for an audit which was subsequently complied with.
9. On 15 March 2011 an application was signed to change the operating centre from Merseyside to the Busworks, South Shore, Blackpool. My briefing papers have a letter dated 21 February 2012 from Philip Higgs at the Busworks, concerning agreement to the use of these premises by Oakwood.
10. The application itself was submitted to the Central Licensing Office on 28 March 2011 and as a result the office requested further information. The office had sent chasing letters to the operator at both addresses on 20 April 2011, 17 May 2011 and 26 July 2011. As no response was received to any of these letters a propose to revoke letter was sent by my office on 8 February 2012 as a result of material change, namely failing to respond to traffic commissioner's correspondence. On 21 February 2012 Backhouse Jones solicitors replied on behalf of the operator stating that the operator had not received any of the correspondence. The letter made no reference to any other material change regarding the licence other than the change of operating centre. My office accepted the explanation and notified the operator accordingly by letter on 27 February 2012.
11. On 12 January 2013 the operator wrote to my office to state that it had now moved premises to share premises with Classic Bus North West Limited (Classic Bus) at Brinwell Road in Blackpool.
12. It should be noted that Companies House records reveal that on 2 April 2013 the director of Oakwood changed from Frank Steele to Philip Higgs. This material change was not notified to the traffic commissioner at the time.
13. On 31 May 2013 my office wrote to the operator asking for evidence of financial standing, details of any overpayments of BSOG and details of any Crown Court or County Court judgements. Whilst the operator sent a reply on 12 June 2013 it did not answer the questions asked by my office's letter with regard to the outstanding County Court judgements.

Classic Bus

14. Meanwhile, on 20 January 2012, Classic Bus applied for a standard national PSV licence authorising 4 vehicles to operate from South Shore Business Park, Blackpool. The sole director was Philip Higgs who was also the transport manager. The licence PC1108899 was granted on 12 July 2012. On 26 July 2013 a warning letter was issued by my office as a result of an unsatisfactory maintenance investigation and on 2 August 2013 an application for an increase to 10 vehicles was granted.
15. On 19 December 2013 my office wrote to the operator regarding a complaint from a third party alleging that service 22 was running off-route and was not running to time. My office also identified and referred to in the letter that the route had been cancelled with effect from 5 November 2013 but that the service still appeared to be running on 19 November 2013. A response was requested by 9 January 2014 but no response has ever been sent by the operator to that letter.
16. On 31 December 2013, Classic Bus went into liquidation and administrators Leonard Curtis were appointed. An application to surrender the licence dated 1 January 2014 was received by the Central Licensing Office on 6 January 2014 but regrettably that was not actioned by the office at that stage.

Red Rocket

17. Meanwhile, on 20 June 2013, 20 days after my office wrote to Oakwood requesting finances, details of BSOG overpayments and court judgements, Red Rocket Bus Ltd (Red Rocket) applied for a standard national PSV operators licence and this application was received at the Central Licensing Office on 16 July 2013. The application has been assigned number PC1122529. The application was originally made for 10 vehicles and in answer to question 13(a) regarding other licences, Philip Higgs on completing the form referred to licence PC1108899 (Classic Bus) but he erroneously stated that he was the licence holder. Furthermore, the application made no reference to the fact that Philip Higgs had now become the sole director of Oakwood. This fact had never been notified to my office either by Philip Higgs or by Frank Steele. On the application for Red Rocket the sole director was Philip Higgs and the proposed transport manager was Philip Higgs. Furthermore, the TM1 form made no reference to Philip Higgs' other duties at Classic Bus.
18. On 23 July 2013 the Central Licensing Office wrote to the applicant company asking for further information. Philip Higgs replied on 29 July 2013 stating that Red Rocket was a standalone company and a separate operation from Classic Bus and the letter made no reference whatsoever to his current role as director of Oakwood.
19. The matter was referred to a deputy traffic commissioner and on 24 September 2013 the Central Licensing Office wrote to Red Rocket asking for clarification of the position regarding Totally Transport. Philip Higgs replied by email on 26 September 2013 stating that the licence had been terminated and that two discs had been returned in early summer 2012. (It is to be noted that this statement was incorrect as the letter was in fact dated 24 September 2012). On 1 November 2013 the Central Licensing Office wrote to Red Rocket to say that the application would be determined at public inquiry. On 19 January 2014 Philip Higgs enquired at my office as to the progress of the public inquiry and further information was therefore put to the deputy traffic commissioner. On 13 February 2014 the Central Licensing Office wrote to the applicant company stating that despite the further evidence having been put to the deputy traffic commissioner, that the public inquiry would still take place.

The call up letter to Red Rocket

20. On 11 March 2014 a call-up letter was sent to Red Rocket convening a public inquiry on 24 April 2014. The call-up letter was subsequently amended on 24 March 2014.

The call up letters to Classic Bus and Oakwood

21. As a result of concerns regarding links with the other entities call-up letters were also sent to Classic Bus and Oakwood on 14 March 2014 for joint public inquiries to be heard on 24 April

2014. All of those 4 public inquiries were originally dealt with by DTC Evans but for reasons that are not known to me he recused himself and accordingly new public inquiries were listed on 1 July 2014 and adjournment letters and recall letters were sent to the 3 operators who still held a licence and the applicant company Red Rocket. I do not set out in this document the legislation referred to as they are contained in my briefing papers.

The hearing on 1st July 2014

22. In view of the complexity of matters I indicated that I would treat the initial hearing date as a directions hearing for Oakwood and Red Rocket but that I would deal with Totally Transport and Classic Bus to conclusion.
23. Accordingly I made orders for revocation as follows:-
 - Totally Transport CIC – revocation pursuant to Section 14ZA(2)(c) of the Public Passenger Vehicles Act 1981 on the basis that the operator had no financial standing because it was in liquidation.
 - Classic Bus North West Limited – revocation pursuant to Section 14ZA(2)(c) of the Public Passenger Vehicles Act 1981 on the basis that the operator had no financial standing because it was in administration.
24. In making the orders for revocation I made it clear to Mr Higgs that as the applications for surrender had not been dealt with and as I was considering regulatory action at the time that the applications to surrender were received that I was perfectly entitled to make the orders on the basis of lack of financial standing but that in the interests of fairness I would not make adverse findings regarding repute as I had not heard any evidence from the operators.
25. I also heard evidence from Philip Higgs of a ‘pre-pack’ sale of Classic Bus to Oakwood on 31st December 2013 for the sum of £25,000 to include all vehicles and that payment was to be made over 12 months.
26. Philip Higgs and Frank Steele attended on behalf of Oakwood as did David Hughes the operations manager. Philip Higgs and David Hughes were also attending on behalf of Red Rocket. It is to be noted that David Hughes is a former DVSA traffic examiner. TE Brian Newton also attended on behalf of the Driver & Vehicle Standards Agency (DVSA). Having made the initial orders for revocation, I then heard evidence from Frank Steele as to why he had not disclosed his bankruptcy order to the traffic commissioner. In summary he told me that he did not think that he had to.

The evidence of the operation of the vehicles

27. I then heard evidence regarding which vehicles and which services Oakwood were operating and I was told by Philip Higgs of a ‘partnership’ between Oakwood and Classic Bus. In discussing matters with Philip Higgs I noted the turnover figures for Oakwood were £19,760 for the year ended 30.11.12 and £30,835 for the year ended 30.11.13. For the year ended 30.11.13 there was also a figure described as “other operating income” of £106,508. I indicated my concern to Mr Higgs that as Oakwood held a licence for 8 vehicles I would expect to see a much larger turnover. I asked Philip Higgs about it and he told me that there was no operation by Classic Bus or Totally Transport as he had applied to surrender those licences and so thought that they no longer had authority. The implication of this was that if Totally Transport and Classic Bus were not operating vehicles and if the Oakwood turnover was very low then either some other entity had to be operating the vehicles or there were no proper accounting procedures in place and income due to Oakwood was going elsewhere.
28. I asked Philip Higgs about this and in summary, I was effectively told that Oakwood were operating the vehicles because the Classic Bus licence had not been granted in time. I was then told that the money received from the journeys carried out by the vehicles operated by Oakwood was paid into the Classic Bus bank account. I put to Philip Higgs that as Oakwood had the licence authority and as Oakwood were supposed to be operating the vehicles, that

Oakwood should receive the payment. Philip Higgs asked me why this was the case and I explained that this was because the entity that operates the vehicles must be the entity that receives payment – in the absence of proper sub-contracting arrangements – and none were ever provided to me.

29. Philip Higgs' response was this, *'Well it doesn't matter where the money ends up does it?'* I put to him that it did, especially as he had applied to surrender the Classic Bus licence on 1 January 2014. Philip Higgs then tried to use National Express as an example but I explained that in this scenario there would be legal contracts regarding who was the operator of the vehicle. I stated that no evidence of any paperwork or any contracts had been produced to me and Philip Higgs stated that all the staff were employed by Classic Bus and that all the income had been paid to Classic Bus. I made it clear that Classic Bus had no authority to operate as it had gone into liquidation on 31st December 2013. At this stage Philip Higgs tried to blame my office for the unauthorised operation. I stated that this was not the case and that Philip Higgs had effectively 'voted with his feet'. Philip Higgs' response was *'You might be right with that.'*

The evidence of the number of vehicles being operated

30. I then went through the fleet list in considerable detail with Philip Higgs and David Hughes regarding how many vehicles were needed to cover their registered services. I was told by both of them that for Oakwood to operate service 12 they needed 4 vehicles but that they could only run with 3 vehicles as the application to increase the fleet authority for Oakwood from 8 to 12 had not been dealt with in a timely manner. David Hughes then complained to me that Blackpool Transport, a competing operator, was duplicating service 12 and I asked TE Newton to investigate this matter and to report back to me. I was then told by David Hughes and Philip Higgs that service 12 was a 20 minute service but as they were only running 3 buses, every third journey took place at 40 minutes instead of 20 minutes. When questioned further, Philip Higgs accepted that he did not have lawful authority to operate more than 8 vehicles (page 50 of the transcript of the hearing). I suggested that Philip Higgs should apply to rectify the position as soon as possible and Oakwood should apply to amend the service at short notice to reflect the fact that it could only operate 3 vehicles on that service.
31. I then examined the position regarding service 22 and I was told that 6 vehicles were needed for Oakwood to operate this service properly but that they could only run 5 and as a result the services were not running on time. I was told by Philip Higgs and David Hughes that an application would be made at short notice to alter the registrations to take account of the fact that only 3 and 5 vehicles could be used for routes 12 and 22 respectively. I stated that, once received, I would grant both applications at short notice.

The evidence of Frank Steele

32. I then heard evidence from Frank Steele regarding his work as a transport manager at Oakwood and he told me that he was working between 48 and 50 hours a week and that he was based at a haulage yard in Link Road, Huyton in Merseyside. He then told me that he operates a 50-seater coach AIG1905 and that as a result he only works 10 hours as the transport manager for Oakwood and the rest of the time is taken up with him operating his coach in the Merseyside area. He gave me examples of runs to events like Chester races and local journeys in Liverpool. I put to Frank Steele that Oakwood did not have authority to operate 9 vehicles as it only had authority for 8. Frank Steele then tried to say that Oakwood was only using 7 vehicles, but I pointed out to him that it had been well established in the previous evidence that it was operating 3 vehicles on service 12 and 5 vehicles on service 22, making a total of 8 vehicles and that the operation of AIG1905 in addition, at times when the other 8 were on the road meant that one of Oakwood's vehicles was operating without authority. I put to Frank Steele that the legal way forward would have been to subcontract that work to an operator who did have sufficient authority. It was at this stage that Frank Steele admitted to me that he did not in fact know how many vehicles were needed to operate service 12 and service 22 and I put to him that he was not exercising continuous and effective management in accordance with his transport manager responsibilities.

The evidence regarding the Red Rocket application

33. I then heard evidence regarding the basis of the application by Red Rocket Bus Ltd and was told that this was because the applicant company wanted to run an express service from Blackpool to Manchester via the Trafford Centre.

The financial evidence of Philip Higgs

34. I then went into closed session as I needed to hear details of Philip Higgs' financial circumstances. It had come to my attention that Philip Higgs was subject to an insolvency voluntary arrangement (IVA) and this had not been disclosed to me. I enquired of Philip Higgs why he had not disclosed it to me and he said that his accountant had said he did not need to. I asked him why he was the subject of an IVA and he said that when he was operating one of his previous companies, he had put about £30,000 on a credit card and that the debt had gone wrong. He told me that he paid £300 a month for the IVA. I asked him about his bank account but all he would say is that this was a 'cash plus' account and he did not give me details of which bank it was.

The further evidence of Philip Higgs

35. Philip Higgs then repeatedly tried to give evidence to me on non-financial matters in camera and I repeatedly tried to stop him from doing so. As a result, when I went back into open session, I recounted the evidence that Philip Higgs had given that did not relate to financial matters. Philip Higgs then asked me to increase the authority for Oakwood on that day to the 12 vehicles requested but I indicated that this would be refused. Philip Higgs admitted that he had been operating 9 vehicles and that 1 vehicle had been operating without a disc in the windscreen.

The financial evidence of Frank Steele and David Hughes

36. I then went back into closed session and heard evidence that Frank Steele was paid a monthly premium of £900 per month for his role as transport manager for 10 hours a week. I then heard evidence from David Hughes who told me that he earned £18,000 per annum as a transport manager.

The adjournment of the public inquiries for Red Rocket and Oakwood

37. I indicated that I would have to list both matters for a full hearing and reminded the operator Oakwood that it could only operate 8 vehicles, that the application by Red Rocket had not been granted and that I had made the order for revocation for Totally Transport and Classic Bus. I registered my concern to Philip Higgs about the unauthorised use and indicated that this would be revisited on the next occasion. I indicated that urgent short notice applications would have to be submitted for services 12 and 22 and that I would grant them at short notice once received. I reminded all parties that if AIG1905 was operated on the Oakwood licence in addition to 8 vehicles, that this would be unlawful. I also indicated that I had concerns regarding who was operating the vehicles with regard to the Red Rocket application and stated that I would also revisit this at the next hearing.

The hearing on 25th July 2014

38. The matter was therefore relisted for a hearing on 25 July 2014 and Mr Philip Higgs and TE Newton attended. I had been advised by my clerk that regrettably David Hughes was not able to attend as he was unwell and currently in hospital. At the start of the hearing I enquired as to why Frank Steele was not present. Philip Higgs stated that he had not been called. I made it clear that he had been called and that he had received a call-up letter on 23 June 2014 for the hearing on 1 July 2014 and that he was present at the last hearing when he had been given the date of the relisted hearing. I also noted that the short notice applications for services 12 and 22 had not been submitted until 21 July 2014, namely 3 weeks after the 1 July 2014 hearing and that the operator had not submitted either the short notice forms or the necessary fees. I was also concerned that Philip Higgs referred to the local authority granting the short notice application when in fact it is for me to grant the short notice applications.

39. I also noted that all financial documents requested had not been produced. Philip Higgs had only produced bank statements for one month for Red Rocket and these showed payments being made. Philip Higgs then sought to blame myself and my office for not having the right financial standing documents. Prior to dealing with matters I had spent a considerable time putting the papers in order to ensure that I had all of them before me. At this stage I regret to record that I found that my patience with Philip Higgs was being sorely tested and so I went through (in detail) every single document that was in mine and my clerk's possession as Philip Higgs had stated that he had previously produced documents to DTC Evans and that my office had lost them. Having been through the papers in considerable detail, it was clear that the papers he referred to were not in mine or my clerk's possession and I am quite satisfied that they never have been. Prior to this hearing Philip Higgs had also written to my office asking a number of questions and when he received a reply from my office he had indicated he was not satisfied with the responses. Accordingly I took the opportunity to go through those questions and responses with him, explaining them in more detail.
40. Philip Higgs then asked me to deal with both public inquiries without either David Hughes or Frank Steele being present and he stated that he had fulfilled the requirements for both the Oakwood licence and the application for the increase as well as for the application for the licence by Red Rocket to be granted. I stated that it was not enough for me to hear mere assertions, but that I had to test the basis of the assertions made, looking at past conduct as well as future intent. I also indicated that I had to be fair and that it was in the interests of fairness to hear evidence from Frank Steele and from David Hughes.

The evidence of financial standing – Oakwood, Red Rocket & Philip Higgs

41. I then went into closed session to hear financial evidence of financial standing and as a result I indicated that financial standing was satisfied for Oakwood. I indicated that there was not enough money available for Red Rocket to satisfy financial standing and Philip Higgs agreed with me. He did, however, ask me to grant the application for Red Rocket with a finance condition similar to the one that Classic Bus had when it was granted a licence. I was then told that Philip Higgs was paying £300 a month for 36 months on the IVA making a total of £10,800. I asked for more detail regarding the bank statements for Red Rocket which had not been produced and Philip Higgs indicated that he would be able to produce these to me.
42. I then went back into open session and Philip Higgs submitted that Oakwood could demonstrate financial standing and that professional competence could be satisfied by the presence of David Hughes as the new proposed transport manager for Oakwood.
43. I indicated that I would deal with the matters on the basis of the evidence produced to me. I indicated my concerns regarding unauthorised use, using more vehicles than the operator had authority for and not running in accordance with the registered particulars. Philip Higgs stated that he had been put in a difficult position by delay at my office and that he would abide by any conditions that I sought to impose. I indicated that I would retire for a few moments to consider whether to proceed to conclusion or whether to adjourn to hear evidence from Frank Steele and David Hughes.
44. Having returned to the public inquiry hearing room but before I issued my decision, I asked Philip Higgs when he had last seen Frank Steele. He then told me that he had seen him that day. I enquired when. He told me at 09:30 hours. I enquired where. He told me at McDonalds near my office and the public inquiry room. I enquired how they both got there. He said they both drove there separately in their own cars. I enquired of Philip Higgs why Frank Steele did not then come to the public inquiry, and Philip Higgs stated that Frank Steele had not been formally invited to the '*meeting*' and that he was no longer the transport manager and therefore he did not want to come to the hearing. He said it was too much stress for him. He said he had not told me this before because it would '*probably upset me even more*'. David Hughes said that Frank Steele was an old man and he did not want to put him through any more upset.

45. Having heard this further evidence I concluded that I would adjourn to hear full evidence from all parties and I listed the matter for 3 September 2014. I indicated once again that proper bank statements for Red Rocket and Oakwood would have to be produced.

The hearing on 3rd September 2014

46. Accordingly, further adjournment letters were sent and the hearing was reconvened on 3 September 2014. Philip Higgs, Frank Steele and David Hughes attended as did TE Newton.
47. As a preliminary matter Mr Higgs explained that he was making an application for a period of grace for Oakwood as it was a standard international licence holder and the application to nominate David Hughes could not be successful as he was only a standard national CPC holder. Frank Steele told me that he had been carrying out the transport manager duties for Oakwood for 10 hours a week until July 2014 and that he then left and he had not been employed there since. I asked Mr Steele why he had chosen not to attend the public inquiry hearing on 25th July and he tried to say that it was because I did not invite him. I made it clear to him that that he was told at the hearing on 1st July that he should attend the reconvened hearing.

The evidence of TE Newton

48. I then heard evidence from TE Brian Newton regarding his investigation into Oakwood. His statement is at pages 105 – 157 of my briefing papers. Due to the length of time that it has taken to deal with matters his evidence was rather old by the time I came to consider it on that day. I was aware that Mr Higgs did not accept all of TE Newton's evidence and so I took care to go through each part of the statement to ascertain what was agreed and what was not. Some of TE Newton's statement relates to a BSOG enquiry that he conducted but I have not referred to this as it is not relevant to this matter.
49. His statement also referred to the fact that he had received a complaint from Blackpool Council about Oakwood advertising a Blackpool illuminations tour for 10 weeks without it being registered at my office together with allegations of anti-competitive practices on service 22 and apparently unachievable running times on service 12. The council were also concerned that the actual operator of the 2 registered services and the illuminations tour was Classic Bus and not Oakwood. As a result TE Newton conducted the investigation. TE Newton's statement confirmed that service 12 was registered by Oakwood with effect from 02.06.12 and service 22 was registered by Oakwood with effect from 10.09.12. TE Newton established that on 12.07.12 Classic Bus was granted a licence for 4 vehicles with 7 in possession. He also conducted internet searches for Oakwood and Classic Bus and discovered that the website for Oakwood was "under construction" with reference to a Liverpool phone number and that the website for Classic Bus was advertising the illuminations tour and services 12 and 22.
50. TE Newton conducted observations in Blackpool on 27.09.12 on service 22 and noted that 2 vehicles in Classic Bus livery were using the Tesco stand instead of the stand at Langdale Road which was the registered stand. He also noted that service 12 had an advertised frequency of 15 minutes but he did not see evidence of this. These observations were agreed by Mr Higgs.
51. TE Newton also conducted observations on 04.10.12 and again noted that service 22 was departing from Tesco and not from Langdale Road. These observations were agreed by Mr Higgs.
52. TE Newton also conducted observations on 16.10.12 by travelling on service 22 and he noted that 2 female passengers had tried unsuccessfully to flag down a Blackpool Transport bus and so the driver of service 22 stopped his bus and told them that they could "*hop on here, you can drop off round the corner*". They got on the bus and got off at Clifton Street. He also observed service 12 but as a result of an error in his statement there are no concerns about that service on 16.10.12 apart from the fact that the conductor allowed a passenger to leave the vehicle whilst not at a bus stop and therefore into a live traffic lane.

53. TE Newton conducted further observations on 18.10.12 and again noted that service 22 used the Tesco stand and not the Langdale Road stand. He also noted that a passenger was allowed to alight the bus whilst not at a bus stop. His statement referred to concerns about service 12 but as a result of an amendment to his evidence there are now no concerns about this. Finally TE Newton travelled on the illuminations tour and he noted that the bus made 3 stops along the way to pick up passengers. This was agreed by Mr Higgs.
54. On 07.11.12 TE Newton (with VE Wilson) visited Mr Higgs by appointment who told him that he was the general manager and CPC holder for Oakwood and the CPC holder for Classic Bus. In fact this is incorrect as at that time Frank Steele was the CPC holder and transport manager for Oakwood. I asked TE Newton why he had not put this inaccuracy to Mr Higgs and he apologised and stated that it was an oversight. In any event Mr Higgs denied that he had made the comment. Much of his discussions with Mr Higgs related to BSOG and so I have not included reference to this here.
55. With regard to TE Newton's summary and conclusion paragraph 4 of his statement was amended to show that the frequency was satisfactory.
56. As a result of that amendment paragraphs 1 – 6 of his summary and conclusions are agreed by Mr Higgs.
57. A great deal of time was taken up at this hearing going into considerable detail about the location of a bus stop in New Bonny Street and as a result I have concluded that the bus in question did not stop at the recognised bus stop.
58. I was concerned to hear from TE Newton that he had never put any of the allegations referred to in his written report to Philip Higgs. I find this highly regrettable. I consider that it is wholly unfair for any operator to face allegations at a public inquiry when they have never been put by the relevant enforcement agency. This matter is exacerbated by the period of time that has elapsed since the original investigation. I shall deal with this further below.

The evidence of VE Wilson

59. The evidence of VE Wilson was then submitted and agreed. I make it clear that I do not have any significant concerns regarding the maintenance of the Oakwood fleet.

The evidence of Philip Higgs

60. I then invited Mr Higgs to give evidence and he referred me to his written statement that he had submitted in response to TE Newton's statement. This written documentation is at pages 176 to 198 of my briefing papers and for the avoidance of doubt I have read the contents in detail. I do not within the confines of this decision set out all the written representations in detail as they are lengthy but they deal with the following
 - Introduction and background
 - Totally Transport CIC
 - Classic Bus North West
 - Responses to complaints by Blackpool Council (Sept 2012)
 - Response to DVSA statement
 - DVSA maintenance investigation
 - Declaration of truth signed by Mr Higgs on 17 04 14
61. Having effectively adopted his written statement that had been produced to me (and having clarified the date when the application was made by Oakwood to downgrade the licence) Mr Higgs told me that he had not registered the Blackpool illuminations tour as it was an "excursion" and as such did not need registering at my office. I had not prepared in detail for this aspect of the case and so I retired for a few moments to obtain the definition of an "excursion or tour" from Mrs Marion Sheppard who is a DVSA expert in all PSV matters and I then returned and read it to Mr Higgs. I then put to him that the illuminations tour did not fit

the “excursion or tour” criteria and that accordingly it should have been registered. Despite this Mr Higgs continued to argue with me in the face of incontrovertible evidence from TE Newton. TE Newton had made it clear in his evidence that passengers got off and on along the route and this is not allowed on excursions or tours. Philip Higgs then tried to tell me that he had no experience of excursions or tours but I put to him that he had held himself out as a PSV expert in his written representations. He then said that he had not checked the law on the matter and so I put to him that he had registered an illuminations tour with Totally Transport but his response was that this was not him but his transport manager.

62. Once again Mr Higgs tried to circumvent my questions about Oakwood operating more vehicles than it had authority for and once again he denied that he had previously admitted this. Once again I found him to be confrontational and in denial about his previous evidence and my previous warnings to him. Philip Higgs then tried to persuade me that as the registered service applications had been granted that he thought that he could run them – even without the necessary vehicle authority.
63. He refused to accept that Classic Bus was the operator of vehicles when it was insuring the vehicles, employing and paying the drivers and the vehicles were liveried as Classic Bus and yet Oakwood discs were displayed in the windscreen. It was at this point that Mr Higgs suggested to me that it did not matter which entity was operating the vehicles as long as the service was running safely in accordance with the registered particulars. Mr Higgs and I then went round in circles with me putting the illegal operation to him and him denying it. I indicated that I was concerned that we were getting nowhere and that I would find as a fact that Classic Bus was operating the vehicles and that the discs for Oakwood were displayed to make the authorities think that it was the lawful operator when in fact it was not. I also indicated that I would take account of Mr Higgs’ evidence that he did not know that this was wrong.

The evidence of Frank Steele

64. I then heard evidence from Frank Steele and as he had been the transport manager at the time I asked him about the Blackpool illuminations tour and what steps he took to ensure that it fell within the “excursions or tours” definition. He accepted that he did not take any.
65. Mr Steele was apparently unable to recall the evidence that he had given to me on 1st July 2014 with regard to the operation of the vehicles by Classic Bus and with regard to the fact that Oakwood had a peak vehicle requirement of 10 vehicles but it only had authority for 8.
66. I asked him if he was still being paid by Mr Higgs and he initially said that he was not and then he changed his evidence and said that Mr Higgs paid “*some of my bills*”. He stated that Mr Higgs paid his phone bill and the insurance for his coach AIG 1905 which was currently parked up at Huyton in Merseyside due to lack of work. He said that it had last gone out 3 or 4 weeks ago and that there was an Oakwood disc still in the windscreen. He then told me that Oakwood was operating 7 vehicles. He told me that he became a transport manager in 1959 and he recalled when he was before me at public inquiry in 2008. He said that he had got involved with Philip Higgs through the operation of old buses as they both had an interest in heritage vehicles. He said that his reputation was good and that as far as he was concerned he had operated all registered services properly.
67. I asked him how he could properly fulfil the role of transport manager for 8 vehicles if he was only working for 10 hours a week in that role. He said that he did not think that it was his job to deal with the drivers in the event of problems and that it was quite alright for them to deal with Mr Higgs instead. Finally he said that he did not think that there was any problem with his reputation.

The evidence of David Hughes

68. I then heard evidence from David Hughes who told me that on 1 July 2014 Frank Steele stepped aside as the transport manager and that he, Mr Hughes, was working for 37 hours a week and that 7 vehicles were needed, namely 4 on service 22, and 3 on service 12. He told

me he had started employment with Philip Higgs on 2 January 2014 and that Philip Higgs had never asked him to do anything that would make him uncomfortable and that he was free to leave if he wanted to. He said he was unhappy with what had been happening in 2012 and 2013 but that everything was OK now that he was working there.

The financial evidence of Frank Steele

69. When I returned to the inquiry after the lunch adjournment, I went into closed session as I wanted to hear proper evidence from Frank Steele as to why his bankruptcy had not been disclosed. Frank Steele's response to me was extraordinary. He asked me if I (Beverley Bell) would say if I had had an abortion. I was somewhat taken aback by this analogy but I reminded myself that Frank Steele was unrepresented and I therefore explained the concept of material change to him. I then received a letter from his cohabitee regarding the reasons for the bankruptcy for which I was grateful. He told me he did not tell my office because he did not think it was relevant because he had sold the company to Philip Higgs and that he was not a director of Oakwood when he was made bankrupt.

The financial evidence of Philip Higgs

70. I then heard evidence from Philip Higgs with regard to the financial trading accounts for Oakwood for the year ended 30th November 2013. As stated above these showed a turnover of £30,835 and a gross profit of £13,397. As stated above they also showed other operating income of £106,508 and Mr Higgs told me that this was a write off of a director's loan of Frank Steele. Mr Steele then told me that he had written off £103,000. I was told that Oakwood had bought Classic Bus on 31.12.13 and I asked for details of the sale of the vehicles. I was told that the majority of the vehicles that were transferred were on finance and I was then told that the sale price was £25,000 and that this included all the vehicles. I enquired as to whether the sum of £25,000 had been paid. I was told that it was payable in instalments and I pointed out that these should have been paid in full by May 2014 and that we were now in September 2014. Mr Higgs told me that there was a revised instalment schedule with Leonard Curtis and that he was still renegotiating the payments. He told me that he had paid £6,500 of the £25,000 owing and that the first payment was made in May 2014. He said he thought that the second payment was made in June 2014.
71. I then asked Mr Higgs about the administrator's progress report of July 2014 from Leonard Curtis which stated that to date only £1500 of the £25,000 owing had been paid. I then reminded him that he had just told me that he had paid £6,500 in May and June and then Mr Higgs tried to say that he might have made a payment in July. Then he told me that he had made 3 payments comprising 2 payments of £1500 and 1 payment of £2500. I suggested that he had changed his evidence but once again he disagreed with me. I put to him that he was being dishonest and he denied this instead saying that he did not have the information in front of him. Mr Higgs assured me that he was up to date with the finance payments to Close Brothers and with staff wages, PAYE and national insurance.
72. I asked him about the finances for Red Rocket as the bank statement produced revealed that the balance was £213.65. He said that he was relying on an expired revolving credit agreement with Paramount Commercial Credit which he was going to renew.

The closing submissions - Oakwood

73. I then returned to open session and I explained to Mr Higgs and Mr Steele that this was the point where I would hear closing submissions or representations as opposed to evidence. Mr Higgs submitted that Oakwood had sufficient finances for the current authority and the application for an increase and I stated that I would have to take into account the fact that Oakwood was in arrears with the debt owing to Classic Bus. Mr Higgs submitted that David Hughes' employment as the transport manager would satisfy the professional competence requirement, that there were no systematic failings with regard to maintenance and that the failings that TE Newton had observed were now 2 years old and that they had never been put to him until the public inquiry. As a result of TE Newton's failure Mr Higgs had not been able to draw matters to the drivers' attention in a timely manner to make sure that they were acting properly.

74. With regard to the Red Rocket application Mr Higgs submitted that I could grant it with a finance condition. He submitted that both entities fulfilled the repute requirement. He asked me if the disputed evidence about unauthorised operation was relevant and I indicated that it was key to my deliberations hence the need for me to obtain the transcripts of the hearings. I explained again that operator licensing is based on trust and that I had to ask myself if I could trust Mr Higgs, Mr Hughes and Mr Steele. I indicated my concern to Mr Higgs about him changing his evidence regarding the payments to the administrators, about the unauthorised use, about operating more vehicles than he had authority for and about registering services when he had insufficient vehicle authority to run them. In answer Mr Higgs said that DTC Evans was satisfied with his answers and that many of the matters complained of went back to 2012. Once again Mr Higgs started to argue with me about his inconsistent evidence regarding the payments to Leonard Curtis and then he tried to assert that he had followed my direction and so this illustrated that he had repute. I put to Mr Higgs that I had simply told him to comply with the law as he had not been doing so previously.
75. Mr Hughes then intervened to try to assist Mr Higgs stating that I could trust Mr Hughes and that he would make sure that everything was done properly. I indicated that I was satisfied that Mr Hughes satisfied the repute requirement.
76. Finally I heard submissions from Mr Steele who told me that he felt that he retained his repute because he and Mr Higgs had done nothing wrong and that I was simply dealing with unfounded allegations made by Blackpool Council and Blackpool Transport.
77. Having heard all the submissions I explained that I would reserve my decisions but that I would also have to wait until the transcripts were received and sent to Mr Higgs before I could consider my decisions. I confirmed that if upon reading the transcripts Mr Higgs wanted to make further statements or give further evidence then he should apply to do so.

The blog by Philip Higgs

78. I then put my briefing and case papers to one side pending receipt of the transcripts. It was then brought to my attention on 5th September by a third party that Philip Higgs had posted a "blog" on the internet via the Oakwood web site. This was done at 12.00 and the blog invited others to share it by the use of email, Twitter, Facebook and Pinterest. It was entitled "Good repute? Beyond reproach? Or Beyond Belief?" It stated this

"Yesterday we attended our fifth inquiry at the Traffic Commissioner's (TC) office for what we consider to be a simple application for an increase in the number of vehicles we can operate on Oakwood Travel's operators' licence and an application for a separate licence for Red Rocket Bus so we can restart the successful Blackpool to Manchester Express service trialled last autumn.

It was in many ways a complete re-run of the previous four hearings with no new evidence being considered. The only difference was that the VOSA report into complaints made by Blackpool Council in September 2012 against our operation was considered yet again after the TC claimed they were unaware that the VOSA statement was retracted at the first Public Inquiry back in April 2014 and the Council's complaints dismissed as being invalid.

Throughout the process the public has been able to attend and yesterday's hearing included such all stars as:

(note that references to third parties on the blog are redacted)

Thankfully, we had support from some of our loyal members of staff as well and the upshot of yesterday's inquiry is that we now have a further wait until early November to hear the TC's decision.

Whatever the outcome, it shows clearly that the TC's role as judge, jury and executioner is no longer fit for purpose and contrary to natural justice – with no redress to the applicant for the length of time the TC has taken to perform their statutory duty. If a process can take over a year to resolve and if we are required to present the same information five times the system is well and truly broken!"

79. It made allegations about individuals who had apparently attended to observe the hearings and I have not included those comments in this document as I do not know whether they are true or not.
80. It attacked the role and function of the traffic commissioner system by stating that the TC's role as judge, jury and executioner was no longer fit for purpose and contrary to natural justice with no redress to the applicant for the length of time the Traffic Commissioner has taken to perform their statutory duty.

The reconvened hearing on 10th September 2014

81. Having had sight of this blog I instructed my clerk to contact Mr Higgs immediately and to request him to attend before me to explain himself. Mr Higgs duly attended before me on 10th September 2014 and he was assisted by Mr John Taylor from the TASS partnership. On 9th September at 17.45 Mr Taylor emailed a letter of apology from Mr Higgs to me.
82. To assist Mr Taylor and Mr Higgs I went through the wording of the blog and indicated where I considered it to be misleading or factually incorrect. Those misleading comments or factual inaccuracies related to
- the reference to 5 public inquiries (when there were 2 and indeed some of the hearings were adjourned due to the actions of the operator and in the interest of fairness to the operator),
 - the reference to no new evidence being admitted at the last hearing when quite clearly I had heard full formal evidence from TE Newton, Mr Higgs, Mr Hughes and Mr Steele,
 - the reference to me claiming that I was unaware that TE Newton's statement had been retracted (this is also factually incorrect as the statement was not retracted but amended) at the inquiry before DTC Evans in April 2014,
 - the reference to the operator having to wait until November to hear my decision implied further delay on my part when my office would have to obtain a transcript of previous evidence because Mr Higgs refused to accept previous evidence that he had given.
83. I also went through the letter of apology that I had received from Mr Higgs. That letter stated that Mr Higgs posted the blog because of utter frustration with the length of time that it had taken to resolve matters and that he wanted to highlight this and to conclude that the underlying system, or how it is resourced, is not best serving the needs of the public or operators. His letter accepted that his words could be seen as a personal attack on my integrity or the traffic commissioners generally. He stated that he had withdrawn the blog at lunchtime the same day and that it had only had 23 views. He stated that he recognised the extremely difficult balance that the traffic commissioner has to undertake to regulate fairly and that this needs a constructive and open relationship between the traffic commissioner and the operator. He said that he wanted to have an appropriate, open and professional relationship with me on behalf of his companies.
84. The letter then went on to make complaint about Blackpool Council and Blackpool Transport, and to make complaint that as a result of the delay in the grant of the licences that there was real financial and systematic damage to the potential of the business. The letter then attempted to quantify that financial loss. The letter finished with an apology and an assurance that the blog would not be reposted on the internet and that he would not repeat a blog using similar wording in the future.

85. Having been through both documents I enquired as to who was going to address me and Mr Higgs stated that he wanted to begin by apologising in person stating that any offence was unintentional and unwise and that as soon as his common sense overrode his frustration the blog was withdrawn.
86. I then addressed Mr Taylor stating that I had asked Mr Higgs to attend as I took the view that such a blog which attacked the traffic commissioner system was a matter capable of affecting an operator's or individuals' reputation. I explained that I had some questions for Mr Higgs and I suggested to him whilst he may have been impetuous that the heading he had used showed that his actions were quite intentional. Eventually he agreed citing his sheer frustration at the process as the reason. He then made reference to the article in the trade publication *Route One* about the hearing on 25th July 2014. As a result I asked the traffic commissioners' media officer Damien Currie to observe the hearing. He duly did so. Mr Higgs then complained that the article was unfair and he did not like the fact that reference was made to Mr Higgs not telling the truth. He said that he thought the article was too one-sided and not balanced enough in his favour. He told me that he took the matter up with the editor of *Route One*. Mr Higgs also made reference to Mike Jewel who is extremely well known in transport law circles as a very well respected independent transport law journalist and he had written the *Route One* article. Mr Jewel was present at the hearing and in the interests of openness and transparency I took a moment to explain to Mr Higgs and Mr Taylor how long I had known Mr Jewel and in what capacity.
87. I then enquired of Mr Higgs how his frustration with the press and the article that appeared about him could translate into an attack on the traffic commissioner system and I asked him why he had not posted a blog complaining about the press instead of me. I then read the press article and made it clear to Mr Higgs that I considered it to be balanced and factually correct. Once again I asked Mr Higgs how his frustration with the press could translate to an attack on the traffic commissioners and he acknowledged that he was unable to answer the question initially and then once again said that it was frustration.
88. I then went through the various aspects of the blog that I considered to be misleading or incorrect inviting Mr Higgs' comments and then I enquired as to how he thought that he and I could do business if his view was that the regime that he wanted to be a part of was no longer fit for purpose. Mr Higgs said this in response "*I'm not...I don't want to get drawn into that, madam.*" Once again I asked him how I could trust him if he could not trust me. Mr Higgs' response was that he had withdrawn the blog and that he now withdrew the remarks.
89. I then heard submissions from Mr Taylor for which I am grateful. Finally I indicated that I regarded the posting of the blog as a matter that was relevant to the reputation of the operator and Mr Higgs but that I would of course follow the principle of proportionality. Mr Higgs undertook not to make any similar postings and the hearing was concluded.
90. I then once again put my papers to one side pending receipt of the transcripts. I arranged with my staff for the transcripts of the July hearings to be obtained which was subsequently done. I am informed by my office that on 5th September 2014 Mr Philip Higgs emailed my staff requesting a copy of the transcript for the 3rd September 2014 hearing and a quote for a transcript of the initial April hearing. The relevant information as to how this is obtained was provided to Mr Higgs together with the contact details of the transcribing company, AVR Transcription Limited (AVR). A letter was subsequently sent to AVR providing the recordings for transcribing. AVR then contacted Andrew Bond at my office as they had not heard from Mr Higgs. Mr Bond subsequently sent an email to Mr. Higgs on 21st October 2014 advising him that AVR had been unable to contact him and asking him to please contact them to discuss the transcription request. Mr Higgs then responded on 24th October 2014 as follows:

"My colleague left a message with AVR just to say we were advised to "hold off" on requesting the transcript until receipt of Mrs Bell's decision."

I am not sure what this message relates to as I have had no dealings with AVR and have left no such instruction or message. There were no further communications regarding the transcript requested by Mr Higgs.

The new application for a licence by Frank Steele

91. After the public inquiry hearing had been concluded it was brought to my attention that an application was received at the Leeds Central Licensing Office by Frank Steele for a standard international PSV operator's licence authorising two vehicles. That application was signed by Frank Steele on 21.07.14 and was received at the Leeds office on 05.09.14. Put simply Mr Steele signed the application form some 4 days before he deliberately chose not to attend the public hearing on 25.07.14 and the application was submitted in person at Leeds some 2 days after Mr Steele had given evidence to me on 3rd September 2014. He never once referred to this application in his evidence instead merely saying that he might want to operate another vehicle one day. I am satisfied that Frank Steele chose to deliberately not tell me about the application although I do not know what his reasons for this are. Once the matter came to my attention I directed that it should be held in abeyance until I had finalised and issued these decisions as they are directly related to the repute of Frank Steele.

The third party correspondence received after the final hearing

92. After the public inquiry hearings but before I started to consider my decision my office received some correspondence from 4 individuals. One letter was from an anonymous individual but the others were from individuals who provided their name and address.
93. I shall refer to them as Mr A, Mr B and Mr C as it is appropriate to redact their personal details. The letters are as follows -
- On 14.10.14 Mr A wrote to me making allegations about the operation of vehicles by Oakwood and about the behaviour and repute of Mr Hughes. The letter was received at my office on 16.10.14.
 - On 28.10.14 a letter was received at my office from Mr B and this letter was handed to me by my staff on 03.12.14. This letter also made allegations about the operation of vehicles by Oakwood as well as allegations about the behaviour and repute of Mr Hughes.
 - A number of letters were received from Mr C, as follows: 08.08.14 regarding the operator's finances; 29.09.14 regarding the operation of vehicles; 06.10.14 regarding allegations of not complying with the registered timetable; 20.01.15 regarding the operator's finances and attaching a report from Leonard Curtis of 18.12.14; 23.01.15 regarding the alleged repossession of 14 of the operator's vehicles; 27.01.15 regarding the operation of vehicles; and 03.02.15 regarding the operation of vehicles.
 - An anonymous letter was received at my office on 23.10.14 making submissions and referring to services 30 and 82.

94. Traffic commissioners have no control over who chooses to write to us and a large part of my time can be taken up with dealing with and replying to correspondence in my capacity as both the North West traffic commissioner and the Senior Traffic Commissioner. I was concerned that 4 individuals had written to me after the hearing and that Oakwood and Red Rocket had not been copied in to the correspondence.

The delay in the issue of these decisions

95. Regrettably there was a delay with the consideration and subsequent issue of these decisions. Mr Higgs was understandably concerned about this and so he instructed Backhouse Jones solicitors to write to me stating that if I did not issue my decision that I would face judicial review proceedings. This letter was dated 3rd December 2014 and I instructed my staff to respond to Mr Backhouse but I also phoned him personally (in the presence of a public inquiry clerk) as well to explain the reasons. This was followed up by a letter from Ms Bielby on 9th December 2014 explaining the reasons for the delay were a combination of pressure of work and the awaiting of the transcripts.

96. I consequently commenced work on my decisions as planned and I was due to complete my work on them on Sunday 11th January 2015. However on that day my mother was taken to hospital as she was very seriously ill and exactly a week later my father was also admitted to hospital with a serious illness. As a result they were both hospitalised for a number of weeks and I was granted compassionate leave by the Department for Transport until I returned to work on 9th February 2015. Understandably I then had an even greater back log of work. In March I was then notified by the Department for Transport that Mr Higgs had lodged a formal complaint against me with the Secretary of State due to the delay in the issue of the decisions. I have not yet seen the complaint against me and so I do not know what the nature of the complaint is. In any event I had set time aside in my diary to finalise the decision but I then discovered that not all of the transcripts had been obtained as Mr Higgs had not obtained the one that he stated he would and also because the transcription company had transcribed a different recording. I was frustrated by this development and then matters were made even worse by problems with staff and the computer system. I shall not set them out in these decisions but I make it clear that the Department for Transport were provided with the details so that they could answer the complaint against me. My office had also received a further letter from Backhouse Jones and so once again I phoned Mr Backhouse (in the presence of my secretary) and explained the combination of exceptional reasons for the delay. He understood my position and then he invited me to hear representations from him in the hope that he could sort the case out. I indicated that this would not be appropriate as the final hearing had taken place and I had already started to consider my decision. He sought to persuade me to think again and asked if he could make representations. I was at this stage conscious that as a result of the unsolicited third party correspondence received after the final hearing that I would have to write to Mr Higgs in any event disclosing it (albeit redacted as to the identities of the authors) and inviting his comment.
97. On this basis I suggested to Mr Backhouse that I was prepared, in view of the exceptional circumstances of this case, to hear oral representations from him. I obviously did not carry out further work on the cases pending those representations.

The hearing on 27th April 2015

98. Accordingly Mr Backhouse appeared before me on the above date with Mr Higgs and Mr Hughes in attendance. I expressed my concerns to Mr Backhouse by explaining that these were cases where I was considering loss of repute and revocation of the Oakwood licence and refusal of the new application by Red Rocket. It was entirely appropriate for me to state this as it will have been no surprise to Mr Higgs or Mr Hughes and also it was only fair that Mr Backhouse knew that the difficulties that his client faced. I also informed Mr Backhouse that I had received unsolicited correspondence and that in the interests of fairness I was duty bound to share it with Mr Higgs. I did not at that time state what weight I would attach to the letters. I also explained to Mr Higgs the reasons for the delay.
99. Mr Backhouse then informed me that as a result of the delay Mr Higgs did not now want to proceed with the current applications by either Oakwood or Red Rocket and that these would be withdrawn by letter. He then told me that instead Mr Higgs wanted to proceed with a fresh application by Oakwood for an increase in vehicle authority from 10 to 18 vehicles and that this application would be submitted imminently. Mr Backhouse rather optimistically asked me to grant authority for an extra 5 vehicles on that day and then he asked if I could grant the full increase sought in time for the summer season which starts in June. I expressed my surprise at this request but stated that I would hear representations from him and we agreed on a date for hearing of Friday 22nd May 2015. I explained that in the interests of fairness that I would send redacted versions of the third party letters to the operator to allow the opportunity to respond. These were issued to the operator's legal representative on Friday 8th May.
100. On Friday 15th May I received a long letter from Mr Backhouse making a number of further representations and I do not set it out in full here. In summary he asserted that I must now recuse myself from the case and that I must appoint a fresh traffic commissioner (or deputy)

to hear the new application afresh as Mr Higgs and Oakwood would not have a fair hearing. He submitted that it had been unfair to send the redacted letters to Mr Higgs and Oakwood when they did not know who the authors were. He submitted that instead I should have referred them to DVSA so that they could interview and if necessary take statements from the individuals concerned so that they could then give evidence, if necessary, in any new hearing. Finally he asked me to vacate the hearing on 22nd May 2015 and to hand the matter over to a fresh traffic commissioner. I instructed my clerk to notify Mr Backhouse that the matter would remain listed for 22nd May.

101. I considered Mr Backhouse's application for me to recuse myself to be premature and misguided. I had not yet indicated what weight, if any, I would attach to the letters. I had not sought to be unfair to his client in any way. I consider that if I had not disclosed the letters and instead had kept them to myself that this would have been both wholly inappropriate for a single person tribunal and also manifestly unfair to Mr Higgs. In that event he would never have known what was said about him or indeed whether I had attached any weight to what was said. Instead I was completely open and transparent. As stated above I have no control over who writes to me or what they say. Since my appointment as a traffic commissioner in 2000 I have received many letters from third parties either making complaint about the activities of someone asking me to investigate or advising me how to carry out my role and to make sure that non-compliant operators are "put out of business". I consider that the letters received in these cases fall into those categories. They seek to make complaint against Mr Higgs and his companies and I also consider that one or two of them also try to influence me in making a decision that is against Mr Higgs.
102. Since their inception traffic commissioners have jealously guarded their independence and this has often been referred to as independence from undue Government and Ministerial influence or interference. But that independence is also an independence from other sources such as those operators whom we regulate and third parties who would try to influence what traffic commissioners do and how we do it. I remind myself (and Mr Backhouse) that this independence is vital for the protection of individuals like Mr Higgs and other operators who appear before traffic commissioners. In his written representations Mr Backhouse suggested that I was unduly or inappropriately influenced by some observers sitting at the back of the public inquiry room. Nothing could be further from the truth. Public inquiries involving PSV operators are quite different in their nature from those involving goods operators. Inquiries for goods operators (apart from environmental cases) only attract observers in the most exceptional of cases and observation of a goods inquiry by anyone external or other operators is quite out of the ordinary. Conversely the majority of PSV public inquiries attract external observers. Some are local authority employees seeking to ascertain if they will need to relocate contracts if the licence is revoked or suspended and some are current or former drivers but some are other operators who seem to delight in viewing the misfortune of others. Some observers also seem to consider it acceptable to make facial expressions during certain parts of the evidence. The presiding traffic commissioner is at an advantage as we can see all of these facial gestures whereas the individual who is giving evidence generally cannot. They are therefore at a disadvantage ignorant of the gestures of the observers.
103. In this case I have been concerned about the attendance of the observers and it is quite clear that there are a number of individuals who do not like Philip Higgs. There were two key parts in the evidence of the operators and they are highly relevant to the submissions that Mr Backhouse makes. When Philip Higgs was arguing with me about his previous evidence and whether he had accepted something or not as I put my recollection of the evidence to him all of the observers started to nod in a way that I can only describe as "furiously". I was concerned that Mr Higgs had not seen this and so I described it to him to help to make my point and also so that he knew what external observers had done in a hearing. I used colloquial language by stating that the observers were like a set of "nodding dogs". Mr Backhouse asserts that I was unduly influenced by this nodding and somehow seems to make a connection that I would not or could not make up my own mind but would be unduly or improperly influenced in my decision. I completely reject that assertion and I also refer to an incident later on in the proceedings when the observers seemed to take delight in the fact

that a witness was uncomfortable. I found this extremely distasteful and therefore felt that I had to intervene and to ask the observers to behave properly otherwise I would have to exclude them from the inquiry room.

104. With regard to the letters that I have received I consider some of them to be nothing more than an attempt to unduly or improperly influence the decisions that I have to make and so I have completely excluded them from my deliberations. They are certainly not evidence and I deal with them accordingly below in my considerations.

The hearing on 22nd May 2015 – the application for recusal

105. On 22 May 2015 the hearing was reconvened for the last time. Philip Higgs, David Hughes and Frank Steele all attended and Mr Higgs and Mr Hughes were represented by James Backhouse solicitor. Mr Steele was unrepresented. Once again there were a number of observers. To assist Mr Backhouse I summarised the position so far and Mr Backhouse renewed his application for me to recuse myself. He asked me to apply the test of whether the objective bystander would consider that the operator had received a fair hearing. He submitted that there should be a system in place at the traffic commissioner's office to prevent presiding commissioners from seeing correspondence whilst a public inquiry was ongoing. I indicated that I did not think that this was appropriate and that I was perfectly capable of seeing correspondence and deciding whether I should copy it to the operator, whether I should admit it in evidence and if so how much weight I should attach to it.

106. Having considered matters carefully I informed Mr Backhouse that I would not recuse myself and that I would deal with the case to conclusion. I indicated that I would set out my reasons in my written decision and they are as follows.

- I have heard a great deal of evidence and there have been a number of hearings and the cost of putting all matters before a new commissioner would be great.
- There would be even further delay in dealing with matters.
- It would be a complex exercise to ascertain which evidence I have heard should be put before any new commissioner.
- I consider that I have always been entirely fair to the operator and transport manager by ensuring that they had all evidence and papers that were in my possession and I have given them every opportunity to respond to that evidence.
- Similarly I consider that any third party or objective bystander observing the proceedings would come to the same conclusion.
- I am entirely familiar with the principles of excluding evidence which is not relevant or where the prejudicial value outweighs the probative effect. In this case I have excluded the evidence of the letters as they fall into this category.
- Finally I reject Mr Backhouses' argument that I should not have dealt with the blog that Mr Higgs posted on the internet. I consider that this blog was an integral part of Mr Higgs' attitude to the operator licensing system.
- I was also concerned that the application by Mr Backhouse for me to recuse myself on the allegation of the perception of bias was something of a ploy. In support of this Mr Backhouse told me that he had to pursue the allegation of perception of bias in case he had to lodge an appeal to the Upper Tribunal. In this case I would have been perfectly justified in telling Mr Backhouse that I was not prepared to hear any representations at all as I had heard all the evidence but in an attempt to be fair to his client I had chosen to do so. I had also allowed Red Rocket to withdraw its application for a licence, Oakwood to withdraw its application for a vehicle increase and Oakwood to submit a new application for a greater increase and I had allowed Mr Backhouse to attend before me and make representations. Mr Backhouse's response was to ask me to recuse myself on the basis of unfairness.
- In this matter I afforded Mr Backhouse and his client every opportunity to make representations when I did not have to do so. Mr Backhouse told me that he thought that he might be able to persuade me to deal with matters as he wanted. He suggested that the matters were not serious. I explained to him that I regarded this as a case where all options remained open to me and that I was actively

considering revocation of the Oakwood licence and refusal of the Red Rocket application. Consequently I was not prepared to start again before another traffic commissioner.

The further evidence of Philip Higgs

107. Having confirmed that I would deal with matters to conclusion I then heard further financial evidence from Mr Higgs. I was told that he was “up to date” with his I.V.A payments although no documentary evidence of this was produced to me. I was told that he was paying £300 per month. I enquired as to whether the payments for the purchase of Classic Bus were up to date and I was told that they were in arrears. No documentary evidence of this was produced and so I gave Mr Higgs a period of time to produce this from Leonard Curtis. I asked Mr Higgs why he was in arrears and he said that it was because he had to pay rent and rates for the business premises at Brinwell Road in Blackpool. I was concerned at this as Mr Higgs had been paying this for some time and I did not see how this was relevant. Mr Higgs then told me that because his business plan had not worked out as a result of his application for the licences not being granted that he was unable to generate the necessary revenue to make the payments. He told me that Leonard Curtis was understanding of his position.
108. I then heard some evidence about the removal of a number of vehicles by Close Asset Finance. Mr Higgs told me that the finance agreement was terminated by Backhouse Jones solicitors due to a dispute with Close Asset. Again no documentary evidence of this was produced and as Mr Backhouse confirmed that his firm acted I again allowed a period of time for him to write to me to confirm the position. In summary Mr Higgs told me that he signed the finance agreement with Close Asset in haste and effectively under duress, that he had not known exactly what he was signing and that as a result he had decided to terminate the agreement. He told me that the vehicles that were the subject of the finance agreements were removed by Close Asset between 13th and 15th January 2015 and that he had already been buying new vehicles in anticipation of the vehicle removal. He then provided me with a fleet list of the replacement vehicles and stated that 4 vehicles were subject to finance agreements with Finance Genesis.
109. At this hearing I was keen to clarify a matter with Mr Higgs and Mr Backhouse as I wanted to be sure that I had understood Mr Higgs’ previous evidence to me. As a result I ascertained that between July 2012 and August 2013 that Classic Bus had authority to operate 4 vehicles and that Oakwood had authority to operate 8 vehicles. I ascertained that between August 2013 and December 2013 Classic Bus had authority to operate 10 vehicles and Oakwood had authority to operate 8 vehicles and that from January 2014 Oakwood had authority to operate 8 vehicles and Classic Bus had no authority to operate any vehicles. I indicated to Mr Backhouse that I had made an error and that this would be corrected. However Mr Higgs accepted that the relationship of the two entities was incorrect and that the 2 entities of Classic Bus and Oakwood had in fact operated as one entity. I also clarified that Frank Steele had joined Mr Higgs in January 2014 and had left in July 2014. Finally Mr Steele confirmed that he had written off the sum of £103,000 which had been a loan to the business.
110. After the lunch adjournment Mr Backhouse asked to address me in camera and I agreed. In camera he told me that Mr Higgs now understood that he had to be open and honest with me and so he was now disclosing to me that he had acquired a share in Nuttalls Coaches in Warrington which has a licence for 8 vehicles. The purpose of the acquisition was to use this licence to provide services from 1st June 2015 as Mr Higgs had applied to run summer services with effect from that date. Whilst the application to register the services was made by Oakwood the services would in effect be subcontracted to Nuttalls. I was told that the purchase would be completed by 30th June 2015 and that the sale price was £8,000 on a “debt free, cash free, asset free” basis. I was told that Mr Higgs was personally paying 48% of the purchase price and Oakwood was paying 52% of the purchase price. I enquired where the money was coming from and I was told that Mr Higgs had his own personal money for the 48% and that Oakwood was using its finances to fund the 52%. Mr Higgs told me that he did not have to disclose this purchase to the liquidator and that he had therefore not done so

but that he would now take advice on whether he should now do so. (My staff then made enquiries and ascertained that there is a valid licence for 8 vehicles.)

The submissions of Mr Backhouse

111. Finally I heard closing submissions from Mr Backhouse and these were very persuasive. He is to be complimented on his advocacy skills in this case. He asked me to see “the world” from Mr Higgs’ perspective. I stated that this would be helpful as Mr Higgs had not been represented at the previous hearings and he had not been the easiest individual to deal with either as a witness or as an operator/applicant seeking to make representations. Mr Backhouse reminded me of the fact that the whole issue for Mr Higgs and his various entities had arisen as a result of a complaint by a competing operator namely Blackpool Transport which is wholly owned by Blackpool Council. He reminded me that Philip Higgs thought that matters had been dealt with to conclusion by DTC Evans and that it was therefore a blow to him when he discovered that he had recused himself and that further hearings and therefore delay would take place. He asserted that Mr Higgs felt that the report from TE Newton played straight into the hands of the competing operator. Mr Backhouse then told me that the letters that I had received had also been sent to other parties as well in the Blackpool area and that Mr Higgs was effectively the victim of a hate campaign. Mr Backhouse told me that the letters had gone to third parties such as Blackpool Pleasure Beach with the sole intention of taking business away from his client and he reminded me that they had also gone to his son’s school. Whilst I was aware of this from Mr Higgs’ original written representations I had not fully appreciated the circumstances in which these had been sent and having heard more detail about this I expressed my sympathy to Mr Higgs about any distress that might have been caused to his son as a result. Mr Backhouse explained that Mr Higgs was understandably upset by an orchestrated set of well written letters.
112. Mr Backhouse submitted that the smear campaign against Mr Higgs had coloured his approach to matters and that he was very frustrated by the whole chain of events. He asked me to take account of the positive factors which were that there were no significant problems with vehicle maintenance, that there was in fact no problem with the reliability and punctuality of local services and that there were no problems with drivers’ hours and tachograph regulations with regard to the private hire work.
113. He submitted that these three factors demonstrated that the Mr Higgs and Mr Hughes could manage the business and that they were a good medium sized operator. He said that there was a trail of poor communication with my office and that Mr Hughes was a good transport manager and that communication was now much improved. He submitted that Mr Higgs had “been through the mill” and that he had removed the blog on the internet after 2 hours.
114. He reminded me that DVSA through TE Newton had not interviewed Mr Higgs about TE Newton’s findings and I accepted that this was the case and that this was regrettable. He said that Mr Higgs was cognisant of the passage of time. Finally he asked me to apply the test of trust but he put it in colloquial language. He said that Mr Higgs was “a safe bet” and that there was little risk in me giving the operator a chance. He stated that in measuring the element of risk that I could look at the lack of problems with maintenance, the lack of problems with drivers’ hours rules, the fact that the services were run reliably and that Mr Higgs was properly running a good business with all the necessary finance in place. He said that I could take specific account of the impact that the whole lengthy public inquiry process had had on Mr Higgs.
115. Mr Hughes then intervened and said that his drivers had been told by drivers employed by their competitor that they would be out of a job after the public inquiry. I asked again as to why there was so much animosity to the operator and I was told that it was because of commercial competition and disgruntled former employees.

The further evidence of Frank Steele

116. I then heard from Frank Steele who had sat patiently throughout the proceedings. Mr Steele was adamant that he wanted to continue to operate PSVs and that he wanted authority to

operate just 1 vehicle so that he could operate his coach on private hire work. In effect he told me that coach operation was "in his blood" and that this was all that he ever wanted to do and that he did not want to retire. I enquired as to why he could not simply drive coaches instead as this was what he was doing at the present time and his answer was that he wanted to be able to have the choice of whether to take on work or not and that he could not do this as a driver.

117. I indicated to all parties that I would have to reserve my decision as the matters were complex and as I needed to receive the documents regarding Close Asset and the sale of Classic Bus to Oakwood.

The further documentation received

118. Consequently on 3rd June 2015 my office received a letter from Oakwood now known as Catch22Bus enclosing a letter dated 13th January 2015 from Catch22Bus to Close Bros Asset Finance cancelling the vehicle rental agreement with immediate effect. On 5th June 2015 I received a letter from Backhouse Jones regarding the Close Asset agreement and finally on 9th June I received a letter from Leonard Curtis dated 4th June 2015 regarding the purchase of Classic Bus by Oakwood. I have taken all 3 letters into account in evidence.
119. The letter of 13th January 2015 from Catch22Bus to Close Asset set out in detail the reasons for the cancellation of the vehicle rental agreement citing duress and the fact that the nature of the finance agreements was not what Mr Higgs was led to believe they were and that as a result his company was paying significantly more than anticipated and that the title of the vehicles had transferred to Close Asset when this was not what had been apparently agreed.
120. The letter from Backhouse Jones set out the history of the signing of the new agreements between Mr Higgs and Close Asset and confirmed that they had been instructed to act in the dispute. That dispute effectively related to the type of finance agreements, the ownership of the vehicles and the valuation of the vehicles. Consequently Close Asset served a notice of termination of the lease agreements on 9th January 2015 and Oakwood cancelled the agreements on 13th January 2015 as evidenced by the letter referred to in the above paragraph. As a result the vehicles were recovered by Close Asset thereafter and as at the present date (some 5 months after the recovery) there have been no further proceedings by Close Asset to recover any further monies.
121. The letter of 4th June 2015 from Leonard Curtis confirmed that the sale price of £25,000 for the sale of Classic Bus to Oakwood is secured by way of deferred consideration and a personal guarantee from Philip Higgs. It confirmed that to date the sum of £13,000 has been received from the purchaser and that the amount owing is in arrears as the purchaser has been unable to make payments because it has not been able to realise its business plan for 2014 and 2015. The letter states that the purchaser has been in contact with the administrator with regard to its financial position and that it "has made payments as and when it has been able". The letter also states that "upon the granting of the additional vehicle licences, (my underlining not theirs) the purchaser will be able to agree a revised payment schedule".

Legal considerations

122. Having reserved my decisions I have read and re-read all original briefing papers, all documents submitted by the operator and my notes of evidence and I have taken account of all the evidence in my briefing papers with the exception of the unsolicited correspondence received by me as I am satisfied that the prejudicial value outweighs the probative effect. I have considered the oral evidence that has been given to me by TE Newton, Philip Higgs, David Hughes and Frank Steele as well as the eloquent representations of James Backhouse. In this case transcripts have been obtained and due to a combination of the delay in considering my decisions caused by my excessive work load and the fact that these have been exceptional public inquiry hearings due to the number of hearings and the delay I read all of the transcripts so as to refresh my memory and make more detailed notes. This in itself has added to the time taken to consider and write these decisions. As a result of

reading the transcripts and the notes I have taken I am entirely satisfied that there has been no unfairness to the operator.

123. This is a complex case with complex facts and circumstances and it is also exceptional. Whilst I am used to such cases as a traffic commissioner of 15 years standing I consider this to fall into a handful of cases that have caused me much concern. The matters that I was originally asked to determine are simple. Should I grant a licence to Red Rocket for a new business venture? Should I grant a vehicle increase to Oakwood? Do I need to take any regulatory action against Oakwood? Can I trust Philip Higgs as “the brains” of all of the entities? Can I trust Frank Steele as a transport manager and potential operator both now and in the future?
124. Those questions have now changed since Mr Higgs instructed Mr Backhouse literally at the eleventh hour. I remind myself that Mr Backhouse was not instructed to contact me with a view to making further representations which would or could have a positive impact upon my determinations. Mr Backhouse was instructed to complain to my office about my delay in issuing my decisions and when the matter still remained outstanding he was then instructed to make formal complaint about me to the Secretary of State. It was only when I spoke to Mr Backhouse on the telephone (again this was an exception as most phone calls with advocates are through my staff) and to explain the personal and office circumstances that led to the delay that he asked if he could persuade me to hear from him. In an attempt to be fair I agreed and as a result of those representations the application by Red Rocket is now withdrawn, the original application for an increase by Oakwood is withdrawn and I am asked to exceptionally grant an even bigger increase for Oakwood.
125. I make it clear for the avoidance of any doubt that as at the date of the issue of this decision I have not seen the complaint that has been lodged against me to the Secretary of State and I have not asked to do so until I have issued my decision. This fact can be confirmed by the Department for Transport if Mr Higgs should doubt my word. I also make it clear for the avoidance of doubt that my decision is not affected in any way by Mr Higgs making complaint about me. The public are entitled to expect their regulators to be robust – and so I am and I make no apology for it. The “flip side of the coin” is that if I am to be robust and criticise operator that I also have to be able to take that criticism. Such criticism goes with the role of traffic commissioner. I therefore take it in the spirit that it is made – in other words I do not take Mr Higgs’ complaint to the Secretary of State about me personally just as I did not take his complaint about the traffic commissioner regime on the internet blog personally.
126. All of that having been said I have to finally make determinations and give reasons and issue decisions. I have to make findings of fact and conduct a balancing act of the positive and negative features. I have to ask myself the Bryan Haulage and Priority Freight questions. In many cases it is possible to look at matters “in the round” and to see the “whole picture” and to give some short key reasons why I have come to a particular decision. In some cases, such as this, I have to conduct an almost forensic analysis of the evidence as I know that Philip Higgs with or without Mr Backhouses’ assistance will go through every word of the transcripts and every word of this decision looking for the slightest thing that gives him reason to appeal.
127. When dealing with the public inquiries I have sought to adopt a proportionate and purposive approach taking account of the appropriate legislation and case law. The governing legislation with regard to the public inquiry is the Public Passenger Vehicles Act 1981 and I remind myself of my role in fulfilling the objective of securing compliance with this legislation.
128. I have considered the Upper Tribunal guideline case of *Bryan Haulage (No. 2) 2002/217* which states that I must not ask myself whether the conduct is so serious as to amount to a loss of repute but whether it is so serious as to require revocation. Put simply, the question becomes “is the conduct such that the operator ought to be put out of business?”

129. I have also asked myself the necessary question of how likely it is that the operator Oakwood will in future operate in compliance with the operator licence regime in accordance with the Upper Tribunal case of Priority Freight and Paul Williams T2009/225. I remind myself that I must consider the Priority Freight question before I ask myself the Bryan Haulage No.2 question. I have set out the balancing act in detail above and taken account of the burden and standard of proof as referred to in the Court of Appeal in the case of Muck It Ltd, Hazel and Hayley Merrit and the Secretary of State for Transport 2005 EWCA Civ 1124. I have also taken particular account of the demeanor of all of the witnesses, and the manner in which they submitted their written evidence and the way in which they gave their oral evidence.
130. In this case I have also reminded myself of, and taken account of, the helpful guidance given by the House of Lords in South Bucks District Council and Another v Porter (No. 2) 2004 UKHL 33 with regard to the giving of reasons at paragraph 35 of the judgment and subsequently endorsed by the Transport Tribunal in the case of Appeal No. 2005/542 James Thorogood at paragraph 4. The Upper Tribunal case law guidance helpfully reminds traffic commissioners not to simply recite or “regurgitate” the evidence adduced by the witnesses followed by the giving of the decision but instead to draw the conclusions and findings from the evidence referring to it only where necessary and to then pay detailed attention to the conducting of the balancing act after the findings of fact have been set out and then to set out the decisions made and directions given. In this case it is vital that I set out the evidence in detail so that any party reading it can see the whole picture.
131. Therefore I consider it vital in a case such as this that I do not lose sight of my key tasks – and they are to answer the Priority Freight and Bryan Haulage questions. In doing this I take specific account of the findings of fact. In this case the findings of fact are analogous to a jigsaw puzzle. Each fact on its own does not assist in any way in enabling me to look at matters “in the round” or to see the “whole picture”. Putting a few pieces of the puzzle together still does not assist me. Some findings of fact alone will not guide me in a particular direction. It is not until I consider all of the findings of fact that the whole picture becomes clear. When conducting the balancing exercise I have grouped the findings of fact into types which I use as the factors for the exercise. To do otherwise would be unwieldy in view of the amount of evidence and the complexity of the facts.

The findings of fact

132. As a result I make the following findings of fact.
- a) Philip Higgs on behalf of Totally Transport failed to answer the legitimate questions of the Office of the Traffic Commissioner when my staff wrote to the operator on 31 May 2013. Whilst I accept that Philip Higgs had attempted to surrender the licence and that this was not actioned nevertheless he should have answered the questions as they could be relevant to the determination of any new licence application.
 - b) The staff at the Leeds CLO did not process the application to surrender by Totally Transport in a timely manner.
 - c) Philip Higgs failed to notify the traffic commissioner of the change of director for Oakwood from Frank Steele to himself in April 2013.
 - d) In June 2013 Oakwood failed to answer a question from my office in May 2013 enquiring as to whether there were any outstanding County Court or High Court judgements for that company.
 - e) Classic Bus through Philip Higgs have failed to respond to my office’s letter of 19th December 2013 regarding allegations of service 22 running off route and not running to time.
 - f) Service 22 was still running on 19th November 2013 14 days after it had been cancelled as a registered service on 5th November 2013.
 - g) When the licence application was submitted by Red Rocket on 20th June 2013 there was no reference by Philip Higgs to the fact that he was now a director of Oakwood and there was no reference at all to that other licence.

- h) When Philip Higgs completed the TM1 form for the Red Rocket application he made no reference whatsoever to his duties as transport manager for Classic Bus even though this licence was in existence at the time.
- i) When the Central Licensing Office wrote to Red Rocket on 23rd July 2013 asking for further information this was an ideal opportunity for Mr Higgs to correct his error and to explain that he was now the director of Oakwood and yet he chose not to do so when he either knew or ought to have known that my office would want to know about any other operator licences that he was involved in.
- j) In effect Classic Bus and Oakwood were being operated as one entity for a period of time when they were 2 separate companies and therefore 2 separate legal entities and when there were 2 separate operator licences. This operation as one entity was facilitated by and orchestrated by Philip Higgs as director of both legal entities.
- k) Oakwood had registered service 12 to run in Blackpool with full knowledge that it needed 4 vehicles to operate the service properly when in fact it only had authority to operate 8 vehicles and 5 of those were committed to another service, namely service 22 thereby effectively leaving only 3 vehicles to cover the service.
- l) Oakwood had registered service 22 to run in Blackpool with full knowledge that it needed 6 vehicles to operate the service properly when in fact it only had authority to operate 8 vehicles and 3 of those were committed to another service, namely service 12 thereby effectively leaving only 5 vehicles to cover the service.
- m) In addition to the above 2 findings of fact Oakwood were also operating another vehicle, namely AIG 1905, as this was the vehicle that Frank Steele was operating in Liverpool in addition to the 8 operating in Blackpool. Oakwood were therefore operating more vehicles than they had authority for.
- n) Philip Higgs failed to notify the traffic commissioner of the IVA and this fact was material to the holding of an operator's licence as it could have an effect upon the financial standing of the entity that holds the licence.
- o) Frank Steele made a deliberate decision not to attend the public inquiry hearing on 25th July 2014 when he knew full well that he was required to attend as he had attended the hearing on 1st July 2014 when he was told of the new hearing date. This was a deliberate act and whilst it is regrettable that my office did not send a formal letter it does not excuse Frank Steele's actions. Even if he had been unsure he could have phoned my office to enquire if the hearing was still going ahead and if he was requested to attend. Instead Frank Steele made the journey from Liverpool to Golborne and met with Philip Higgs at McDonalds which is located within a short walking distance from my office prior to the inquiry and then chose not to attend the hearing. I am satisfied that this was deliberate and that it caused an unnecessary adjournment of the hearing on 25th July as I would have been able to hear the evidence without Mr Hughes as he was not the transport manager at the time of the failings.
- p) I am sure (even though I know that the standard of proof is the civil one only) that Philip Higgs deliberately chose not to volunteer the information to me at the hearing on 25th July that he had met with Frank Steele that morning at McDonalds and that this was deliberate attempt to either mislead me or to withhold a material fact from me. I am satisfied so that I am sure that if I had not asked Philip Higgs the direct question about Frank Steele when I returned after an adjournment that I would not have known about it.
- q) TE Newton failed to either question or interview Philip Higgs or Frank Steele about the results of his findings. Not only is this regrettable but it is also unfair. If individuals or companies are to face the regulator at public inquiry it is only fair that they should not only know the full details of the allegations against them but they should also have been given a chance at the earliest possible stage to answer them. Mr Higgs and Mr Steele knew nothing of the allegations until they received the call up letters for the public inquiry. By then time had moved on and it was therefore more difficult for Mr Higgs and Mr Steele to obtain their evidence and properly answer the allegations. The public inquiry hearing is a tribunal hearing and best practice dictates that those appearing before a tribunal should do so when they have had prior notice of the evidence to be admitted. I have considered whether to exclude the evidence of TE

- Newton but have concluded that I do not need to do so as Mr Higgs was able to answer the allegations by TE Newton to my satisfaction. .
- r) In evidence Philip Higgs told me that he thought that once he had registered to run local services that he could do so even if he did not have the necessary licence authority. I find this to be such a preposterous proposition as to defy belief. Philip Higgs knew that he could not run the services without the necessary licence authority and this is evidenced by the fact that he is now seeking to blame my office and me for not granting the licence applications in time with the result that he could not operate services and thereby lost revenue. Philip Higgs cannot have it both ways.
 - s) Philip Higgs has displayed a complete disregard for which entity operates which vehicles and suggests that it does not matter who is running the services as long as they are running reliably and punctually. Again I find this to be a preposterous proposition from someone who has been in the PSV industry for so long.
 - t) As the nominated transport manager Frank Steele took no steps whatsoever to acquaint himself with how many vehicles were needed to operate services 12 and 22 punctually and reliably. This is a core function of a transport manager and Mr Steele therefore failed to carry out his transport manager duties properly and diligently.
 - u) As the nominated transport manager Frank Steele took no steps whatsoever to ensure that the Blackpool illuminations service was either registered properly as a registered local service (which it should have been based on the circumstances in which it was run) or that it's operation fully complied with the excursion or tour provisions.
 - v) Frank Steele did not think that it was necessary to deal with the drivers on a regular basis. Whilst there will be certain circumstances when it is acceptable for a transport manager to delegate some parts of their work in dealing with drivers to another employee this is not one of those cases. This is a modest vehicle authority and the demands on the transport manager are therefore modest and not onerous. Philip Higgs' role was to run the business with all that this entails and all the call that is therefore made on his time. Consequently it falls to the transport manager to deal with the drivers, the safety of the vehicles and to ensure that the registered services run on time. Again Frank Steele failed to carry out his transport manager duties.
 - w) The evidence of Philip Higgs with regard to the payments to Leonard Curtis was dishonest, equivocal and inconsistent. Mr Backhouse tries to persuade me that this was because Philip Higgs did not have the papers in front of him and that it was because he was confused or could not remember. At first blush this submission is persuasive but it is necessary to look behind the submission and at the evidence. If Philip Higgs had been unsure he could and should have told me at the start. Instead he chose to make clear self serving statements to me about payments that he had made that would show him in a positive light and it was only when I questioned those statements and payments that did not show him in such a positive light that Philip Higgs backtracked and then tried to rely on the fact that he did not have the papers with him. I find this approach to be absolutely typical of Philip Higgs and his attitude. I find as a fact that he is a man who likes to, and who does, make many statements which he asks to be accepted as cold hard facts when in fact they are nothing more than mere assertions or half truths or dishonest statements.
 - x) Despite it being an express term of the sale on 31st December 2013 of Classic Bus to Oakwood for £25,000 that payment was made by May 2014 as at the date of this decision Oakwood has only paid just over half (£13,000) of the sale price to Classic Bus. I reject Mr Higgs' assertion that this is because he has to pay rent and rates at Brinwell Road, Blackpool as he has always had this expense. I also reject Mr Higgs' assertion that this is also because he has not been able to realise his business plans. Mr Higgs has "put the cart before the horse" and has compiled a business plan which is based on one key enabling factor – the grant of either a new licence or the increase in an existing one. Without authority for more vehicles there is no business plan and I consider that Mr Higgs should not have based his plan on assuming that he would obtain the extra authority.
 - y) I have never heard any detailed evidence from Philip Higgs as to why Classic Bus was liquidated and I have never heard any evidence from him as to whether there are

- any outstanding County Court or High Court judgments for either him or any of the limited companies that he has been involved with as Mr Higgs has never volunteered that information to me.
- z) As a result of the sale of Classic Bus to Oakwood taking place but consideration not being paid in full some 18 months after the sale I find that Philip Higgs has gained an unfair commercial advantage over other operators who do pay their debts on time.
 - aa) The above finding of fact is exacerbated by the fact that I am now told that Philip Higgs has now found £8,000 in his private capacity and in his capacity as director of Classic Bus to buy yet another company that holds an operator's licence. This material fact had not been notified to the liquidator of Classic Bus, Leonard Curtis, as at the date of the last hearing. I ask myself what view they would take of this when they discover that Mr Higgs does not apparently have enough money to pay for the purchase of one company and yet he has now apparently found enough money to pay for the purchase of yet another one.
 - bb) The blog that Philip Higgs posted on the internet on 5th September 2014 was a direct attack upon the role of traffic commissioners and the operator licensing regime. For the avoidance of doubt I do not take this personally as an attack upon myself as Beverley Bell but as an attack upon the presiding traffic commissioner and I am quite sure that if DTC Evans or one of my colleagues had been the presiding commissioner that the attack would have been the same. I completely reject Mr Higgs' assertions that the blog was posted as a result of frustration at the reporting of his case in the trade press. If he had been concerned that the press reporting was unfair then he would have posted a blog that dealt with his concerns about this and not about his concerns with the traffic commissioner regime.
 - cc) Consequently once again Philip Higgs was disingenuous in his dealings with the regulator and once he had realised his mistake in criticising the regime to the outside world he tried to "backtrack" when asked to face the regulator and blame someone else, namely a well respected and well established senior member of the specialist trade press.
 - dd) Frank Steele deliberately withheld evidence from me that he had completed an application for a new licence when he appeared before me in September 2014. He knew that he had completed an application for a licence and signed and dated it in July 2014 and yet he withheld this from me. As a result I find that he does not display the requisite openness and transparency that is required for licence holders and transport managers.
 - ee) It is clear that Philip Higgs has made a lot of enemies within the Blackpool area and I do not know the reasons for this. One or more than one of these individuals are determined to make life as uncomfortable as possible for Philip Higgs and their strength of feeling is such that they are prepared to involve his young son. I regard this as despicable.
 - ff) This must have had a huge impact upon Philip Higgs and it will have affected his attitude when dealing with third parties. I consider that it will have made him quite understandably defensive at times and aggressive at times and that it will have had an impact upon how he saw the "outside world".
 - gg) Whilst VE Wilson had some minor concerns regarding the maintenance arrangements they were not serious and they are capable of remedy.
 - hh) There has been no evidence produced to me of any serious failings with regard to drivers' hours (EC and/or domestic) breaches.
 - ii) There has been no evidence produced to me by DVSA of any other service reliability failings.
 - jj) There has been no evidence produced to me by Oakwood if its own compliance with the registered service particulars for its services. I am told that the services are running on time but no documentary evidence has been produced in support of this.
 - kk) David Hughes has been appointed as a new transport manager and as a result his approach should ensure that he exercise continuous and effective responsibility over the transport operation of the business.

- ll) Frank Steele has accepted that he is not able to exercise continuous and effective responsibility for the existing fleet or an increased authority and instead he just wants to be allowed to operate one or two vehicles.
- mm) Frank Steele is no longer the transport manager and his failings would not continue if the licence continues.
- nn) Frank Steele was clearly ashamed of his own personal bankruptcy and as a result did not inform my office of the same.
- oo) Frank Steele is now discharged from the bankruptcy.

The factors to be considered in the balancing act

133. Having made the above findings of fact I must now conduct the necessary balancing exercise and I consider that the factors to take into account in that exercise are this.
- a. The conduct, attitude and behaviour of Philip Higgs with regard to the operator licensing regime
 - b. The conduct, attitude and behaviour of Frank Steele with regard to the operator licensing regime
 - c. The conduct, attitude and behaviour of Philip Higgs with regard to the running of punctual and reliable services
 - d. The conduct, attitude and behaviour of Frank Steele with regard to the running of punctual and reliable services
 - e. The conduct, attitude and behaviour of Philip Higgs with regard to the various legal entities and the financial standing requirements
 - f. The conduct, attitude and behaviour of Frank Steele with regard to the various legal entities that he has been involved
 - g. Any operator licence failings regarding maintenance concerns.
 - h. Any operator licence failings regarding drivers' hours' breaches.
 - i. The actions that Philip Higgs has taken since the call up to the public inquiry.

The positive factors

134. I put the following factors into the positive balance.
- The conduct, attitude and behaviour of Philip Higgs with regard to the operator licensing regime
 - a) David Hughes has been appointed as a new transport manager and as a result his approach, taking account of his previous experience as a DVSA traffic examiner should ensure that he exercises continuous and effective responsibility over the transport operation of the business and that he will therefore ensure compliant operation.
 - b) Philip Higgs has been affected to a material degree by the actions of a small number of individuals who are determined to cause him maximum damage. I do not know the reasons why as no evidence has been produced to me in this regard. I am satisfied that this "smear campaign" against Philip Higgs will have had a big impact upon his behaviour and upon the way in which he now deals with authority. I have not underestimated the stress that this will have caused him and the effect it will have had upon his behaviour. I therefore put it into the positive balance.
 - c) A mitigating feature is that there was an attempt to involve Philip Higgs' close family (his son) in this smear campaign and again this will have had a large impact on his behaviour and will, at times, have made him put his emotions before reason.
 - d) Mr Higgs did make an application surrender the licence for Totally Transport in a timely manner but the staff at the Leeds CLO did not process the application in good time.
 - The conduct, attitude and behaviour of Frank Steele with regard to the operator licensing regime

- a) Frank Steele has now left the Oakwood business and has thereby accepted that he is not able to exercise continuous and effective responsibility for the existing fleet or an increased authority.
 - b) Frank Steele is no longer the transport manager and his failings would not continue if the licence continues.
- The conduct, attitude and behaviour of Philip Higgs with regard to the running of punctual and reliable services
 - a) There has been no evidence produced to me by DVSA of any other service reliability failings.
 - b) TE Newton failed to either question or interview Philip Higgs about the results of his findings. Not only is this regrettable but it is also unfair. Whilst Mr Higgs and Mr Steele knew nothing of the allegations until they received the call up letters for the public inquiry Mr Higgs was still able to answer the allegations.
- The conduct, attitude and behaviour of Frank Steele with regard to the running of punctual and reliable services
 - a) I can find no positive features
 - b) TE Newton failed to either question or interview Frank Steele about the results of his findings. Not only is this regrettable but it is also unfair. Whilst Mr Higgs and Mr Steele knew nothing of the allegations until they received the call up letters for the public inquiry Mr Higgs was still able to answer the allegations.
- The conduct, attitude and behaviour of Philip Higgs with regard to the various legal entities and the financial standing requirements
 - a) At the present time Oakwood can establish financial standing but this is counter balanced by the fact that yet another PSV licence holder is being purchased with money from the Oakwood business whilst the debt to the liquidators for the purchase of Classic Bus remains outstanding
- The conduct, attitude and behaviour of Frank Steele with regard to the various legal entities and financial standing
 - a) Frank Steele was clearly ashamed of his own personal bankruptcy and as a result did not inform my office of the same.
 - b) Frank Steele is now discharged from the bankruptcy.
- Any operator licence failings regarding maintenance concerns.
 - a) Any maintenance concerns are not serious and they are capable of remedy and they do not require regulatory action.
- Any operator licence failings regarding drivers' hours' breaches.
 - a) There is no evidence before me that there are any undue concerns about drivers' hours rules and so no regulatory intervention is necessary in this regard.
- The actions that Philip Higgs has taken since the call up to the public inquiry
 - a) I can find no positive features other than the employment of David Hughes

The negative factors

135. I put the following factors into the negative balance.

- The conduct, attitude and behaviour of Philip Higgs with regard to the operator licensing regime as evidenced by the following

- a) on behalf of Totally Transport he failed to answer the legitimate questions of the Office of the Traffic Commissioner when my staff wrote to the operator on 31 May 2013.
 - b) Philip Higgs failed to notify the traffic commissioner of the change of director for Oakwood from Frank Steele to himself in April 2013
 - c) In June 2013 Oakwood failed to answer a question from my office in May 2013 enquiring as to whether there were any outstanding County Court or High Court judgements for that company
 - d) Classic Bus through Philip Higgs have failed to respond to my office's letter of 19th December 2013 regarding allegations of service 22 running off route and not running to time
 - e) When the licence application was submitted by Red Rocket on 20th June 2013 there was no reference by Philip Higgs to the fact that he was now a director of Oakwood and there was no reference at all to that other licence
 - f) When Philip Higgs completed the TM1 form for the Red Rocket application he made no reference whatsoever to his duties as transport manager for Classic Bus even though this licence was in existence at the time
 - g) When the Central Licensing Office wrote to Red Rocket on 23rd July 2013 asking for further information this was an ideal opportunity for Mr Higgs to correct his error and to explain that he was now the director of Oakwood and yet he chose not to do so when he either knew or ought to have known that my office would want to know about any other operator licences that he was involved in
 - h) Philip Higgs deliberately chose not to volunteer the information to me at the hearing on 25th July that he had met with Frank Steele that morning at McDonalds and that this was deliberate attempt to either mislead me or to withhold a material fact from me. I am satisfied so that I am sure that if I had not asked Philip Higgs the direct question about Frank Steele when I returned after an adjournment that I would not have known about it.
 - i) Oakwood was also operating another vehicle, namely AIG 1905, as this was the vehicle that Frank Steele was operating in Liverpool in addition to the 8 operating in Blackpool. Philip Higgs either knew or ought to have known that Oakwood was operating more vehicles than it had authority for
 - j) The blog that Philip Higgs posted on the internet on 5th September 2014 was a direct attack upon the role of the traffic commissioner and the operator licensing regime
 - k) When asked to explain the blog once again Philip Higgs was disingenuous in his dealings with the regulator and once he had realised his mistake in criticising the regime to the outside world he tried to "backtrack" when asked to face the regulator and blame someone else, namely a well respected and well established senior member of the specialist trade press.
- The conduct, attitude and behaviour of Frank Steele with regard to the operator licensing regime
 - a) Frank Steele made a deliberate decision not to attend the public inquiry hearing on 25th July 2014 when he knew full well that he was required to attend
 - b) Oakwood was also operating another vehicle, namely AIG 1905, as this was the vehicle that Frank Steele was operating in Liverpool in addition to the 8 operating in Blackpool. Frank Steele either knew or ought to have known that Oakwood was operating more vehicles than it had authority for
 - c) Frank Steele did not think that it was necessary to deal with the drivers on a regular basis and taking account of the nature and type of operation this was a major failing on his part.
 - d) Frank Steele deliberately withheld evidence from me that he had completed an application for a new licence when he appeared before me in September 2014. He knew that he had completed an application for a licence and signed and dated it in July 2014 and yet he withheld this from

me. As a result I find that he does not display the requisite openness and transparency that is required for licence holders and transport managers.

- The conduct, attitude and behaviour of Philip Higgs with regard to the running of punctual and reliable services as evidenced by the following
 - a) Service 22 was still running on 19th November 2013 14 days after it had been cancelled as a registered service on 5th November 2013
 - b) Oakwood had registered service 12 to run in Blackpool with full knowledge that it needed 4 vehicles to operate the service properly when in fact it only had authority to operate 8 vehicles and 5 of those were committed to another service, namely service 22 thereby effectively leaving only 3 vehicles to cover the service
 - c) Oakwood had registered service 22 to run in Blackpool with full knowledge that it needed 6 vehicles to operate the service properly when in fact it only had authority to operate 8 vehicles and 3 of those were committed to another service, namely service 12 thereby effectively leaving only 5 vehicles to cover the service
 - d) I consider it to be a preposterous proposition that Philip Higgs asserted that he thought that he could run registered services without the necessary licence authority.
 - e) There has been no evidence produced to me by Oakwood if its own compliance with the registered service particulars for its services. I am told that the services are running on time but no documentary evidence has been produced in support of this.

- The conduct, attitude and behaviour of Frank Steele with regard to the running of punctual and reliable services as evidenced by the following
 - a) As the nominated transport manager Frank Steele took no steps whatsoever to acquaint himself with how many vehicles were needed to operate services 12 and 22 punctually and reliably. This is a core function of a transport manager and Mr Steele therefore failed to carry out his transport manager duties properly and diligently.
 - b) As the nominated transport manager Frank Steele took no steps whatsoever to ensure that the Blackpool illuminations service was either registered properly as a registered local service (which it should have been based on the circumstances in which it was run) or that it's operation fully complied with the excursion or tour provisions

- The conduct, attitude and behaviour of Philip Higgs with regard to the various legal entities and financial standing
 - a) In effect Classic Bus and Oakwood were being operated as one entity for a period of time when they were 2 separate companies and therefore 2 separate legal entities and when there were 2 separate operator licences. This operation as one entity was facilitated by and orchestrated by Philip Higgs as director of both legal entities.
 - b) Philip Higgs failed to notify the traffic commissioner of the IVA and this fact was material to the holding of an operator's licence as it could have an effect upon the financial standing of the entity that holds the licence
 - c) Philip Higgs has displayed a complete disregard for which entity operates which vehicles and suggests that it does not matter who is running the services as long as they are running reliably and punctually.
 - d) Philip Higgs gave dishonest and equivocal evidence to me regarding the payments made to Leonard Curtis and this was a deliberate attempt to mislead me.
 - e) Despite it being an express term of the sale on 31st December 2013 of Classic Bus to Oakwood for £25,000 that payment was made by May 2014 as at the date of this decision Oakwood has only paid just over half (£13,000) of the

sale price to Classic Bus. I consider that the reasons advanced by Philip Higgs for none payment are not valid.

- f) I have never heard any detailed evidence from Philip Higgs as to why Classic Bus was liquidated and I have never heard any evidence from him as to whether there are any outstanding County Court or High Court judgments for either him or any of the limited companies that he has been involved with as Mr Higgs has never volunteered that information to me.
 - g) As a result of the sale of Classic Bus to Oakwood taking place but consideration not being paid in full some 18 months after the sale Philip Higgs has gained an unfair commercial advantage over other operators who do pay their debts on time.
 - h) Philip Higgs has suddenly found £8,000 in his private capacity and in his capacity as director of Classic Bus to buy yet another company (Nuttalls) that holds an operator licence. This material fact had not been notified to the liquidator of Classic Bus, Leonard Curtis, as at the date of the last hearing.
 - i) Despite having heard an exceptional amount of evidence I am still not satisfied that there is any transparency whatsoever about the operation of the vehicles and the financial arrangements of Oakwood.
- The conduct attitude and behaviour of Frank Steele with regard to the various legal entities and financial standing
 - a) Frank Steele failed to declare his bankruptcy to my office and whilst he may have been ashamed he did so without good reason

The subsequent considerations

136. It is clear from the above that there are a large number of negative features but I remind myself that there are cases when despite many negative features the traffic commissioner can still be satisfied that as to the Priority Freight and Bryan Haulage questions.

The Priority Freight question

137. In asking myself the Priority Freight question as to how likely it is that Oakwood Travel will comply with the operator licence obligations. Mr Backhouse seeks to persuade me that it is highly likely and to support his submissions he asks me to take account of the positive features regarding maintenance, drivers' hours and the fact that there are no other registered service failings brought to my attention. Whilst I have put them in the positive balance (along with the other features referred to above) operator licensing is not just about these matters. Repute is widely defined and it is about an operator's general conduct and so it is right that I also take account of the other positive and negative features that I have itemised above. The negative features are extensive and they are serious. As stated above each one taken in isolation might be capable of remedy or they might only require some regulatory action that falls short of revocation. But when taken together and viewed as a whole I conclude that the chances of Philip Higgs either on his own or as a director of any company ensuring operator licence compliance and are so small as to be wholly discounted. There is nothing about him or about his companies that is in any way transparent. Traffic commissioners and the Transport Tribunal and the Upper Tribunal have repeatedly stated that operator licensing is based on trust and that the traffic commissioner must be able to trust the operator to comply.

138. But that trust is not just about ensuring that vehicles are, for example, subjected to regular safety inspections. It is also about ensuring the following –

- a. that the correct entity is operating the vehicles
- b. that it has the requisite vehicle authority to be able to cover all the services that it operates – whether registered bus service or hire or reward work
- c. that it has the requisite vehicle authority to be able to run all registered bus service punctually and reliably
- d. that it will answer correspondence from the Office of the Traffic Commissioner and/or DVSA in a timely fashion

- e. that it will not fail to answer legitimate questions from the Office of the Traffic Commissioner and/or DVSA about matters such as questions regarding outstanding County Court or High Court judgements
- f. that it will proactively declare all material and relevant facts to the Office of the Traffic Commissioner and/or DVSA either when specifically questioned or when submitting applications to the traffic commissioner
- g. that it will not deliberately mislead either the traffic commissioner (or the staff of the Office of the Traffic Commissioner) by deliberately withholding relevant information from the traffic commissioner at any public inquiry or directions hearing
- h. that it will show due respect to the regulatory regime and those appointed (staff and traffic commissioners) to administer it
- i. that it will conduct its business and financial transactions transparently
- j. that it will pay its due debts on time,
- k. that in the event of a previous liquidation and sale of the old business to the new business that it will pay the purchase price in accordance with the terms of agreement
- l. that it will not purchase any more businesses until it has paid for the previous old business in full in accordance with the terms of the original agreement

139. Taking account of all of the evidence I am satisfied so that I am sure that Philip Higgs and Frank Steele have not ensured any of the above requirements. I am therefore satisfied, so that I am sure, that neither Philip Higgs nor Frank Steele nor any company in which Philip Higgs or Frank Steele is connected to in any way (as employee director or shareholder) will comply with the operator licence regime.

140. I take specific account of the serious nature and the period of time of the non-compliance. Put simply I do not trust Philip Higgs, Frank Steele, or any company connected to either of them in any way (including the entity of Oakwood) to operate compliantly. In considering the Priority Freight question I conclude not only is it unlikely that Philip Higgs, Frank Steele or Oakwood will not comply with the legislation but also (so that I am certain) that they will not.

141. My answer to the Priority Freight question for Philip Higgs, Frank Steele and any company is therefore a simple and resounding “not at all”.

The Bryan Haulage No.2 question

142. I must now go on to ask myself the Bryan Haulage No. 2 question, namely, is the conduct as described above such that the operator, Oakwood, ought to be put out of business? In answering this question I remind myself of the purposes of operator licensing – the promotion of road safety and fair competition. There will be cases when despite the failings by an operator some other type of action falling short of revocation such as a significant order for curtailment or a lengthy period of suspension will focus the mind of the operator and will be sufficient to achieve the regulatory purpose. I have considered and rejected such orders in this case.

143. In then asking myself whether the conduct is such that Oakwood ought to be put out of business I answer in the affirmative. I consider that it would be an affront to the legitimate licensed transport industry to allow this operator to continue in the PSV industry. In the Upper Tribunal case of *Aspey Trucks Ltd T2010/49* Judge Hinchliffe states as follows – *“In this respect, Traffic Commissioners are the gatekeepers to the industry - and the public, other operators, and customers and competitors alike, all expect that those permitted to join the industry will not blemish or undermine its good name, or abuse the privileges that it bestows. What does “Repute” mean if it does not refer to the reasonable opinions of other properly interested right-thinking people, be they members of the public or law-abiding participants in the industry?”*

144. It would in my view taking account of the factors at paragraph 138 be wholly wrong and an affront to the operator licence regime to allow this business to continue and consequently the failings are so serious that they require revocation. Any other order taking specific account of

the above would not deal with the breaches and conduct sufficiently. As a result of all of the above I find that Philip Higgs as director, and Frank Steele as the previously nominated transport manager do not fulfil the repute requirement and nor does the limited company Oakwood.

The orders made

145. I therefore conclude that I would be failing in my duty if I did not make an order for the revocation of the licence for Oakwood and the disqualification of the company and of Philip Higgs as a director. Accordingly I direct that the licence for Oakwood Travel Services Ltd now known as Catch22Bus Ltd is revoked pursuant to loss of repute and loss of professional competence. I consider it appropriate and proportionate to allow 28 days for an orderly closure of the businesses. The licences are therefore revoked with effect from 23.59 on Friday 31st July 2015. The application for the increase in authority is obviously refused.
146. I also direct 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, Oakwood, Classic Bus, Totally Transport and Red Rocket.
147. With regard to the loss of repute of Frank Steele as a transport manager I also direct that he be disqualified as a transport manager for a period of 5 years and in doing so I take account of his advanced years. Mr Steele tells me that he wants to operate one or two vehicles and I give direction to Mr Steele with regard to his own application for a new licence that I can think of no rehabilitation measures that I could advance either as an applicant operator or as a transport manager that would adequately deal with the failings. If Mr Steele wants to remain in the PSV industry then it must be as a driver only and not as an operator or transport manager. I invite him to withdraw his application (PC1132931) but if he does not then I shall ask my staff to send a letter stating that I am minded to refuse the application.
148. As stated above I was informed in closed session that Mr Higgs has now acquired Nuttalls and this fact is now in the public domain. I now have concerns about this entity and so I direct that a call up letter be sent to this operator citing repute, professional competence and financial standing.
149. Finally I record my thanks to my staff who have assisted me in this difficult case and to Mr Backhouse for his assistance at the final hearing.

Beverly Bell

Traffic Commissioner
30th June 2015

Footnote

- a. On 16th June 2015 my office received yet another letter from a third party and this letter was copied to Backhouse Jones. I have excluded it from my deliberations.
- b. A copy of this decision will be sent to the Secretary of State for Transport at the same time as it is sent to all parties in view of the complaint that has been made against me.
- c. A redacted version of this decision will be issued to any third parties upon request
- d. I have already explained to both the operator and its solicitor the reasons for the delay in the issue of this decision. I make the reasons clear here as well. The delay

has been caused by a combination of pressure of work and my taking compassionate leave during the month of January 2015. I apologise to all parties for the delay as I am mindful that written reasons for decisions should be issued within 28 days of the final hearing.