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**IN THE COMPETITION**  
**APPEAL TRIBUNAL**

Case No. 1178/5/7/11

Victoria House,  
Bloomsbury Place,  
London WC1A 2EB

13 March 2012

Before:

LORD CARLILIE OF BERRIEW QC  
(Chairman)  
PETER FREEMAN CBE QC  
MARCUS SMITH QC

Sitting as a Tribunal in England and Wales

**BETWEEN:**

**2 TRAVEL GROUP PLC (IN LIQUIDATION)**

Appellants

– v –

**CARDIFF CITY TRANSPORT SERVICES LIMITED**

Respondent

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**HEARING (DAY 2)**

## **APPEARANCES**

MR. M BOWSHER QC and MS A BLACKWOOD (instructed by Addleshaw Goddard) appeared on behalf of the claimant.

MR. J FLYNN QC and MR C WEST (instructed by Burges Salmon) appeared on behalf of the respondent.

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Tuesday, 13 March 2012

(10.00 am)

MR BEV FOWLES (continued)

Cross-examination by MR WEST (continued)

MR WEST: Good morning, Mr Fowles.

A. Good morning.

Q. Around September 2002, 2 Travel employed a finance director; is that right?

A. It did, yes.

Q. Mr Carl Waters?

A. That's correct.

Q. And was that in anticipation of the flotation in January 2003?

A. I think it was connected, yes.

Q. Mr Waters was an experienced accountant with a history in this industry, wasn't he?

A. He was, yes.

Q. He had previously been the finance director at First Eastern Counties, I believe?

A. Prior to joining us, yes.

Q. So you would expect his judgment on the financial side of 2 Travel's business to be reliable?

A. I would expect his judgment to be reliable within industry terms, yes.

Q. And it was Mr Waters rather than you who primarily

1           undertook to deal with the finance side of business?

2   A.   That's right, yes.

3   Q.   Mr Waters is still around as far as you know?

4   A.   He is, yes.

5   Q.   Do you occasionally come across him from time to time in

6       this industry?

7   A.   No, he's not in this industry any more.

8   Q.   Nevertheless, 2 Travel haven't called him as a witness?

9   A.   No.

10  Q.   I'm afraid that being so, questions which I would like

11       to put to Mr Waters, I'm going to have to put to

12       somebody else, and it may be yourself and Mr Fowles.

13       Shortly after joining the company, Mr Waters wrote

14       a memo raising a couple of points I'd just like you to

15       look at.  It's in bundle E2, page 256.

16  THE CHAIRMAN:  Would you just bear with me for a moment?

17       I want to see if I can get this up on my computer

18       reasonably quickly.

19  MR WEST:  All my references are to the E bundles.  Some of

20       these documents are also in the core bundles, the G

21       bundles, so we are currently putting together a document

22       which cross-refers to where one can find the documents

23       in both bundles, if that would be useful.

24  THE CHAIRMAN:  I'm sure it would.

25  MR WEST:  So this is an internal memo, 2 Travel Coaches,

1 from Carl Waters. The first point I'd just like to show  
2 you is at 258. He begins just after the second hole  
3 punch or round about:

4 "To ensure records are best utilised, it is  
5 essential that the accounting records are capable of  
6 measuring and monitoring all aspects of the company's  
7 operations. To do this properly, there will need to be  
8 a culture change within the organisation so that the  
9 requirement for correct recording of all transactions is  
10 carried out. An example of this has been the discovery  
11 during the audit of payments being made but supporting  
12 documentation not being readily found, VAT not being  
13 reclaimed as cash payments have been made from cash  
14 receipts, so understating both revenue and costs.  
15 Written procedures are now being introduced and it is  
16 essential that these are supported and driven through by  
17 senior managers."

18 Were you aware of this issue of cash receipts being  
19 used to make cash purchases?

20 A. No, I wasn't. Obviously, Mr Waters was given a free  
21 hand as a director. We were aware that we needed change  
22 at the time and felt that he was the person to introduce  
23 that change. He was given free rein to do that. This  
24 was, I think, one of his first pieces of work to us,  
25 giving us an assessment of what was there and what

1 the shortcomings might have been.

2 Q. I think that's right, that this is the first document we  
3 see from him, but what he seems to be describing here,  
4 and we'll see it later, is that drivers had been using  
5 fares paid on the bus to buy items like fuel. Were you  
6 aware that that had happened?

7 A. That may well have been the case. It depends where they  
8 were working and how they were working. The receipting  
9 of that cash may -- I think Carl Waters was alluding to  
10 in his statement, that the drivers perhaps weren't  
11 returning slips from fuel purchases.

12 Q. And the second point which I'd like to show you here is  
13 at 261 under "Banking facilities". 2 Travel, at this  
14 time, did not have an overdraft. I think that's right,  
15 is it?

16 A. Yes.

17 Q. Sorry, it's 261.

18 A. Thank you.

19 Q. "There's one area of finance which has not been utilised  
20 by the business' bank borrowings, which since the start  
21 of the company, have been non-existent ...(reading to  
22 the words)... borrowings of approximately £450,000  
23 equates to finance costs of nearly 20 per cent.  
24 Discussions have therefore commenced with several banks,  
25 including HBOS and NatWest, over a potential move from

1 the company's existing bankers, Barclays. Initial  
2 discussions have indicated an interest from them in  
3 providing a facility to the company and the tariffs  
4 quoted show significant reductions on existing costs.  
5 The effects of moving away from factoring are  
6 significant in terms of profit and cashflow and should  
7 be implemented at the earliest opportunity."

8 But that recommendation that you move away from  
9 factoring towards an overdraft arrangement wasn't  
10 implemented at that stage, was it?

11 A. No, it wasn't.

12 Q. In fact, 2 Travel continued factoring its debts all the  
13 way through 2003 and indeed 2004.

14 A. That's right.

15 Q. As we've seen, Mr Waters joined the company in  
16 around September of 2002. That's certainly the date of  
17 this memo. By April of the following year, 2003,  
18 Mr Waters was becoming very concerned by the company's  
19 financial position, wasn't he?

20 A. Yes, he had concerns.

21 Q. And we can see that at E3/436. The analysis of the  
22 figures is actually at 437, a memo from Carl Waters to  
23 Bev Fowles and Huw Francis: subject "Cash flow  
24 performance":

25 "Becoming increasingly obvious that we are not

1 generating enough cash to cover our ongoing  
2 requirements. At present, our cash flow appears to  
3 follow the pattern of ..."

4 And he sets out two columns, one weekly and one  
5 monthly. He firstly has a number of items for income  
6 and then items for expenditure, so the income we can see  
7 is £60,000 in total per week, and expenditure, £73,000  
8 per week. Monthly income, £92,000 per month. Monthly  
9 outgoings, £105,000 per month. He says:

10 "As you can see, the sums do not add up. I think  
11 we have to stop looking at everything through rose  
12 tinted eyes and recognise that things are not going to  
13 get better in the short term. If, however, someone can  
14 prove to me that I am wrong with the above, I will  
15 gladly stand corrected. But after looking at the bank  
16 every day and starting to get regular phone calls from  
17 Barclays, I do not think I am. In addition, it should  
18 be noted that the above income relates to school only  
19 weeks. Outside these, 13 weeks or 25 per cent of the  
20 year, income falls by £40,000 per week, whereas our  
21 costs will be lucky to drop by £8,000 per week, leaving  
22 huge problems for a very large part of the year, which  
23 period is rapidly approaching."

24 And that £40,000 appears to relate to the factoring  
25 figure and concerns the fact that during those weeks,

1           you didn't have any school bus contract income; is that  
2           right?

3   A.   That's right.

4   Q.   Then just at the end of this memo, the final paragraph:

5           "I'm certain the board will start asking very  
6           serious questions shortly and I think we need to discuss  
7           all our options without any bias and through practical,  
8           realistic eyes rather than the misty idealistic views of  
9           the last few months and forecast."

10           And it's right, isn't it, that the forecasts in the  
11           flotation documents had proved to be over-optimistic, as  
12           Mr Waters was saying?

13   A.   They had, yes, but I think both Huw Francis and myself  
14           and probably the rest of the board, realised that there  
15           was a value underpinning the company, which was the  
16           value of the land.

17   Q.   Yes. We'll come to the land in just one second.

18   THE CHAIRMAN: Can I just ask about this. Mr Fowles, what  
19           happened to this memo in board terms? Was it discussed  
20           at a board meeting?

21   A.   Everything was discussed at board meetings, yes. The  
22           board then was a plc board, obviously, so quite clearly  
23           we all had legal obligations to bring that to the market  
24           and to the board.

25   THE CHAIRMAN: And was this pessimistic forecast brought to

1 the attention of the NOMAD and/or to the market?

2 A. It was, yes.

3 THE CHAIRMAN: Thank you.

4 MR WEST: This appears to be in April 2003 and I don't think  
5 the company had purchased the land yet by this stage,  
6 the freehold of the Swansea depot?

7 A. It was in the process of being done, yes.

8 Q. So we'll see what Mr Waters said -- I skipped over it --  
9 it's the second last paragraph here, his recommendation  
10 for trying to improve things. He says:

11 "We can't get rid of the coaches because of the  
12 finance on them. We urgently need to sort out the  
13 refinancing as this may save us £20,000 per month. We  
14 also need to talk to some of the finance companies with  
15 a view to returning some of the vehicles or to the tour  
16 companies, Leisure Time included, to try and increase  
17 our rates. The alternative, which may prove very  
18 attractive in the longer term, is to build up CTC ..."

19 That's the coach travel company --

20 A. Mm-hm.

21 Q. -- which you'd recently acquired?

22 A. Yes.

23 Q. "... into a national clearing house organisation through  
24 investment in people and systems and try and build up  
25 a portfolio of work whereby we can get other operators

1 eg Ridgeways, to take our coaches off us in return for  
2 work."

3 He was suggesting that the utilisation of the  
4 coaches would be increased, which would improve the  
5 financial position of the company?

6 A. That's right.

7 Q. Through the use of the CTC clearing house, which you'd  
8 recently acquired?

9 A. That's right.

10 Q. And we'll come back in a minute to see how that turned  
11 out. But the next development was the acquisition of  
12 the Swansea depot. Mr Francis' view was that the depot  
13 had development potential and could be a very valuable  
14 piece of land, wasn't it?

15 A. It was, yes.

16 Q. And his background was in the property business?

17 A. It was. And still is.

18 Q. Mr Waters' reaction to the possibility of these  
19 development profits, we can see in yet another bundle,  
20 E12, page 3. Rather than me reading this out, I wonder  
21 if you could simply read it to yourself. (Pause).

22 THE CHAIRMAN: Do we have a date for this document?

23 MR WEST: No, E12 is the undated documents bundle. But  
24 Mr Waters does say "10 months down the line from his  
25 previous memo", which was September 2002, which dates

1 this to around the summer of 2003.

2 So the first page I want to ask you about is the  
3 £300,000 per annum director level overhead. It's right,  
4 is it, that that was the combined salaries of the  
5 executive directors, together with Mr Huw Francis?

6 A. Yes, it was. When we went to AIM, we were on far more  
7 modest salaries and the market was surprised how  
8 reasonable those salaries were. We were advised that  
9 our salaries ought to increase. They suggested the  
10 amount.

11 Q. Then he says:

12 "Going public has put a further 100K of costs into  
13 the company."

14 That was, for example, the fees of the non-executive  
15 directors, Mentor and CFA, was it?

16 A. That's right.

17 Q. He then says that the contract base is totally  
18 underpriced and commitment to guaranteeing 45 hours is  
19 killing any chance of improvement.

20 Is it right that the contract base, that's the  
21 school bus contracts and so on, were not generating  
22 sufficient revenues to meet the company's running costs?

23 A. Some of the schools contracts weren't covering all the  
24 costs. The majority of the Cardiff contracts were much  
25 higher priced than those in Swansea and Llanelli, which

1 is why they were targeted.

2 Q. Mr Waters' reaction to the possibility of development  
3 profits from the Swansea depot was that the land should  
4 be sold and the profits should be used to pay off the  
5 creditors and wind up the company.

6 A. That's what he says.

7 Q. But again, his advice wasn't taken about that at this  
8 stage?

9 A. His advice wasn't taken at all.

10 Q. And in the same bundle at page 15, Mr Waters returned to  
11 that theme. He says -- this is again about the question  
12 of tender pricing:

13 "Whilst preparing my presentation on costing, it  
14 became clear to me we do not appear to be building in  
15 all our costs. Our average daily earned per contract  
16 PVR -- " That's peak vehicle requirements, I believe?

17 A. That's correct.

18 Q. "... is, excluding cash and OAP, the figures set out  
19 there. These rates are nowhere near what we need to  
20 earn, given the level of our overheads and finance costs  
21 ...(reading to the words)... where their costs are over  
22 260 days."

23 So that's five days a week for 52 weeks a year:

24 "This makes the time revenue per day even lower.

25 The profit of the past, if it existed, only arose

1 through in-fill work and better vehicle utilisation."

2 2 Travel booked a profit in the year 2002, did it  
3 not?

4 A. It did.

5 Q. Mr Waters here seems to be querying whether that profit  
6 was actually genuine. Were you aware that there was  
7 an issue as to whether the 2002 profit figure was  
8 accurate?

9 A. It was signed off by our accountants, Bevan and  
10 Buckland, at the time, I think, so I had no cause to  
11 doubt it.

12 Q. But it's right, isn't it, that if that profit was  
13 misstated, that would be a very serious matter indeed  
14 because those accounts were the basis of the AIM  
15 flotation?

16 A. I think Solomon Hare's audits of the company would have  
17 detected any profit that might not have been there, as  
18 you say. Solomon Hare, preparing us for the AIM market,  
19 did a very thorough job. They were with us for up to  
20 three months. I think they went through the company  
21 extremely rigidly and, as such, I would say that the  
22 previous profit as declared, was in existence. I don't  
23 know what Mr Waters was alluding to here.

24 Q. Well, we may see some more references in a minute.

25 Anyway:

1           "The profit of the past, if it existed, only arose  
2           through in-fill work and better vehicle utilisation.  
3           Our poor quality of service has destroyed the truth of  
4           this, leaving our cost base exposed. We have  
5           dramatically increased our headcount in PVR but to no  
6           avail. On a weekly basis, our factoring now does not  
7           even cover our net wages and this is not sustainable.  
8           I don't want to seem the eternal pessimist ...(reading  
9           to the words)... company structure and costs must be  
10          made immediately. The company was sold to the city on  
11          the basis that all standing costs were covered in the  
12          contract and that other in-fill work was profit. This,  
13          is blatantly now not true. We must urgently look at how  
14          the business runs and decide where we want the company  
15          to be in the future."

16                 So he was again stating that the fixed costs of the  
17          company were not covered by the contract work?

18    A. He was. I think we were in the process, at the time, of  
19          trying to move the company from coach to, largely, bus.  
20          Quite clearly, we were in a transition period, which  
21          I don't think Mr Waters quite grasped.

22    Q. Mr Waters then wrote another memo, which I think is  
23          dated this time, in July 2003, which is at E3/627.

24          8 July 2003:

25                 "I am writing to advise you that in my estimation,

1 the company will run out of cash by the end of July 03.  
2 Once the school term ends and the last invoices are sent  
3 to Aston Rothbury [that was the factoring company] then  
4 our cash will dry up completely. Even by reducing our  
5 headcount and banning overtime, we will be a minimum of  
6 25K per week to cover our wage bill. We may be lucky to  
7 get 25 per cent of this from our factors. In addition,  
8 our monthly ...(reading to the words)... I have  
9 attempted to meet to discuss this problem with you  
10 [that's Bev Fowles and Huw Francis, whom the memo is  
11 addressed] but your times on site have over recent days  
12 been limited ...(reading to the words)... will/should  
13 drop."

14 So his suggestion at that time was rather than to  
15 sell the Swansea site and wind up the company, to use it  
16 as collateral for a loan of some kind?

17 A. That's correct.

18 Q. But again, that advice was not taken at this stage?

19 A. Shortly afterwards there were developments with  
20 Barclays, with Nigel Short and Huw Francis.

21 Q. Could I ask you now to look at the exhibit to  
22 Mr Conway's statement. It'll be in one of the C  
23 bundles. C, tab 15. I don't know if that's C1 or C2.

24 THE CHAIRMAN: 2.

25 MR WEST: It's my C3, but it may be your C2. The document

1 I want to look at is in the exhibits, page 12, which is  
2 page 198 of my bundle, but again I think that's  
3 a different numbering.

4 THE CHAIRMAN: What's the document?

5 MR WEST: It's Chrysalis VTC's proof of debt in the  
6 insolvency of 2 Travel. Page 12 of the exhibits.

7 THE CHAIRMAN: 197.

8 MR WEST: It begins:

9 "Proof of debt, general form."

10 So this is Chrysalis VTC's proof of debt in the  
11 insolvency. They were the 8 per cent loan stock holder,  
12 weren't they?

13 A. They were.

14 Q. And you'll see the total amount of the claim, £691,923.

15 The amount of the loan stock was £600,000, wasn't it?

16 A. It was.

17 Q. We've seen that. So the additional 91,000, you'll see  
18 what it says there, under "Particulars", number 6:

19 "Particulars of how and when debt incurred. Loan  
20 stock of £600,000. The loan was advanced on 23/1/03.  
21 Interest rate of 8 per cent unpaid. Interest has  
22 accumulated since 1/8/03."

23 So is it right that 2 Travel, at this stage, stopped  
24 paying the interest on the 8 per cent loan stock?

25 A. Yes, they did.

1 Q. That was one of the ways in which 2 Travel dealt with  
2 the critical cash flow issues to which Mr Waters had  
3 adverted?

4 A. Yes, it was done by agreement with Chrysalis or it was  
5 done with Venture -- not Venture, sorry, Mentor.

6 Q. Mr Waters then wrote another memo, which is this time in  
7 E4, page 273. This time dated August 2003:

8 "At the last board meeting, you may recall that  
9 Graham Spooner --"

10 He was from Matrix, wasn't he?

11 A. He was.

12 Q. Sorry, Mentor. Mentor they were called.

13 A. Mentor, I beg your pardon. They represent --

14 Q. "... requested I put this year's actuals and next year's  
15 budget into the same format ...(reading to the words)...  
16 and the outcome is shown in the attached schedules."

17 Which are over the page and we'll look at them in a  
18 second:

19 "The figures speak for themselves and ...(reading to  
20 the words)... to achieve. I noted also that on one of  
21 Graham's pieces of paper, he had figures for the next  
22 year's projections taken from the working capital  
23 report. Our budget, ever in its current optimistic  
24 form, shows a considerable worsening against that  
25 projected ...(reading to the words)... increase in

1 interest charges of the budget, compared to the working  
2 capital model. This reflects the increase in lease/HP  
3 agreement during this year to finance vehicle  
4 acquisitions as no cost was available, as had been  
5 anticipated in the flotation document."

6 That refers to the fact that the vehicles had been  
7 purchased on HP rather than outright, does it?

8 A. It does.

9 Q. "Explaining the variances will not be an easy task and  
10 in part reflects the naivety ...(reading to the  
11 words)... cause severe problems and questions, but if  
12 the effect of the property can be laid over this, then  
13 base year should probably be moved to 04/05 and a clean  
14 bit of paper used to create a realistic and achievable  
15 profit projection."

16 So he is here suggesting that the Swansea property  
17 be sold and the money put into the company so that,  
18 effectively, you can start again?

19 A. Yes. He was continually wanting to sell the property  
20 throughout.

21 Q. And he's also saying that the projections and budgets on  
22 which the flotation documents were based have turned out  
23 to be optimistic?

24 A. That's what he says, yes.

25 Q. And that was true, wasn't it?

1 A. As the figures were on paper, yes it was.

2 Q. If we look at the schedules over the page, we can see  
3 what he means because he compares here, the statutory  
4 accounts on page 274, the year to date, budget accounts  
5 and the working capital report. One can see that the 02  
6 statutory accounts, PBT, profit before tax, down at the  
7 bottom, has £212,000. That was the profit booked in  
8 2002 under the statutory accounts. And year to date,  
9 to June 2003, has a loss of £535,000. Can you see that  
10 under PBT?

11 A. I can.

12 Q. The budget accounts for 2004, so this is what's being  
13 projected for next year, has a profit of 143, whereas  
14 the working capital report prepared by Solomon Hare, its  
15 figure for 2004 was a profit of £439,000. So one can  
16 see why Mr Waters was concerned that these projections  
17 and budgets were not achievable?

18 A. Yes, I think the figure in June 2003 doesn't take effect  
19 of either the exceptionals that were introduced -- that  
20 we were unaware of at the start of the flotation. They  
21 were the one off costs for flotation during that year of  
22 428, as it states there.

23 Q. But the projections and the working capital report, as  
24 we saw yesterday, had been prepared on the basis that  
25 the flotation costs were included within those

1 projections?

2 A. Yes, I did say yesterday that the money raised at  
3 flotation wasn't as much as was thought would have been  
4 raised.

5 Q. If we can look now at the next page, 275. There are  
6 some notes at the bottom. The one I'm interested in  
7 starts:

8 "Overheads."

9 Comments, Turnover, Gross profit, then "Overheads",  
10 which says:

11 "2002 costs ...(reading to the words)... paid via  
12 dividend, not salary. 2004 costs not complete, probably  
13 understated by 70K plus and includes plc costs of 100K.  
14 Operating profit. Query now whether 2002 correct, given  
15 debtor position and treatment of profit on disposal and  
16 shareholders' remuneration. Level of profit concern,  
17 given level of finance debt."

18 So he's there again querying whether the 2002 profit  
19 was actually correct and the explanation given is:

20 "Debtor position."

21 So presumably some of those debts turned out to be  
22 bad or non-existent debts:

23 "Treatment of profit on disposal and shareholders'  
24 remuneration."

25 Does that jog your memory as to why there was

1 a query as to whether the 2002 figure was correct?

2 A. The only one who had a query was Mr Waters and, as  
3 I said, two very eminent bodies. Our own auditors --  
4 our own accountants, sorry, and the audit for AIM, both  
5 had gone through these figures in depth. I didn't see  
6 any cause to argue or debate those figures in 2002 when  
7 they were examined.

8 Q. Well, can we just have a quick look at that point in  
9 bundle E5, page 162. This is a letter which begins at  
10 160 from Bevan and Buckland, the auditors. The relevant  
11 point, currently, is point 8. You'll see what they say:

12 "In the draft accounts provided to us for audit  
13 for August 2003, there was approximately 150,000 of  
14 trade debtors that were over 12 months old.  
15 Approximately 40,000 of debt had been identified by  
16 yourself as customers who had paid cash to the company  
17 but this cash had not been recorded in the books and  
18 records."

19 THE CHAIRMAN: Who is this letter from?

20 MR WEST: This is from Bevan and Buckland, the auditors.

21 THE CHAIRMAN: Right.

22 MR WEST: "As a result, the debtor account was still in  
23 existence. The balance of the old debtors, we believe,  
24 relate to a situation where the service was in fact  
25 never carried out but no credit note had been issued, ie

1 invoices raised in advance of the service being carried  
2 out and, unfortunately, that service was never  
3 undertaken. As we discussed, these are extremely  
4 serious issues as the August 02 accounts form the basis  
5 of the prospectus to enter the AIM market. Our view at  
6 present is that although the sums involved are extremely  
7 large, given the significant losses the company has  
8 incurred during the year, we don't believe the amount is  
9 fundamental to the accounts. However, we believe this  
10 matter needs to be discussed with the full board before  
11 finalising the accounts. With regard to the draft  
12 accounts, they have been prepared, we have reduced the  
13 sales and reduced the debtors' account for the sums  
14 we have discussed."

15 So the profits in 2002 were £220,000. I think  
16 that's right, is it?

17 A. Mm-hm.

18 Q. They're saying, the auditors are saying, it included  
19 £150,000 of trade debtors over 12 months old, many of  
20 which, £40,000 of which, were customers who'd paid cash  
21 to the company, which hadn't been recorded, and the  
22 balance were old debtors who had been billed, even  
23 though the service had never been provided. That would  
24 have a material impact, wouldn't it, on the level of  
25 profits for 2002?

1 A. Yes, it would.

2 Q. At some stage, Mr Fowles, 2 Travel opened a depot in  
3 Llanelli. It is not clear from the files I've seen when  
4 that was. Do you remember when that was?

5 A. Precisely, no.

6 Q. Approximately?

7 A. I think it was some time in either late 2002 or early  
8 2003.

9 Q. Mr Waters wrote a memo about that depot, which is in  
10 E12, page 17. So this is a memo from Mr Waters on the  
11 Llanelli depot. If it's right that that opened late  
12 2002/early 2003, he says:

13 "It has been in place nearly nine months."

14 So this would be around September 2003, say. He  
15 says:

16 "The overhead costs of the Llanelli depot  
17 ...(reading to the words)... needs to be reviewed. The  
18 income of the depot has not increased significantly  
19 through having a permanent presence in the town and our  
20 costs have risen. The budget for the depot shows an  
21 operating loss ...(reading to the words)... more of an  
22 inconvenience than a benefit. Trying to treat it as  
23 a stand-alone depot with only six vehicles is not  
24 worthwhile and I would recommend immediate action of  
25 some sort to reduce the costs."

1           There are then some options set out and he says  
2           after that:

3           "We need to recognise that the Llanelli experiment  
4           has not worked and it may now be time to cut our  
5           losses."

6           You must have been aware because this memo was sent  
7           to you, that Mr Waters was recommending that the  
8           Llanelli experiment be brought to an end?

9   A.   Yes, I think this was some time in December 2003.  It's  
10       not dated, but he says it's before the Cardiff depot  
11       opened.  What Mr Waters was unaware of at the time was  
12       that there was a substantial tranche of tenders due  
13       in April 2004 for the Llanelli depot, which we had put  
14       ourselves in a position for to take advantage of and  
15       which we did take advantage of.

16   Q.   So again, it was all going to work out all right in the  
17       future; is that right?  Things were going to improve?

18   A.   The tenders couldn't be brought forward.  I don't think  
19       the Local Authority would have done that, we had to wait  
20       our time.  Had we not had a depot in Llanelli, it would  
21       have been very difficult --

22   THE CHAIRMAN:  Why didn't Mr Waters know that?  You had  
23       a fairly small headquarters staff and he was the Chief  
24       Financial Officer.  It's just a little difficult to  
25       understand why he did not realise that events like that

1 were likely to occur in a small company?

2 A. He probably did know. He might not have appreciated the  
3 depth of the tenders, but he would have known that the  
4 tenders were coming up because we would have discussed  
5 it at board, as we would have discussed this. I doubt  
6 very much whether there's a further piece of paper about  
7 the Llanelli depot, so his queries would have been  
8 answered at the time. But it was a situation where we  
9 had developed that part of the country, we had a depot  
10 there. It followed on from the way that we worked,  
11 which was to put a depot in and then wait for tenders to  
12 come up. We had the opportunity in North Road. One has  
13 to take opportunities when they arise, even though it  
14 perhaps was significantly before the tenders were due.  
15 But we knew the tenders were due in 2004 and a large  
16 amount of them, we were successful in getting those  
17 tenders.

18 MR WEST: We saw a minute ago that Mr Waters had recommended  
19 that 2 Travel's cash flow position be improved by  
20 expanding the use of the CTC, the coach travel centre.  
21 Do you remember that?

22 A. Yes.

23 Q. And could you go back to E4, which I think you have  
24 still got open, at page 279. You acquired the coach  
25 travel centre, I think in around April 2003; is that

1 right?

2 A. Yes.

3 Q. This is an e-mail to Carl Waters from Haleema Mohammed.

4 She was an employee at the CTC, wasn't she?

5 A. She was.

6 Q. You'll see what she says in August 2003:

7 "Dear Carl. Can't get hold of Bev because he's in  
8 a meeting. I know you have said this is nothing to do  
9 with you, but I've never had to put up with so much  
10 grief in the four years I've worked here. I've so many  
11 companies chasing payment, they are pulling out of work  
12 for October and we can't afford to lose these companies.  
13 I don't blame these companies for chasing as they're  
14 overdue by far. I have never worked for a coach travel  
15 like this. Me and Christine have had the worst four  
16 weeks of working here ever. Please can you pass this on  
17 to Bev and get these payments sorted."

18 So the position is that the result of the CTC  
19 passing into your ownership was that you stopped paying  
20 the creditors of CTC, just like you did with all of the  
21 other creditors of 2 Travel; is that right?

22 A. No, that's not right at all. We were coming to terms  
23 with managing the Coach Travel Centre. The previous  
24 owner of Coach Travel Centre had operated it without  
25 very many systems. We were trying to implement our own

1 systems into the place. Carl Waters was dealing with  
2 that. Quite clearly, papers had to come through Swansea  
3 to be verified and sent back before they could be paid.  
4 It just took a little bit of time.

5 Q. The document is 357 of the same bundle. Headed "Coach  
6 Travel Centre":

7 "Effect of unpaid suppliers."

8 This is in September.

9 THE CHAIRMAN: I have a 356 and a 357A under 357. Are they  
10 different documents? (Pause).

11 MR WEST: You'll see what this says:

12 "Effect of unpaid suppliers. They have stated they  
13 will not undertake future work unless they have a  
14 written guarantee of payment on terms previously agreed.  
15 They are all aware that payment has been made by tour  
16 operators."

17 So 2 Travel had actually received the money for  
18 these tours from the operators, just hadn't passed it on  
19 to the vehicle suppliers; that's what's being said  
20 there?

21 A. There was a delay, certainly, but it wasn't a serious  
22 delay.

23 Q. They thought it was serious?

24 A. Yes.

25 Q. "As I explained to you, we have coaches booked with them

1 for October and will not be able to cover the work if  
2 they refuse to operate. They emphasised that they'd do  
3 the work at a competitive rate which is true. When  
4 these operators speak to other operators, it won't take  
5 too long for word to spread that payment's not been made  
6 and we shall be in the position whereby we won't be able  
7 to cover any jobs. The tour operators will also get to  
8 know the situation and won't offer any work if they feel  
9 they have problems getting coaches. We have already  
10 lost work for Selwyns as they have informed me they are  
11 not prepared to give us any work because we now belong  
12 to 2 Travel and they are not prepared to work with the  
13 company because of past circumstances. One Stage are  
14 not particularly keen to use 2 Travel again, and if  
15 things continue to go this way, we will get a reputation  
16 whereby it will be hard to sell our services to anyone  
17 ...(reading to the words)... every other call daily is  
18 from operators who are not in a good frame of mind and  
19 tend to take it out on them. The last thing we want is  
20 for them to put their notice in."

21 And that ties in with the e-mail from Khalima  
22 Mohammed, doesn't it?

23 A. Yes.

24 Q. And it goes on to say that the situation requires  
25 a meeting because the system of working is putting the

1 whole set-up in danger of CTC losing its goodwill with  
2 both coach and tour operators, which has taken a number  
3 of years to build up:

4 "As you're aware, this set up has functioned  
5 profitably without any hassle. We don't pay out any  
6 monies we haven't had in, so I find it hard to  
7 understand why this situation has arisen. If things had  
8 been left as they were, we would not find ourselves in  
9 this position. I have run this set-up and others over  
10 the years and have never been put in this situation  
11 before and I feel if the Coach Travel Centre is to run  
12 successfully, it will have to be rectified very quickly."

13 So it hadn't been a success, the purchase of CTC by  
14 2 Travel. In fact, it had a very negative effect on  
15 CTC's business?

16 A. There were other things that affected the business after  
17 we'd bought it. The transition to moving more of our  
18 own vehicles in, was one which upset several of the  
19 previous subcontractors that had been used. The  
20 Foot and Mouth case meant that there were a lot less  
21 tour operators booking with us -- not just with us, but  
22 just with everybody. But I think the transition or  
23 merging into the larger company, did prove difficult  
24 with the staff.

25 Q. But the main problem was that suppliers weren't being

1           paid?

2   A.   They were paid eventually.

3   Q.   Just one last document on this, at E6, page 519.  The  
4       document begins at 517 and it refers to the Coach Travel  
5       Centre, amongst other things.  It's sent to, amongst  
6       other people, yourself.  But the particular part of it  
7       I want to look at is on 519.  There's some handwriting  
8       there.  I'm not sure we know whose handwriting that is.  
9       Do you know whose handwriting it is?

10  A.   I don't, I'm afraid.

11  Q.   The document seems to have been sent to Huw Francis,  
12       Bev Fowles and David Fowles.

13  A.   I don't think it's either of those three.

14  Q.   Well, we may be able to resolve that mystery at some  
15       point.  But whoever it is says:

16               "Urgent work."

17               This is dated April 2004, so more than six months  
18       after the problems we were seeing the  
19       previous September:

20               "Urgent work needed to be done."

21               This is related to CTC, as you can see from the  
22       little box saying "Coach Travel Centre":

23               "Despite knowing of problems for many months,  
24       nothing has been done, both on the admin side and  
25       financial side, ie invoice and credit control, payments.

1 We now have a very steep hill to climb to recover  
2 goodwill from coach operators and ensure our customers  
3 are shown a first class admin service, not bits of paper  
4 here and there. We must use technology. There's  
5 a problem with booking and admin being in Cumbria and  
6 finance being in Swansea ..."

7 A. It's Cwmbran.

8 Q. Cwmbran, I'm sorry:

9 "Important, the next few months, that telephone  
10 calls are made and answered."

11 So it seems that the problems were still continuing  
12 the following April with the CTC; is that right, that  
13 hadn't been resolved?

14 A. There certainly seems to be administration and  
15 invoicing, credit control --

16 Q. And 2 Travel had now lost much of the goodwill which CTC  
17 had built up before 2 Travel purchased it? Is that what  
18 happened?

19 A. That's what it says there.

20 Q. August was the end of 2 Travel's financial year. The  
21 accounts for the year to August 2003 are at E5/439.  
22 Page 453, you can see the results for the year.  
23 Opposite "Loss/profit on ordinary activities before  
24 taxation." Loss of £996,663 for the year.

25 A. Mm-hm.

1 Q. Over the page on 455, there's a line for "Net current  
2 liabilities." £1.333076 million. So that was the  
3 extent to which 2 Travel's current liabilities exceeded  
4 its current assets in August 2003; is that right?

5 A. [inaudible] audited accounts.

6 Q. It's a pretty serious position to be in, isn't it, for  
7 a bus company, if your net current liabilities exceed  
8 your current assets by over £1 million? A bus company  
9 of this size?

10 A. Yes, it is. It was a known situation. I think we were  
11 somewhere in the region of between £450,000 and £600,000  
12 worth of one off costs in that year. The valuation of  
13 the land wasn't at its true value, it didn't have its  
14 developmental potential, and ... But I think  
15 Richard Needham, in his statement, alludes to that.

16 Q. So the company still had net positive assets when one  
17 took account of the value of the land?

18 A. Yes.

19 Q. I think we'd agree with that. At this stage. But  
20 2 Travel also had substantial cash liabilities or what  
21 one might call back debt at this time, of about  
22 £1 million. Sorry to jump back again. This is in  
23 E4/737. Another memo from our friend, Mr Waters. The  
24 right-hand page. October 2003:

25 "Becoming increasingly difficult to meet our ongoing

1 cash requirements. The position with Barclays is,  
2 I believe, at its limit ...(reading to the words)... we  
3 now own a potentially extremely valuable piece of land.  
4 The underlying business has not improved from where it  
5 was a year ago and, in fact, I believe it's gone  
6 backwards. In several areas we have lost work due to  
7 poor performance ...(reading to the words)... We are  
8 not. I attach a schedule big ticket cash requirements  
9 which funds need to be available in the short-term. The  
10 restructuring of some of this debt will help, but the  
11 introduction of additional debt has eaten into the  
12 benefit of this ...(reading to the words)... I cannot  
13 see how much longer they will allow this to continue,  
14 particularly as I can see no way of us making payment to  
15 them of back debt or ongoing debt. Other trade  
16 creditors also continue to suffer and now the fuel  
17 companies have been messed around, their credit to us  
18 will be reduced, further worsening our already  
19 overstretched cash position. The board have been told  
20 that September and October results will be closer to  
21 budget, but in reality, I do not see this happening and  
22 I'm sure the accounts will back this up. Since the  
23 budget was put together, we've lost a lot of contract  
24 work in Swansea, Gorseinon College, and private hire has  
25 been decimated."

1           And we've seen Gorseinon College before. Over the  
2 page:

3           "The move to bus service work has been partially  
4 successful, but the income being taken on bus is less  
5 than half that anticipated and then only on half the  
6 services we plan to run ...(reading to the words)... or  
7 in OAP terms."

8           Then he deals with commercial engineering and he  
9 says:

10           "Cost savings built into the budget have not been  
11 achieved ...(reading to the words)... increased rather  
12 than decreased our costs, while fixed costs such as  
13 insurance, have also cost us more than anticipated and  
14 will continue to do so if we actually declare the full  
15 size of the fleet to Ensign."

16           Is it right that 2 Travel had not declared to its  
17 insurer the full size of its fleet?

18 A. It had declared all the vehicles to Ensign. It also  
19 declared some were laid up, which they were.

20 Q. So what did Mr Waters mean by this comment?

21 A. I have no idea.

22 Q. "The business is competing in a very difficult market.  
23 While this should be recognised, it should also be  
24 recognised that a major restructure of the business is  
25 required ...(reading to the words)... possible

1 strategies, so that at least we have some answers  
2 available when we are questioned as to how this position  
3 has been allowed to occur. The other issue will be the  
4 forthcoming audit ...(reading to the words)... major  
5 issues with the Stock Exchange. I know a rabbit was  
6 pulled out of the hat last year, but now we need another  
7 one, otherwise there may be a lot of egg on a lot of  
8 faces."

9 Presumably by the rabbit out of the hat, he means  
10 the proceeds of the AIM flotation. Is that what he  
11 seems to be talking about?

12 A. I don't know. It's a strange turn of phrase.

13 Q. He says:

14 "We need another one."

15 And I suspect there what he means is the sale of the  
16 Swansea land. Again, if you don't know, you don't know.  
17 We then have a list of big ticket cash liabilities,  
18 which add up, at the bottom, to £866,000 in total.

19 And they include:

20 "Eversheds, 55."

21 So Eversheds did some of the legal work on the  
22 flotation; is that right?

23 A. They did, yes.

24 Q. They hadn't been paid. Solomon Hare, they were the  
25 accountants for the flotation. They hadn't been paid.

1 Is that right?

2 A. That's right.

3 Q. "Still owed £50,000 to John Owen for the purchase of

4 CTC"; is that right?

5 A. That's right.

6 Q. Cleverly, he was the vendor of the Swansea depot and he

7 was owed £100,000; is that right?

8 A. They're all right at this time, yes.

9 Q. There are some queries on this. But going down, "CFA",

10 that was the NOMAD?

11 A. Yes.

12 Q. They were owed monies. "Downing Classic" ; that was the

13 8 per cent loan stock?

14 A. That's correct.

15 Q. Which was about £4,000 a month, so four months

16 outstanding at this stage?

17 A. We paid quarterly.

18 Q. Right.

19 A. Or we were billed quarterly, sorry.

20 Q. Matrix. They were the non-executive director appointed

21 by Downing Classic. They hadn't been paid. But the

22 largest item by far, Inland Revenue, £500,000. Was

23 £500,000 overdue -- I think this is PAYE taxes at this

24 stage; is that right?

25 A. That's right.

1 Q. And then he says:

2 "In addition to the above, I am aware we are now  
3 behind on some of our finance agreements and some of our  
4 trade creditors are well overdue for payment. To get us  
5 back on an even keel, we therefore need a cash injection  
6 now of over £1 million."

7 Someone has written "None" next to "Finance  
8 agreements." Can you identify that handwriting?

9 A. I'm sorry, I can't.

10 Q. But it's right that at this stage, 2 Travel was behind  
11 with its finance agreements, wasn't it?

12 A. There were some finance agreements where they were  
13 behind. They were probably only a month.

14 Q. And that included the Anglo Irish Bank, I believe; is  
15 that is right?

16 A. That's right.

17 Q. Mr Waters refers in this memo to the fact that fuel  
18 companies had been messed around and had therefore  
19 reduced their credit to you. That might perhaps explain  
20 why on-bus takings were being used to pay for fuel,  
21 might it?

22 A. I don't think that's the case. Some of the fuel  
23 companies -- the fuel companies do shrink their terms of  
24 payment to suit themselves. I think it still goes on.

25 Q. Let's see what the auditors said about that, going back

1 to their letter in E5, page 160. It's actually 161,  
2 point number 5. The auditors say:

3 "We have raised concerns about the accounting for  
4 cash income and cash expenses within the company. In  
5 particular, there was a significant problem at your  
6 Cardiff branch ...(reading to the words)... you have  
7 identified approximately £30,000 of receipts for this  
8 work, ie approximately £9,000 unaccounted for. We  
9 believe this was probably spent on fuel and both  
10 yourself [that's Mr Waters] and Bev [that's you] have  
11 confirmed that no cash wages would have been paid out of  
12 this money."

13 So it appears some cash was being spent on fuel, so  
14 the auditors say?

15 A. Yes, the cash was being spent on fuel, certainly at the  
16 Cardiff depot and the Llanelli depot.

17 Q. And the auditors are concerned that cash had also been  
18 spent on wages, but you'd confirmed that that hadn't  
19 happened?

20 A. There were no wages paid by cash at all.

21 Q. And the auditors say:

22 "This is an extremely serious matter, which you  
23 confirm is not continuing, and appropriate controls have  
24 been instituted."

25 Over the page at number 6:

1           "Similarly, in Cwmbran branch ...(reading to the  
2 words)... no invoices are available. You confirmed that  
3 this occurred because of the very serious cash flow  
4 problems the company had at that point. Again, you  
5 confirmed that no cash wages would have been paid out of  
6 that money."

7           And someone appears to have written in handwriting:

8           "I cannot agree to this."

9           I'm not sure I can read the rest. Do you know whose  
10 handwriting that is?

11 A. I think that's Carl Waters'.

12 Q. Is he there saying that he cannot agree that there would  
13 be no cash wages paid?

14 A. It all depends where you suppose the arrow's being  
15 pointed. I don't know. It says, "Again you confirmed",  
16 and it's to Carl, so he's obviously confirmed it at some  
17 stage.

18 Q. Were you aware that 2 Travel drivers on the park and  
19 ride routes had been boasting that they were paid in  
20 cash?

21 A. I have no idea about that, I'm sorry, no.

22 Q. Going back to paying for fuel in cash, that's pretty  
23 risky for a bus company, isn't it, because if you don't  
24 have sufficient on-board bus takings to pay for the  
25 fuel, you run the risk of running out of fuel whilst on

1 the road, don't you?

2 A. There's always that possibility. It was reasonably well  
3 controlled at the depot level. They made sure in most  
4 cases that they had sufficient fuel.

5 Q. But there were examples of 2 Travel buses running out of  
6 fuel whilst on service?

7 A. I think there was one or two in the Llanelli depot where  
8 we introduced new vehicles and the tankage wasn't  
9 assessed properly.

10 Q. And there were also some examples where 2 Travel got  
11 into trouble for fueling up with the passengers on  
12 board?

13 A. I think there was one incident where that happened and  
14 the driver was disciplined properly.

15 Q. Going back to Mr Waters' memo --

16 THE CHAIRMAN: Mr Fowles, how common is it in the industry  
17 for fuel to be paid for out of fares, cash fares?

18 A. It all depends whether you have fuel on site, sir. More  
19 and more companies are not having fuel on site. We  
20 don't have it in the company that I'm in at the moment,  
21 for purely environmental reasons. So we purchase at  
22 local garages. However, we don't pay cash for it.

23 THE CHAIRMAN: You use some kind of card?

24 A. We use a card, yes.

25 THE CHAIRMAN: Agency card?

1 A. Agency card or we have an agreement with the garage  
2 where they invoice us on a weekly basis.

3 THE CHAIRMAN: So generally speaking, is it usual or quite  
4 unusual for fuel to be paid for in cash?

5 A. It's not usual.

6 THE CHAIRMAN: Not usual.

7 A. We were doing it at our stations because it suited and  
8 it saved banking at the time. The money would come in  
9 in the night and would be used for fuel purchases the  
10 following morning.

11 THE CHAIRMAN: But of course, records are essential, aren't  
12 they?

13 A. Yes, they are, and that's where the discrepancies in the  
14 papers arise.

15 THE CHAIRMAN: Thank you, Mr West.

16 MR WEST: Mr Waters was still keen at this time for 2 Travel  
17 to get out of using factoring. Did you know that?

18 A. He was always keen for us to get out of factoring. The  
19 trouble was that the factoring agreements are always  
20 12 months in advance. So you're always committed to  
21 factoring or committed to giving six months' notice on  
22 a rolling six or 12 months' notice on a rolling 12.

23 Q. But in fact, Mr Waters told the auditors in response to  
24 their queries on the 03 accounts, that the board had  
25 agreed to an exit from factoring. Were you aware of

1           that?

2   A.   Yes, they had agreed to a negotiated agreement to get  
3       out of factoring.

4   Q.   But again, that was never implemented?

5   A.   Well, it was left to Mr Waters to arrange.

6   Q.   PwC then wrote to the company on 13 November 2003.  This  
7       document is at E5/112.  You, I assume, saw this at the  
8       time, did you?

9   A.   I believe so, yes.

10  Q.   It's a lengthy document.  I'm not going to read it all  
11       out.  In essence, the proposal one can see at page 115,  
12       was for 2 Travel to make a number of acquisitions.  
13       Three are identified there.  One refers to the  
14       acquisition of the Quadrant.  That was the bus station  
15       in Swansea, was it?

16  A.   It was, yes.

17  Q.   Not your bus depot, the central bus --

18  A.   No, the bus station in -- [OVERSPEAKING].

19  Q.   For 4 million, is the figure given on the table there,  
20       halfway down.  And then -- sorry, that's not right.  
21       It's under "Cost of investment", 5 million.  That was  
22       the proposed cost for the acquisition of the Quadrant,  
23       was it?

24  A.   Yes.

25  Q.   Acquisition of Stagecoach's local business, 17 million.

1 A. Mm-hm.

2 Q. Other local businesses -- these were small or local  
3 businesses in west Wales -- 3.5 million?

4 A. That's right.

5 Q. So PwC were suggesting that 2 Travel should spend  
6 £25.5 million acquiring various businesses and other  
7 assets in Wales?

8 A. Yes.

9 Q. But this proposed strategy wasn't pursued in the event?

10 A. Um ... Certainly, detailed discussions went on about  
11 the purchase of the Quadrant and certainly there were  
12 some discussions with some of the local businesses. We  
13 did approach -- well, Mentor actually approached  
14 a company in south west England. We did get into  
15 discussions with them as well.

16 Q. But the AIM listing had only raised about £550,000,  
17 hadn't it, by way of equity for 2 Travel, plus the  
18 £600,000 loan stock; is that right?

19 A. That's right.

20 Q. And you said yourself that the flotation had fallen  
21 short in terms of the funds that it had generated?

22 A. Yes.

23 Q. So wasn't it completely unrealistic to suggest that  
24 2 Travel, at this stage, was in a position to spend  
25 £25 million purchasing other companies?

1 A. We would have had to go back to the market. There had  
2 been other flotations since ours in the January. One  
3 fairly large London company had also floated. They had  
4 gone back to the market and acquired certain businesses.  
5 It was felt that we could do the same.

6 Q. But in the event, you didn't?

7 A. No.

8 Q. And PwC then sent a letter with a rather different  
9 strategy. This was the PwC report of 17 February 2004,  
10 which is in the same bundle at page 271. You have seen  
11 this before, haven't you?

12 A. Just a couple of times.

13 Q. Yes. So this document proposed a different strategy of  
14 what might be called organic growth, increasing  
15 utilisation of the company's assets by registering new  
16 routes; is that right, broadly?

17 A. That's right, yes.

18 Q. Then if you could turn to page 286, there's an  
19 explanation of the new routes set out there. The fourth  
20 bullet point down says:

21 "Ticket revenues are based upon market research of  
22 the routes. This has identified current ticket prices  
23 and the number of passengers travelling on the routes."

24 What does that reference to market research -- what  
25 document does that refer to?

1 A. It doesn't refer to any document, it's research that we  
2 did ourselves.

3 Q. So one can't find that written down anywhere?

4 A. It would have been submitted to PwC at the time.

5 Q. And the next bullet point, it says:

6 "It is assumed that the new service will attract  
7 30 per cent of all the passengers using the corridors by  
8 month 6. Brand loyalty is minimal in this industry."

9 That 30 per cent figure was provided by yourself,  
10 was it?

11 A. It was provided by ourselves on the basis of what had  
12 been achieved in other areas, Neath in particular.

13 Q. Let's just look at that 30 per cent figure for a minute  
14 because, as you probably know, Cardiff Bus doesn't agree  
15 with that figure. So far as concerns Cardiff Bus --  
16 this is talking about in Cardiff. So far as concerns  
17 Cardiff Bus season ticket or multi-ride ticket holders,  
18 none of those passengers would have travelled with  
19 2 Travel, would they?

20 A. It's unlikely.

21 Q. Although, in fact, there is evidence in the bundles of  
22 2 Travel's drivers allowing Cardiff Bus season ticket  
23 holders to board the bus by pressing the pass button.  
24 Were you aware that that had happened?

25 A. No, I wasn't aware that that had happened.

1 Q. And that pass button is the button you press when an OAP  
2 with a freedom card, a concessionary passenger, boards  
3 the bus, isn't it?

4 A. It all depends which button it's programmed in for. If  
5 it's --

6 THE CHAIRMAN: You don't have to be an OAP to have one of  
7 these?

8 A. It's over 60s, sir.

9 MR WEST: Senior citizens of one type or another. But so  
10 far as concerns such freedom pass holders, they would be  
11 likely to get on to the first bus that arrived, wouldn't  
12 they?

13 A. Could you repeat that?

14 Q. Concessionary travel holders, also disabled people in  
15 Wales, they would be likely to board the first bus that  
16 arrived that went where they wanted to go, wouldn't  
17 they?

18 A. It really depends. If you're talking about a turn up  
19 and go service, I would agree. If you're talking about  
20 a timetable service, not necessarily so. They would  
21 come out for the timetabled bus.

22 Q. But all of these routes were frequently serviced routes,  
23 the Cardiff routes, weren't they?

24 A. They were when the white buses were out there, but they  
25 weren't as far as other times go. We had a timetable.

1 Our timetable would be half hourly or 20 minutes or  
2 whatever timetables were set at the time. We would  
3 advertise those timetables and people would come out for  
4 those timetables, as they did.

5 Q. Well, Mr Niels has produced an analysis of this. I would  
6 like to show it to you. (Handed). This is in  
7 bundle I1, tab 5. It's headed "Oxera", who are  
8 Cardiff Bus's economics experts. There are a number of  
9 these pages, each for different routes. You'll see the  
10 route is divided into a number of sections. The first  
11 page is service 217. It's been divided into four  
12 sections, Heol Trelai, Pendine, Ely Bridge and Canton.  
13 What this diagram shows is the number of liveried buses,  
14 white buses and 2 Travel buses on each section of the  
15 route.

16 Let's just take section 1, that's the outlying  
17 section, where you say 2 Travel was aiming to pick up  
18 most of its business. On that section of the route,  
19 according to this diagram -- let's assume it is right  
20 for the moment -- there were six Cardiff Bus liveried  
21 services per hour and two 2 Travel services per hour.  
22 Were you aware of that?

23 A. Yes.

24 Q. And then over the page, the 245 service from St Mellons.  
25 Here there were eight Cardiff Bus liveried services per

1 hour, to 2 Travel's two services in section 1. The next  
2 page, Llanrumney service, 250; eight Cardiff Bus  
3 liveried services to 2 Travel's two. Over the page is  
4 the 258 service from Pentwyn. Of course, there were no  
5 2 Travel services on that because it didn't operate.  
6 And the final page, 262, from Pentrebane; six  
7 Cardiff Bus liveried services, two 2 Travel services.

8 The first point is that these were clearly all  
9 frequently served routes, were they not? Even without  
10 the white bus, you have six Cardiff Bus liveried  
11 services as a minimum on each of these routes, which  
12 means one service every ten minutes at the maximum, and,  
13 as Mr Jones told us yesterday, that's a frequently  
14 served route, isn't it?

15 A. It's a frequently served route, yes.

16 Q. And on frequently served routes, as Mr Jones also told  
17 us yesterday, passengers don't come out for a timetable,  
18 do they?

19 A. They may not, no. It's a -- what's phrased a "turn up  
20 and go" service. Some of the services didn't quite go  
21 the same way on Cardiff Bus. For instance, the one in  
22 Llanrumney. Three buses go one way and three buses go  
23 the other way round the estate.

24 Q. But let's take the 217, for example. You have six  
25 Cardiff Bus liveried services, two 2 Travel services.

1           Given that people are just turning up and being picked  
2           up, the likelihood is that the passengers will be  
3           divided between those services in accordance with the  
4           relative frequencies. So if you have eight buses per  
5           hour in total, of which two are 2 Travel, you're likely  
6           to get about a quarter of the passengers, all other  
7           things being equal?

8   A. I would disagree, but if you --

9   THE CHAIRMAN: Sorry, what do you disagree with?

10   A. We offered a different type of service. It wasn't --

11   THE CHAIRMAN: If we look at the 217 and we take, for  
12           example, the Ely Bridge section, you get 19 buses from  
13           Cardiff Bus liveried and four from 2 Travel. So that's  
14           23 buses. So that's, on average, buses turning up every  
15           two to three minutes.

16   A. Yes. We wouldn't expect to take a great deal off that,  
17           obviously.

18   THE CHAIRMAN: No, people would get on the next bus.

19   A. Indeed, there was a demand at that point, bearing in  
20           mind the majority of people coming into the city would  
21           be coming from the outer establishments, the estates,  
22           which are the areas that we targeted, the high chimney  
23           pot area.

24   THE CHAIRMAN: Yes, but if you take the first section, Heol  
25           to Trelie, it has eight buses an hour between Cardiff

1 Bus liveried and 2 Travel, so that's a bus every 7 to 8  
2 minutes. Are people going to get on the next bus that  
3 turns up or are they going to wait for 2 Travel or, for  
4 that matter, for Cardiff Bus?

5 A. They might -- what we hoped was that they would come out  
6 for our timetabled bus. And we had networked our  
7 timetable and spent a lot of time --

8 THE CHAIRMAN: So they would know when your bus was coming  
9 because it was two an hour and they'd be timetabled,  
10 clearly?

11 A. That's right.

12 THE CHAIRMAN: Thank you.

13 MR WEST: Just to give one more example, over the page, the  
14 245 St Mellons service. There you have eight Cardiff  
15 Bus liveried buses to 2 Travel's two, so 2 Travel would  
16 expect to get about one in every five passengers, all  
17 other things being equal; is that right?

18 A. If you take maths in a very simplistic form, yes.

19 Q. Back again to the 217, you say that the vast majority of  
20 the passengers would get on in section 1, but just by  
21 way of example, on this particular route, passengers,  
22 large numbers of passengers get on and off at the  
23 Cowbridge Road shopping centre, don't they?

24 A. They would get off and on there.

25 Q. Which is part-way into the route?

1 A. It is part-way into the route, yes. Again, we would be  
2 timetabled through that point.

3 Q. And where you have passengers getting on or off part-way  
4 into the route, as you can see from these charts, there  
5 are an even greater number of Cardiff Bus buses compared  
6 to the 2 Travel buses?

7 A. Yes. There are a greater number of passengers though.  
8 All buses go to the city centre or virtually all buses  
9 go to the city centre. The service starts in Ely,  
10 basically, and then works its way into the centre.  
11 We were targeting the Ely people rather than those  
12 people down the line, where we knew there would be an  
13 awful lot of Cardiff Bus vehicles.

14 Q. Now, Dr Niels has calculated, using these graphs and  
15 information about where passengers get on and off, that  
16 2 Travel could be expected to have acquired not  
17 30 per cent but only 18 per cent of the market on these  
18 routes. So my suggestion to you is that the 30 per cent  
19 projection was yet another example of projections made  
20 with what Mr Waters called rose tinted spectacles?

21 A. I don't think so. When we started the services, we  
22 certainly had a lot more passengers on than we thought  
23 we were going to have.

24 Q. PwC estimated that £600,000 of working capital would be  
25 required to develop the new routes. Is that right?

1 A. Yes. Are we off this one?

2 Q. Yes.

3 A. Sorry.

4 Q. Just before we go to that, the PwC report, if you still  
5 have it open, refers to an agreement with the Inland  
6 Revenue to pay off the outstanding debt, which we've  
7 seen was £500,000, at £25,000 per month. And that,  
8 I think, is an agreement in this bundle at page 431, but  
9 perhaps you could confirm that?

10 THE CHAIRMAN: Sorry, in which bundle?

11 MR WEST: This is E5.

12 A. Sorry, page number?

13 Q. 431. The terms and conditions there, number 3:  
14 "The arrangement commenced [on page 432] 20 Feb 04  
15 and instalments must be paid as follows: one off payment  
16 of £50,000 by March 20. Monthly payments of £20,000 per  
17 calendar month."

18 So this is a slightly different agreement than the  
19 one referred to by PwC, is it?

20 A. It is, slightly.

21 Q. But this agreement was in place for a number of months.  
22 This was a final agreement, was it?

23 A. Yes.

24 Q. And PwC's views in its February 2004 report was that  
25 £600,000 of working capital would be required by

1           2 Travel to develop the new routes?

2   A.   That's right.

3   Q.   And that was met by Mr Francis and Mr Short signing  
4       guarantees for £675,000, in exchange for bank lending to  
5       2 Travel of the same amount and Mr Francis and Mr Short,  
6       in exchange for the guarantees, obtained security over  
7       the Swansea depot. Was that broadly what happened?

8   A.   Yes, the Swansea land, yes.

9   Q.   We have the guarantees in the bundle at E12/188. No  
10       need to look at them necessarily. They're also not  
11       dated and signed, but they're the only versions we have.  
12       2 Travel's interim results then came out in this bundle,  
13       page 503, for the period to February 2004. At page 508,  
14       you see the result. The column for "Unaudited",  
15       28 February 2004:

16               "Retained loss for the period, £158,000."

17       So 2 Travel's loss making performance continued  
18       in the six months to February 2004?

19   A.   Yes, it did.

20   Q.   And on the preceding page, 507, we see the net current  
21       liabilities had gone up from 1.3 million to 1.66 million  
22       by February 2004.

23   A.   Yes.

24   Q.   A valuation of the Swansea depot was obtained at this  
25       time, which is at page 536 of this bundle, from Poolman

1 Harlow, I think they're called.

2 A. That's right.

3 Q. Page 536. They valued the land at £850,000.

4 A. As it stood, yes.

5 Q. But the company's financial difficulties continued. For  
6 example, it was in default of its insurance premiums  
7 in March 2003. Were you aware of that?

8 A. I was aware of -- we were in renegotiations with another  
9 broker at the time.

10 Q. If you want to look at E6, page 197. This is from Phil  
11 White of Belmont International. Were they the old  
12 brokers or the new brokers you just referred to?

13 A. I think they were the new brokers.

14 Q. He says:

15 "Bev, further to my e-mail below, I understand  
16 you have had a further discussion with Ensign  
17 ...(reading to the words)... The failure to make the  
18 payment by that date will result in the irrevocable  
19 cancellation of the policy from 31 March 2004  
20 ...(reading to the words)... pay it by instalments in  
21 effect."

22 Then the e-mail underneath, also from Mr White to  
23 yourself, he says he has tried to contact you by phone  
24 but was unsuccessful:

25 "Advised by Ensign ...(reading to the words)... As



1 A. It is, yes.

2 Q. But you weren't in charge of the Cardiff depot at that  
3 stage, it was Mr David Fowles?

4 A. That's right.

5 Q. And immediately after the commencement of the services,  
6 when the white services also began, 2 Travel complained  
7 to the OFT?

8 A. Yes.

9 Q. And indeed to the Traffic Commissioner?

10 A. That's right.

11 Q. And to Cardiff Bus directly through Darwin Gray, your  
12 solicitors?

13 A. That's right.

14 Q. And indeed to the police as well?

15 A. There was a letter to the police, yes.

16 Q. As a result of the complaint to the Traffic  
17 Commissioner, there was a VOSA monitoring exercise in  
18 Cardiff in June and July 2004?

19 A. Yes, there was.

20 Q. And we can see the results of that in -- we looked at  
21 this yesterday -- E7, page 597. On the first page  
22 you will see they say they observed 760 departures in  
23 total: 627 Cardiff bus; 133, 2 Travel. They give  
24 Cardiff Bus's punctuality as 99.68 per cent, whereas  
25 with 2 Travel, 91 departures of the 133 failed to

1 operate. 24 operated late and 11 early. Total  
2 punctuality of 5.26 per cent and, in addition, a further  
3 34 were seen to be operating off their registered  
4 routes. It's a pretty damning indictment, isn't it, of  
5 the standard of service provided by 2 Travel on these  
6 routes?

7 A. If you observe the figures as they are, yes, it would  
8 appear so. However, monitoring at that time was not  
9 a very precise science. It had only just been started  
10 by the Traffic Commissioners. Our vehicles were being  
11 predated by the white services. The white services  
12 hadn't been registered in any way with the Traffic  
13 Commissioner. We felt them to be not legal. They would  
14 follow our buses, am and pm, they would follow them all  
15 day. It was felt by a lot of our drivers, to start  
16 with, that it would be sorted. It wasn't sorted. June  
17 and July is almost three months after it had started.  
18 The Traffic Commissioner didn't decide to send anybody  
19 out to look at it for that length of time, by which time  
20 I think both companies were not adhering to some of the  
21 routes that they were supposed to.

22 Drivers would drop short, they wouldn't complete the  
23 journey, in an attempt to get back on the next journey  
24 in front of the white bus, try and shake the white bus  
25 off. So I think it all depends where the monitors were

1 standing, where their observations were made. I don't  
2 think they say where their observations were made. But,  
3 for instance, if they were made in Cardiff City centre,  
4 then quite clearly, if a bus was meant to come down  
5 St Mary's Street and on to Wood Street, the driver may have  
6 decided to come down and do the turn, ready to go -- to  
7 go back, missed the last stop, particularly if he didn't  
8 have any passengers on board. I think by other means of  
9 measurement, and some of Cardiff's own disclosures,  
10 I believe, indicate that we were operating up to  
11 70 per cent of our services.

12 Q. You said in that answer that both companies weren't  
13 operating in accordance with their routes. But in fact  
14 that's not what VOSA saw because they only refer to  
15 2 Travel operating off their routes?

16

17 A. VOSA didn't monitor the white buses.

18 Q. That isn't what they say either, is it, because on  
19 page 598, beside the second hole punch, they say:

20 "Although no anti-competitive behaviour was  
21 witnessed by ourselves, the comparisons have been  
22 compiled in order to show the closeness of the no frills  
23 and 2 Travel services."

24 That must be a reference to Cardiff Bus's no frills  
25 service, mustn't it?

1 A. No, it wasn't.

2 Q. What was it a reference to then?

3 A. It was a reference to their green liveried buses. They  
4 didn't have a timetable to monitor the white buses, so  
5 they couldn't possibly monitor them. There was no  
6 timetable. You couldn't get a timetable, and whilst you  
7 couldn't get a timetable, you can't monitor, so  
8 therefore the white buses could not have been monitored.  
9 I think Sian Thomas actually picks this up in part of  
10 this letter. Because they asked the Traffic  
11 Commissioner's office for timetables for the white  
12 buses, for the no frills services, as they called it,  
13 117, 114 and 162, and they couldn't get them.

14 Q. I think what you're referring to is the last paragraph  
15 on page 599, where she says:

16 "Having subsequently read and noted the formal  
17 response from 2 Travel, which included copies of  
18 correspondence between themselves and Mr Douglas,  
19 it would appear that the TAO [that's the traffic area  
20 officers] confirmed to 2 Travel that ...(reading to the  
21 words)... anti-competitive behaviour."

22 Is that what you're referring to?

23 A. I'm also referring to the paragraphs above that, where  
24 it says:

25 "Timetables were forwarded to us. However, no

1 details were supplied specifically relating to the  
2 Cardiff Bus no frills services, 117, 114 and 162."

3 THE CHAIRMAN: And the previous paragraph.

4 MR WEST: Yes, but the reason there were no timetables  
5 is that these were frequent services --

6 A. No, they weren't frequent services. If they were  
7 frequent services, they would have had to have numbers  
8 17, 14 and 62 up. They couldn't possibly be under the  
9 frequent services at 117, 114 and 162. There were no  
10 registrations 117, 114 and 162.

11 Q. The fact is that these were frequent services and they  
12 were monitored by VOSA, as Mr Jones explained to us  
13 yesterday --

14 MR BOWSHER: I have to interrupt. A proposition is being  
15 put forward that flatly contradicted the witness's  
16 evidence.

17 THE CHAIRMAN: He said they were not frequent services.

18 MR BOWSHER: Sorry to interrupt.

19 MR WEST: Well, I don't want to go through with this witness  
20 the correspondence we had with the TAO about this  
21 because he wasn't involved in it. But it was explained,  
22 certainly yesterday by Mr Clayton Jones, how the  
23 monitoring would happen if there were frequent services,  
24 namely that the VOSA monitors would ensure that the  
25 services were as frequent as their registrations. In

1 other words, at least six an hour, not more than ten  
2 minutes apart.

3 A. And that's what they monitored. They monitored the  
4 services that you have just given to me in Gunner Niels'  
5 report, which are the six an hour coming in from Ely,  
6 the eight an hour coming in from elsewhere. They could  
7 not monitor the 117, the 114 and the 162 because (a)  
8 they weren't services, they were not registered with the  
9 Traffic Commissioner and therefore they could only  
10 monitor the numbers, the route numbers, that they would  
11 have seen on the road, ie 17 -- and that should be 144,  
12 I believe, there, not 114 -- 44, 62, 58, if it had run.  
13 That's all they could monitor. They couldn't monitor  
14 a 117 because there was no 117 in Cardiff.

15 Q. I don't want to argue with you, Mr Fowles, but if you  
16 look at the last paragraph, which I read out a minute  
17 ago, on the third line she says:

18 "Cardiff Bus's no frills services, 117, 144 and  
19 162."

20 So where she refers to the "no frills services" on  
21 the previous page. She says that:

22 "They didn't witness anti-competitive behaviour but  
23 they did compile comparisons to show the closeness of  
24 the no frills and 2 Travel services."

25 She's talking about the buses?

1 A. Yes, which weren't registered properly.

2 Q. But they were monitored by VOSA, that's what she's  
3 saying?

4 A. They weren't monitored. She said they can't be  
5 monitored because they couldn't get a timetable. How  
6 can you monitor something that doesn't come in on  
7 a timetable?

8 Q. Well, even if not monitored against a timetable, they  
9 were monitored in the sense that --

10 A. The only monitoring they did on the white services was  
11 the closeness and she makes reference to that in the  
12 letter, the closeness of the white services to our  
13 services. And then if you skip the three paragraphs in  
14 between, she then says that because they couldn't  
15 monitor the white services and they weren't registered,  
16 it may have implications with regard to the complaint  
17 that 2 Travel had made.

18 Q. Yes, but going back to the point I made a minute ago,  
19 they did monitor, in the sense of watching, the white  
20 services, to see if there was any anti-competitive  
21 behaviour to be seen, didn't they?

22 A. It had to be anti-competitive just to be there, because  
23 it shouldn't have been there. It wasn't registered to  
24 be there.

25 THE CHAIRMAN: Shall we move on, Mr West?

1 MR WEST: Yes. I'll just ask one more question about that.  
2 Where she talks about anti-competitive behaviour, that  
3 refers to the matters which had been raised in your  
4 complaint, which had led to this monitoring exercise?  
5 A. And the anti-competitive behaviour was the illegal  
6 operation of the buses, the non-registered services.  
7 That was our complaint.  
8 Q. That's not quite right though, is it, because it was  
9 also bad driving, intimidation, harassment and  
10 sandwiching your buses?  
11 A. It goes on from one in front and one behind. They  
12 followed us. The white buses just followed our routes.  
13 They would wait at 8.30, 8.45 every morning for us at  
14 the terminus and then just follow us, one in front, one  
15 behind.  
16 Q. So your position is that VOSA just failed to see any of  
17 this?  
18 A. No, they did see it, they make reference to it. She  
19 says the closeness of the white services to our services  
20 would probably give 2 Travel some -- may well have an  
21 implication with regard to their complaint of  
22 anti-competitive behaviour. The last paragraph.  
23 Q. Well, we'll come back in a minute to see what the  
24 Traffic Commissioner concluded about that. Now, this  
25 was in June and July 2004, and in around about the same

1 time, Mr Rawlinson of City Financial Associates, the  
2 NOMAD, began to be very concerned about the financial  
3 position of 2 Travel. We can see that at page 199 of  
4 bundle E7:

5 "Bev, sorry, can't get down to the board meeting  
6 again today ...(reading to the words)... I am extremely  
7 concerned about the losses and the dire state of the  
8 balance sheet, where debt levels have risen to  
9 5.46 million ...(reading to the words)... next week to  
10 discuss the position."

11 The result of this was that there were some changes  
12 on the board of 2 Travel; is that right?

13 A. Um ... Yes, there were.

14 Q. You moved from being chief executive to being operations  
15 director?

16 A. That was in September, I think it was.

17 Q. And Mr Francis effectively took over your position  
18 at the helm of the company?

19 A. No, Martin Cook was appointed as chief executive officer  
20 at the time. Mr Francis joined the board.

21 Q. He had previously only been company secretary?

22 A. Correct.

23 Q. And Mr Waters left the company?

24 A. Mr Waters had given us notice. I can't be specific, but  
25 it was some time in June he gave us three months'

1 notice.

2 Q. These figures that caused Mr Rawlinson such concern were  
3 figures as at the end of April, and therefore would not  
4 have been materially affected in any way by the  
5 infringement, would they?

6 A. That's the case, yes. It was prior to the predation.

7 Q. Well, the in-fill services began on 19 April, but even  
8 so, the 30 April figures would not reflect --

9 A. Yes.

10 Q. -- that business. And Mr Rawlinson was particularly  
11 concerned that the new overdraft facility, which had  
12 been provided by Barclays, after getting the guarantees  
13 from Mr Francis and Mr Short, appeared to have been  
14 drawn down in its entirety on the day it was received.  
15 Do you remember that?

16 A. I can't recall that, I'm afraid.

17 Q. If you look at page 201, this is a message to yourself  
18 and Mr Waters. It's the fourth bullet point:  
19 "Very concerned about your cash flow. You appear to  
20 have missed ...(reading to the words)... cash inflows  
21 the day you got the overdraft."

22 THE CHAIRMAN: Sorry, who is Liam Murray?

23 A. He worked for CFA.

24 THE CHAIRMAN: So he works for Mr Rawlinson?

25 A. Yes, the NOMAD.

1 MR WEST: The e-mail itself is from Mr Rawlinson, as you see  
2 at the bottom, "Tony"; so he was presumably an  
3 assistant, was he?  
4 A. Yes.  
5 Q. In fact, however, the overdraft wasn't drawn down in its  
6 entirety, it appears, on the day it was received.  
7 We can see that from page 214. This is a note prepared  
8 by Mr Spooner of Mentor, who seems to be GMS. Is that  
9 right?  
10 A. Yes.  
11 Q. Under "Cash position":  
12 "Continuing problems with the factors ...(reading to  
13 the words)... drawn down to date."  
14 So actually it was only £550,000 drawn down at that  
15 date, but it was shortly after that, fully drawn down at  
16 page 415. It's another note, it appears, from  
17 Mr Spooner. On the second page under "Cash balance  
18 sheet":  
19 "Cash position remains tight due partly ...(reading  
20 to the words)... poor financial records. The 675K bank  
21 facility guaranteed by Francis and Short was fully  
22 drawn."  
23 So it was fully drawn by August?  
24 A. Yes.  
25 Q. And then whilst we are on this document, two more

1 paragraphs down:

2 "PAYE arrears are a cause for concern, now 794K, as  
3 the monthly payment schedule has not been adhered to by  
4 2 Travel."

5 So 2 Travel was also in breach of its agreement to  
6 repay the back debt owed to the Inland Revenue?

7 A. Yes, it paid it in September.

8 Q. Yes, we'll come back to that. Under the "PwC report",  
9 the Cardiff routes were not expected to generate profits  
10 for the first four months; is that right?

11 A. Yes, it usually takes about that time to settle a route.

12 Q. So again, as at August, the dire financial position  
13 which is shown by these documents, was not something  
14 which had been caused by the infringement because there  
15 wouldn't have been any profits on these routes anyway?

16 A. Yes, but by August, PwC had done a further report for us  
17 and the further report had taken actual figures that  
18 were used in the last week of June and July and  
19 projected forward, which showed that we had done  
20 a little bit better than we thought we were going to  
21 have done. In fact, quite significantly better than we  
22 thought.

23 Q. Well, we'll come to that PwC report, but I'm not sure  
24 you answered my question, which is that the financial  
25 position of the company in August 2004 was not the

1 result of the infringement, because, even if there had  
2 been no white services, PwC was not projecting a profit  
3 on the routes by this stage?

4 A. They weren't projecting a loss either. The predation  
5 would have had an effect on us during that period and  
6 did.

7 Q. You mentioned a minute ago that Mr Waters left the  
8 company around this time. It was agreed that he would.

9 A. Mm-hm.

10 Q. And around the same time he wrote another one of his  
11 memos, which is at page 394 of this bundle. This was to  
12 Mr Huw Francis.

13 A. Did you say 394?

14 Q. 394. It begins with the rather unpromising subject  
15 line: "Systems failures":

16 "Further to our recent discussion, please find below  
17 a summary of the main issues ...(reading to the  
18 words)... overreliance on factoring, depots' lack of  
19 administrative staff, failure to properly record cash  
20 receipts, incorrect invoicing, failure to follow systems  
21 introduced, continual firefighting, no strategic  
22 planning, autocratic management style, senior management  
23 interference, fear of the truth, company culture."

24 Many of these problems had been identified by  
25 Mr Waters at the time he arrived at the company, hadn't

1           they?

2   A.   Yes, certainly.

3   Q.   Two years later, no progress appears to have been made?

4   A.   Most of them were under the remit of Mr Waters.

5   Q.   Given these difficulties, it would be almost impossible

6       for the company to keep reliable accounts?

7   A.   As he says in his next line, many of these can be

8       addressed quite quickly. They were small systems

9       failures. Chequebook payments not being properly

10      recorded with stubs. I mean, it's a memo. It's his

11      department.

12   Q.   What he also says there is that similar exercises have

13      been undertaken in the past. And then he says:

14                "When clean positions have been reached, subsequent

15      actions taken have negated ...(reading to the words)...

16      the situation this time."

17                So Mr Waters, this time, is the optimist.

18   A.   Possibly.

19   Q.   You then refer to the further PwC report. That's at

20      page 416 in this bundle. At page 438 we see some more

21      projections by PwC. If you look at the very bottom

22      line, on the left-hand side there are some actual

23      figures and under "Result before taxation", the figure

24      corresponding to the three months to August, which is

25      the penultimate figure on that row, is a loss of

1           £315,000.

2   A.   Sorry, I'm not with you.

3   Q.   Here.   (indicating).

4   A.   Yes, thank you.

5   Q.   You said a minute ago that the company had done better

6       than expected.  It doesn't appear to be recorded in

7       PwC's report here?

8   A.   I said the company had done better in Cardiff than it

9       had thought it was going to do.

10  Q.   But then the projections going forwards, we can see on

11       the right-hand side of the page, "Result before

12       taxation".  They're projecting a loss of £7,000

13       in September.  And lo and behold, in October, a profit

14       of £74,000.  So yet again, some projections for the

15       future, which don't appear to relate in any way to the

16       company's actual performance in the past?

17  A.   I disagree.  We had been awarded quite a lot of

18       contracts from the September and the bus revenues were

19       expected to flow in, as we've said, after the initial

20       four month period.

21  Q.   PwC projected the maximum overdraft requirement at

22       page 426, of £937,000 in April 2005.  Do you see that?

23       The first note below the table on page 426.

24  A.   Yes.

25  Q.   What then happened is that Mr Francis and Mr Short gave

1 a further guarantee, didn't they?

2 A. That's right.

3 Q. This time in the sum of £300,000. Do you remember that?

4 A. Yes.

5 Q. The intention was that combined with the existing 675,  
6 that would make a total of 975, which would be  
7 sufficient to cover this peak overdraft requirement.  
8 Was that the intention?

9 A. I think so, yes, as I recall.

10 Q. Although, in fact, the 675 had already been spent?

11 A. I think there was a further 600K, which had been  
12 itemised by Nigel Short and Huw Francis at the time.

13 Q. Well, there was then a further guarantee provided by  
14 them of £650,000 in October 2004. Is that what you're  
15 referring to?

16 A. Could be, yes.

17 Q. Because by then, you referred a minute ago to the fact  
18 that the Inland Revenue payment had been made at the end  
19 of August; is that right?

20 A. I think it was September.

21 Q. The Inland Revenue served a winding-up petition on  
22 2 Travel in August 2004, didn't it?

23 A. That's right.

24 Q. Threatening to wind you up unless you paid £464,000 of  
25 back taxes?

1 A. That's right.

2 Q. And that's why a further guarantee was then given by  
3 Mr Short and Mr Francis?

4 A. No, the payment was made to the tax office in cash of  
5 £460,000.

6 Q. I don't believe that's right.

7 A. I can tell you it is.

8 Q. What happened, in fact, was that there was a loan, the  
9 company took out another loan of £300,000, which  
10 together with the cash from the company, went to pay off  
11 the Inland Revenue, and that loan of £300,000 was  
12 a short term loan, which fell due at the end of October.  
13 Do you remember that?

14 A. I don't think so. The money was paid by Nigel Short,  
15 myself and Huw Francis at the time. There was no  
16 short-term 300K loan. It was paid cash by the three of  
17 us.

18 Q. You remember that the trading in 2 Travel shares was  
19 suspended on 14 November 2004. Do you remember that?

20 A. Yes.

21 Q. And the reason for that was that a further bank loan of  
22 £300,000 had fallen due for repayment. Do you remember  
23 that?

24 A. No, sorry.

25 Q. That was the bank loan which was taken out to pay the

1 tax money?

2 A. I don't think so.

3 Q. I'm not sure if you're the right person to ask about any  
4 of this, Mr Fowles.

5 A. Probably not.

6 Q. Going back to the PwC second report, as you said,  
7 Mr Short and Mr Francis provided a further guarantee of  
8 £300,000, which was intended to cover that 937 working  
9 capital requirement. And in exchange for that, the  
10 company agreed to provide them with an option to  
11 purchase the Swansea depot for £2 million, plus  
12 20 per cent of any profit on a subsequent resale. Is  
13 that right?

14 A. I think so, yes.

15 Q. We can look at that. That's at page 465. From  
16 Huw Francis and Nigel Short, 12 August 2004. They say  
17 they're making available to 2 Travel an unsecured loan  
18 of £937,000, on condition that the company provides them  
19 with a legal charge over the property and depot at Upper  
20 Bank and the company provides them with an option to  
21 acquire:

22 "The option price will be the current market value  
23 as of today's date, assessed by King Sturge, not less  
24 than 2 million, plus 20 per cent of any profit on  
25 a resale."

1           That option agreement was then entered into, was it  
2           not?  
3    A.   The board gave approval, yes.  
4    Q.   On those terms?  
5    A.   Yes.  
6    Q.   But the suggestion of a loan of £937,000 did not  
7           proceed?  
8    A.   I believe it did.  
9    Q.   I think we've just been over this.  What happens was  
10           there was the further guarantee of £300,000 on top of  
11           the existing 675 from the previous April?  
12   A.   There was a further £600,000 in there somewhere.  
13   Q.   And then a further £650,000.  
14   A.   Mm.  
15   Q.   What then happens, since we're in August 2004, was that  
16           the company was subject to a Traffic Commissioner  
17           inquiry.  Do you remember that?  
18   A.   Yes.  
19   Q.   And that arose out of monitoring, to go back to  
20           monitoring, of 2 Travel's services, but this time  
21           outside Cardiff?  
22   A.   That's correct.  
23   Q.   And prior to the period of the infringement?  
24   A.   That's right, yes.  
25   Q.   There was a finding of failure to operate registered

1 services by 2 Travel. We can look at the decision in  
2 E8, I believe. It's in E7 again, page 591.

3 Paragraph 3:

4 "Mr Anderson ...(reading to the words)... in Neath."

5 So this is Neath:

6 "Of 152, 19 failed to operate, 27 ran outside the  
7 limits. Total non-compliance of 30 per cent."

8 Then in paragraph 4, the second period of Neath  
9 monitoring:

10 "37 failed to operate, 17 outside limits, total  
11 non-compliance, 17 per cent."

12 And in Llanelli, paragraph 7:

13 "Mr Anderson found during his monitoring in Spring  
14 04, 54 of 115 scheduled services failed to operate,  
15 further 17 outside limits. 61 per cent non-compliance."

16 Then in Newport and Cwmbran, paragraph 10:

17 "Three routes in Newport Cwmbran registered from  
18 1 June had failed to run at all, from then to the date  
19 of the letter to me. Over 400 services a week should  
20 have run on these three routes. The company agreed that  
21 none had run."

22 So that was a zero per cent compliance result on  
23 those services.

24 Then at paragraph 18, it summarises the monitoring  
25 on all the different services:

1           "Of the 573, 109 failed to run, 61 ran outside  
2 limits, almost 30 per cent non-compliant against the  
3 5 per cent which is acceptable ...(reading to the  
4 words)... consistent with the County Council's reports.  
5 I am staggered by the Newport Cwmbran situation, where  
6 services hadn't even started to run ...(reading to the  
7 words)... against the spirit and letter of the law and  
8 cannot be tolerated. Overall, non-compliance, including  
9 Newport Cwmbran, was well over 50 per cent."

10           That was against the industry standard, which  
11 I believe is 95 per cent tolerance, of buses running no  
12 more than one minute early and five minutes late;  
13 is that right?

14 A. I don't think it's a standard that's achieved, but it's  
15 a standard that's set.

16 Q. And at paragraph 16, the Traffic Commissioner says:

17           "With one exception, I did not find the excuses  
18 offered by the company to be reasonable."

19           Is that right?

20 A. Yes, he did, yes. The figures would have been,  
21 particularly in Neath -- we had a debate in chambers  
22 with him. On one particular day of monitoring, the  
23 Traffic Commissioner's monitor was in the Neath bus  
24 station. It was the same day that our vehicles used to  
25 do six buses into a school before they started their

1 service, and then would come off at 3 o'clock, 3.15, to  
2 take the children out. In the morning of one of the  
3 days of monitoring, our control office in Swansea got  
4 a message from the school concerned that the children  
5 were going to have to come out early because there was  
6 some sort of scare in the school or some sort of  
7 electrical problem. They were going to be on the  
8 pavement at 12 o'clock. We argued with the Traffic  
9 Commissioner that our controller took the right decision  
10 to take the vehicles off service at 12 o'clock to  
11 transport 300 schoolchildren home. The Traffic  
12 Commissioner said that we had failed in our compliance  
13 and thereby penalised us the maximum that there was to  
14 penalise, for the number of vehicles that failed to  
15 operate on that day. Each vehicle of the six probably  
16 failed to operate between three and four services. Had  
17 those figures been taken into account as a justifiable  
18 reason, then I feel that the Neath figures would have  
19 been much, much better.

20 The Traffic Commissioner disagreed with us. I asked  
21 him to take into account the pressure that was put on  
22 our control staff at that particular time. They had but  
23 one chance to make a decision. It wasn't a lengthy  
24 period of time they had, it was about 20 minutes, and  
25 I said: if we made a mistake, then we made a mistake.

1 But that's all it would have been. The compliance  
2 figure in Neath was quite high apart from that. But  
3 nevertheless, he refused. Most people in the industry  
4 thought that we did the right thing at the time.

5 Q. So this is right, is it; you say you were just unlucky,  
6 that they got you on the wrong day?

7 A. I didn't say that.

8 Q. At paragraph 11, the Traffic Commissioner records that  
9 the company made a general point about having had  
10 difficulty in recruiting drivers and even more  
11 difficulty in retaining them once recruited:

12 "At one time annual turnover ...(reading to the  
13 words)... training and test dates. Hong Kong PSV  
14 licences being, unexpectedly, not valid here."

15 A. Yes.

16 Q. So 2 Travel had a long-standing difficulty with driver  
17 shortages, as recorded here, didn't it?

18 A. I think every company in the country did.

19 Q. And that was a problem which pre-dated the infringement  
20 in Cardiff?

21 A. It's still a problem.

22 Q. And one of the difficulties 2 Travel had was that it had  
23 no internal programme to train up new drivers to PCV  
24 level?

25 A. That's correct.

1 Q. Unlike Cardiff Bus, which has an extensive programme to  
2 train up new bus drivers?

3 A. And who were still short.

4 Q. But they'd be even more short if they were limited to  
5 seeking to recruit from outside?

6 A. That's right. I accept that.

7 Q. And the result was that 2 Travel ended up recruiting  
8 drivers from as far afield as Nepal?

9 A. That's correct.

10 Q. These were the Gurkhas, who were introduced ultimately,  
11 I think, in Swansea?

12 A. Yes, they were.

13 Q. And another difficulty, especially for a no frills  
14 operator, would be trying to recruit drivers, unless the  
15 terms and conditions on offer were equivalent to those  
16 offered by other bus operators?

17 A. I think that's a pretty debatable point. It all depends  
18 what the whole package is as far as driving staff are  
19 concerned.

20 Q. At paragraph 15 the Traffic Commissioner says this:  
21 "The 2 Travel group are relative newcomers  
22 ...(reading to the words)... ensuring they have enough  
23 buses and trained staff, management, supervisors,  
24 drivers and engineers available, before any route  
25 ...(reading to the words)... registered services before

1 they had the physical resources to run them reliably."

2 That's right, isn't it? You had registered these  
3 services before you had the relevant drivers and the  
4 other resources you needed to run the services reliably?

5 A. To register the service with the Traffic Commissioner,  
6 you have to give him 56 days' notice or two months,  
7 whereby it is fair to assume that you would not want to  
8 carry the labour for the whole of that 56 day period.  
9 You would assume that you could recruit or you might  
10 well have recruited in advance of it. Unfortunately,  
11 the 56 day notice period -- it's very difficult to look  
12 into the future to see that you might not get the  
13 required drivers. On occasions, and the Cwmbran one was  
14 one, we registered services which we thought we could  
15 fill. Several people came and several people left  
16 during the 56 day period. The turnover of staff is  
17 quite clear from the document. We informed the Traffic  
18 Commissioner about the Cwmbran non-compliance in advance  
19 of the entry date.

20 Q. These difficulties that you mentioned, about the need to  
21 register the services 56 days in advance, those rules  
22 apply to everybody?

23 A. That's correct, yes.

24 Q. And the reason 2 Travel had been so anxious to grow  
25 quickly was, of course, it now had these external

1           shareholders, as a result of floating on AIM, who  
2           demanded a return on their investments?

3   A.   As shareholders do, yes.

4   Q.   2 Travel was fined in the end, as you can see under  
5           "Decision", paragraph 21, a total of £28,600 for these  
6           failures to operate. The Traffic Commissioner decision  
7           was not, in the event, appealed by 2 Travel, was it?

8   A.   It was, yes.

9   Q.   An appeal --

10  A.   An appeal was launched about the fine.

11  Q.   But it was never pursued?

12  A.   It was pursued through until December that year.

13  Q.   And it was then withdrawn or treated as withdrawn?

14  A.   It was treated as withdrawn when it shouldn't have been.

15  Q.   Despite that, 2 Travel never paid the fine?

16  A.   No, they didn't.

17  Q.   And as we've seen, the monitoring by VOSA in Cardiff,  
18           which we've looked at before, but was actually later in  
19           time, then demonstrated that 2 Travel was continuing to  
20           fail to operate its services in accordance with its  
21           registered schedules?

22  A.   Well, we've been into that, haven't we?

23  Q.   We have, but the fact is that these problems were not  
24           new in Cardiff, they were in fact, long-standing  
25           difficulties that 2 Travel had had in operating its

1 registered services?

2 A. And exacerbated by the predation.

3 Q. We've seen reference to the King Sturge valuation, and  
4 they provided a new valuation in August of £1 million.  
5 Do you remember that? E7/608.

6 A. Oh yes, yes.

7 THE CHAIRMAN: When was this, sorry?

8 MR WEST: It is dated, I believe, August 31 on page 608.  
9 Although I believe there was an earlier version in July.  
10 Page 610 gives a market value of £1 million for the  
11 Swansea depot, just between the hole punches.

12 A. Yes.

13 Q. If we can just go back briefly to the financial  
14 position. The further guarantees provided by Mr Short  
15 and Mr Francis are then, if you go forward to  
16 page 726 -- this one actually begins at 720. That's the  
17 £300,000, which, together with the 675, was intended to  
18 cover the PwC maximum overdraft requirement. Is that  
19 right?

20 A. Yes.

21 Q. That's dated 22 September 2004 on page 726. Then 729,  
22 this is the option agreement of the same date, by which  
23 Mr Short and Mr Francis were granted the option to  
24 purchase the Swansea depot for £2 million plus  
25 20 per cent.

1 MR FREEMAN: Could I just ask a question on that. What is  
2 the call option start date? There's a manuscript  
3 amendment.

4 MR WEST: Do you know the answer?

5 A. 22 September 2009, by the look of it.

6 Q. It looks like it should be 2004. But there were  
7 provisions as to when --

8 A. It's the start, yes.

9 Q. There were provisions as to when the start date could be  
10 exercised, were there not?

11 A. Yes, I think there were. I wasn't chief executive at  
12 that particular time.

13 MR FREEMAN: We don't know who made that manuscript  
14 amendment or what its significance is; is that right?

15 A. Yes.

16 MR WEST: If you look at paragraph 5.1, page 732, it says  
17 that:

18 "The call option may only be exercised following the  
19 satisfaction of the planning conditions and may only be  
20 exercised prior to 16 May 2008, with the prior consent  
21 of the seller."

22 So it looks like it was certainly envisaged that it  
23 could be exercised prior to 2009, which suggests the  
24 amendment is correct.

25 And at the end of August, the Inland Revenue

1 demanded the repayment of the £464,000 overdue PAYE, as  
2 you've said.

3 A. Mm-hm.

4 Q. That hadn't been factored into the PwC predictions, had  
5 it?

6 A. Not in one lump, no, it had been factored into the PwC  
7 papers on the basis that it would be paid back in  
8 instalments.

9 Q. In instalments, but you were in breach of the agreement  
10 with the Inland Revenue to pay the instalments?

11 A. Which is why it was paid in a lump sum.

12 Q. And the result of that was that Mr Short and Mr Francis  
13 provided additional guarantees, which are at E8,  
14 page 93, for £650,000? At the bottom of 93.

15 A. Yes, I'm looking for the date.

16 Q. This is dated 8 October, I believe, on page 101.

17 A. That's right.

18 Q. That brought the total of guarantees provided by  
19 Mr Short and Mr Francis to 1.625 million. 675 plus 300,  
20 plus 650?

21 A. That's right.

22 Q. If you leave E8 open, I'm afraid we're going back to E7  
23 briefly, at 788. This is a letter from Tony Rawlinson  
24 of NOMAD to Huw and Bev, and I'm not going to read it  
25 all out, but the NOMAD was very concerned about what had

1           happened and, in particular, that the option agreement  
2           had been signed, as indeed had the guarantees, without  
3           the consent of the independent board. Do you recall  
4           that?

5    A. I recall having a conversation with Tony Rawlinson about  
6           it. I also recall Richard Needham having a conversation  
7           with Tony Rawlinson.

8    Q. In the first paragraph:

9           "We were astonished to learn that the option and  
10           loan agreements were entered into, albeit conditionally  
11           ...(reading to the words)... with us and  
12           Graham Spooner."

13           Then if you go down to the fifth paragraph:

14           "Also astonished to learn that despite all of our  
15           requests to be kept informed, the company had received  
16           a demand from the Inland Revenue ...(reading to the  
17           words)... make the payment. I don't understand this  
18           process and I don't know when or if the payment has been  
19           made."

20           So they were also concerned that this substantial  
21           payment had been concerned without telling NOMAD?

22    A. We had told the chairman, the chairman was in agreement.  
23           I vaguely recollect that the chairman said he would deal  
24           with the NOMAD.

25    Q. And at page 624 -- sorry to jump around -- there's

1 another note from Mr Spooner, I believe.

2 THE CHAIRMAN: Sorry, what page?

3 MR WEST: 624. Point 4. Do you agree with the accuracy of  
4 what's written there:

5 "It is envisaged that Bev ...(reading to the  
6 words)... signature on a property option and charge  
7 documents in favour of Messrs Francis and Short which  
8 had not been approved by the two GG board in final  
9 form."

10 A. It had been approved by Richard Needham. I signed it  
11 after speaking with him. I was the only director on  
12 site at that particular time.

13 Q. And is it right that you had temporarily left the  
14 company by reason of what had happened?

15 A. I was on leave.

16 Q. I think it's probably fair to show you paragraph 1:

17 "Bev Fowles had been advised to take leave on  
18 medical advice."

19 Ultimately, however, as you said, the board decided  
20 to recommend that the transactions, that's the option  
21 and the further guarantees, should be approved by the  
22 company?

23 A. That's correct.

24 Q. But there had to be a shareholders' resolution because  
25 this was a related party transaction. So an EGM then

1       took place on 29 October, at which the resolution  
2       was duly passed, as you've said. The trading statement,  
3       if you still have E8, is at page 89.

4               This is the statement issued by the company to the  
5       Stock Exchange, in which the board's recommendation to  
6       shareholders to vote in favour of the resolution  
7       approving the transaction was announced. You can see on  
8       the second paragraph of the first page, he's discussing  
9       there the interim results before he gets to the related  
10      party transaction point and says on the second  
11      paragraph:

12             "Whilst we were successful in achieving our  
13      objective of registering a number of new routes and key  
14      expansion areas, shortages of working capital, drivers  
15      and suitable vehicles meant we were unable to operate  
16      the services at the intended levels. Our shortcomings  
17      were highlighted in a report of the Traffic Commissioner  
18      issued on 25 August and we committed to the commissioner  
19      that we would operate all registered services in Gwent  
20      from 6 September onwards, which we have done and  
21      improved performance of Llanelli and Neath also. These  
22      operational improvements have become possible, given  
23      that we have located the vehicles we require at suitable  
24      prices, recruited additional drivers and a further  
25      working capital facility announced on 13 August."

1 Two paragraphs further down:

2 "Against this background, the company's performance  
3 for the year to 31 August 04, although not finally  
4 determined, was disappointing. In addition to not being  
5 able to expand the bus network as planned ...(reading to  
6 the words)... almost half the costs in the first nine  
7 months."

8 Why is it that nowhere in this statement, Mr Fowles,  
9 are the Stock Exchange told that the reasons for  
10 2 Travel's poor performance were that it was the subject  
11 of predation in Cardiff?

12 A. This is an account for the interim results for the six  
13 months ended 28 February, I think, isn't it?

14 Q. Well, it isn't, though, because if you look at the  
15 paragraph I just read, it talks about the company's  
16 performance for the year to 31 August 2004.

17 THE CHAIRMAN: What was the general purpose of this trading  
18 statement?

19 A. Um ... I think it was to do with the related party  
20 transaction. It took advantage of informing the --

21 THE CHAIRMAN: But that's one part. It says at the top:

22 "Trading statement, related party transaction and  
23 directorate change."

24 So those are three issues.

25 A. I think it's quite common that if you have a chance to

1 talk to the -- or to make a statement to the AIM market,  
2 Stock Exchange, the shareholders, you take advantage of  
3 it. And obviously we had to talk about the related  
4 party transaction and inform them of the directorate  
5 change, and I think a brief trading statement was put in  
6 as well.

7 MR FREEMAN: And correcting the information on the number of  
8 vehicle operator discs?

9 A. Yes, that's right.

10 MR WEST: That wasn't the only correction because if we look  
11 at the first paragraph under "Related party  
12 transaction", it refers to the earlier announcement of  
13 an unsecured loan by Messrs Francis and Short, 30 August  
14 04:

15 "The company announced that Francis and Short, both  
16 directors ...(reading to the words)... working capital.

17 "In fact, the facility that was provided was in the  
18 aggregate amount of 975 and comprised guarantees in  
19 respect of monies advanced to the company by the  
20 company's principal bankers ...(reading to the words)...  
21 option to acquire will be given."

22 Now, the words "aggregate amount of 975" might be  
23 thought to be slightly misleading, given that 675 of  
24 that 975 had been provided in April and had already been  
25 spent. Do you agree with that?

1 A. As I say, this was given out in October and I wasn't  
2 chief executive then, I'd been relieved of that post.  
3 Most of this was prepared by Martin Cook, who was the  
4 new chief executive.

5 Q. So you weren't responsible for that --

6 A. And Hugh Jenkins. No, very, very little of this applied  
7 to me. I was in charge of operations then.

8 Q. On the top of page 91, the options discussed:

9 "The options and option to purchase the whole of the  
10 company's land ...(reading to the words)... following  
11 receipt of satisfactory planning permission. It must be  
12 exercised prior to 5 October 2009 and cannot be  
13 exercised ...(reading to the words)... and 20 per cent  
14 of certain allowable expenditure."

15 And skipping down:

16 "The independent directors comprising  
17 Sir Richard Needham ...(reading to the words)... lack of  
18 alternative sources of funding. Without the proposed  
19 facilities, the independent directors do not believe the  
20 company would be able to continue to trade. With the  
21 proposed facilities in place, the company remains  
22 solvent and has a viable future."

23 So more optimism expressed there. But it's right,  
24 isn't it, that the £2 million price of the option,  
25 that's the price at which the Swansea depot could be

1           acquired, plus the 20 per cent, of course, was a fair  
2           and reasonable price for that land at the time?

3   A.   It was compared to the valuation, yes.

4   Q.   And that's why the company approved it?

5   A.   Yes, the company did approve it.

6   Q.   So what then happened is that another £300,000 of bank  
7           lending fell due for repayment at the end of October.

8           Were you aware of that?

9   A.   No, I wasn't.

10   Q.   Which also had not been factored into the PwC report,  
11           and that's what led to the suspension of 2 Travel's  
12           shares on AIM on 14 November 2004. But again, if you  
13           weren't aware of that --

14   A.   No.

15   Q.   That then led to the appointment of Grant Thornton as  
16           investigating accountants, who set out their conclusions  
17           in a report, which is in the next bundle, E9, at  
18           page 290. This is in the form of a draft, but I don't  
19           believe that we have a version of this which is not  
20           a draft, dated 23 November 2004. Did you see this  
21           at the time?

22   A.   Yes, I may have done, yes.

23   Q.   And the main conclusion is at paragraph 1.6, where  
24           Grant Thornton say:

25           "The company is clearly insolvent at present, being

1           unable to pay its debts as and when they fall due."

2           Were you aware that Grant Thornton had advised the  
3           company that it was insolvent in November 2004?

4   A.   They didn't advise me, but they must have advised  
5           Martin Cook.

6   THE CHAIRMAN:   Sorry, can I just try and get an impression  
7           of what was happening.  You were the operations director  
8           at the time?

9   A.   I was, yes.

10   THE CHAIRMAN:   And you'd been involved from the very  
11           beginning?

12   A.   I had, yes.

13   THE CHAIRMAN:   And you had a financial interest?

14   A.   Yes.

15   THE CHAIRMAN:   Substantial financial interest in the  
16           company.  You had appointed a new chief executive.  But  
17           weren't you intimately involved as someone so heavily  
18           involved in the -- you are described as an "independent  
19           director" and I don't know what the definition, off the  
20           top of my head, of an independent director is, but  
21           plainly you must have been aware of what was going on  
22           in relation to Grant Thornton and their conclusions,  
23           surely?

24   A.   I was aware of it, yes.  I mean -- but I don't recall  
25           what happened during that period of time.  Martin Cook

1           took most of that responsibility. I had been involved  
2           in the activities in Cardiff for most of the previous  
3           three months, which had taken an awful lot of my time.

4   THE CHAIRMAN: Yes, but here we have a company in which  
5           you're heavily involved and you have a financial  
6           interest and you're told the company is unable to pay  
7           its debts as and when they fall due, which is pretty  
8           fundamental to whether you're entitled to trade at all,  
9           isn't it?

10   A. Yes. Yes, it would be, yes. By that time, I had had to  
11           tell both Huw Francis and Nigel Short that in view of  
12           the fact that nobody would take the predation in Cardiff  
13           and do something about it, either the Traffic  
14           Commissioner or the OFT, both of whom moved very, very  
15           slowly, that they should not put any more money in.

16   THE CHAIRMAN: Yes, thank you.

17   MR WEST: Just on the point about being an independent  
18           director, I think what that reference means in the  
19           trading statement is that Mr Fowles wasn't a party to  
20           the related party transaction.

21   THE CHAIRMAN: I see.

22   MR WEST: Because if he was, he couldn't vote on it.

23   MR SMITH: I notice in paragraph 3.4 of this report, there's  
24           reference to the King Sturge valuation.

25   MR WEST: Yes.

1 MR SMITH: We see there the market value of 1 million, which  
2 you showed us earlier. There's also a reference to the  
3 value with planning permission at 2.35 to 3.5 million,  
4 which I didn't see in the King Sturge report. Can you  
5 help us as to where that comes from? Can the witness?  
6 MR WEST: I can try to.  
7 THE CHAIRMAN: I saw earlier a reference to Redrow placing  
8 a potential price on the site of 400,000 -- 470,000 an  
9 acre? Something like that.  
10 MR WEST: I think it was 600,000 an acre --  
11 THE CHAIRMAN: 600,000 -- 670,000.  
12 MR WEST: -- for development for residential purposes. The  
13 topic of the Swansea depot and what happened with it is  
14 going to be gone into in more detail with  
15 Mr Huw Francis because he was actually involved in it  
16 but -- that's why I'm skipping over some of this.  
17 MR SMITH: In that case, do take it up later.  
18 MR WEST: Okay.  
19 THE CHAIRMAN: I have gone back to paragraph 1.6. That was  
20 where you left off.  
21 MR WEST: Yes, paragraph 1.6 does then refer to the prospect  
22 of further cash injections, which tends to contradict  
23 what you said a minute ago, that by this stage, you had  
24 advised Messrs Short and Francis that they were throwing  
25 good money after bad?

1 A. They still wanted to put money in, but I felt until the  
2 predation could be sorted, then we weren't going to  
3 deliver what we were meant to be delivering in Cardiff.  
4 It wasn't fair to them as individuals.

5 Q. Then at paragraph 1.12, Grant Thornton say:  
6 "We have to say at the outset that ...(reading to  
7 the words)... breakdown in accounting records that's  
8 occurred since the departure of the previous finance  
9 director at the end of August 2004. This has been  
10 caused, probably, by the lack of a handover period with  
11 the new finance director."  
12 It's right, isn't it, that from the date that  
13 Mr Waters left, there were no further management  
14 accounts prepared in July 2004?

15 A. That's right, yes.

16 Q. And indeed, although 2 Travel's accounting year ended on  
17 31 August 2004, there were no statutory accounts  
18 prepared for 2004 either?

19 A. No. Mr Hugh Jenkins and Martin Cook had departed by the  
20 time that they were supposed to have completed them.

21 Q. When did they leave the company?

22 A. I think they left some time in November/early December.

23 Q. But ordinarily, the company's annual accounts would be  
24 prepared within six months of the year end; is that  
25 right?

1 A. That'd be February.

2 Q. By February, and the company was still trading the  
3 following February, wasn't it?

4 A. Um ... It was still in existence and, yes, doing some  
5 trade.

6 Q. No steps were ever put in place to prepare the statutory  
7 accounts?

8 A. That's right. By that time we knew we weren't going to  
9 be there very much longer.

10 Q. You said a minute ago that Mr Jenkins and Mr Cook left  
11 in November or December.

12 A. Mm-hm.

13 Q. And Mentor and CFA resigned, we can see at page 361 of  
14 this bundle, on 29 November 2004. At the bottom:

15 "City Financial Associates has resigned. The board  
16 of 2 Travel wish to announce that Mentor resigned as  
17 well."

18 That's on the 24th.

19 A. Sorry?

20 Q. That's the day after receipt of the Grant Thornton  
21 report dated 23 November?

22 A. That's right.

23 Q. There's then a further Grant Thornton report --

24 MR SMITH: Just one moment. I wonder if the witness would  
25 look at paragraph 4.6 of the present report. Page 306.

1 We can see there, Mr Fowles, 4.6, says that Nigel Short  
2 has confirmed £300,000 funds are held at his  
3 solicitor's, pending approval by the board and the  
4 NOMAD, and you can see a page earlier, paragraph 4.4,  
5 that under the second bullet, Mr Short was prepared to  
6 put in £300,000, subject to acquisition of company's  
7 overage rights. So it would appear from this that  
8 Mr Short was prepared to put in more money into the  
9 company. Is that right?

10 A. Mr Short and Mr Francis were both prepared to put more  
11 in, but we were suffering very great difficulties in  
12 operating in Cardiff at the time, which was meant to be  
13 the main stream of revenues and profits and without that  
14 being sorted out, I just couldn't advise them or tell  
15 them to put any more money into the company. It really  
16 wasn't fair. Nothing was being done in Cardiff,  
17 couldn't be sorted out. The Traffic Commissioner wasn't  
18 prepared to take any issue and certainly the OFT moved  
19 very, very slowly.

20 MR SMITH: It may be that Mr West is coming to this, but  
21 can you recollect whether this £300,000 was ever put in  
22 or not?

23 A. I can't recollect, but I don't think it was.

24 MR SMITH: I was asking, Mr West, whether the £300,000  
25 that's mentioned in paragraph 4.4 and 4.6, whether that

1 was, in fact, ever made?

2 MR WEST: Yes, it was. What happened was that Mr Short  
3 provided £300,000 in exchange for the company giving up  
4 its right to the 20 per cent, which it was entitled to  
5 on any increase in the value of the Swansea depot.

6 There's a document at E9, page 450 of this same bundle:

7 "In order to facilitate the ongoing conduct of  
8 2 Travel's existing business ...(reading to the  
9 words)... assignment to Mr Short of the benefit of the  
10 payment to which 2 Travel is entitled under the terms of  
11 the option agreement."

12 MR FREEMAN: So that means on exercise of the option, the  
13 benefit of the land is completely theirs, is it?

14 MR WEST: Yes. They still have to pay the 2 million, but  
15 in the event of a subsequent resale at an increased  
16 price, they don't have to pay the 20 per cent.

17 Although you say the OFT was slow to act, it was not  
18 in fact until 3 November 2004 that 2 Travel finally  
19 submitted a detailed complaint to the OFT?

20 A. Yes, we sent a complaint in via an agency at that time.

21 Q. Prior to that date, a number of less formal complaints  
22 had been made and a number of requests for further  
23 information from the OFT had gone unanswered.

24 A. They were eventually answered, yes.

25 Q. It's not quite right to say that the OFT was simply

1 sitting on its hands; it hadn't actually received  
2 a formal complaint with the information it had asked  
3 for?

4 A. I think we were unaware of the procedures that were in  
5 place at the time, but once we realised those, we ...  
6 I think a guy called Clive Rix did the report for us.

7 Q. There was then a further report from Grant Thornton on  
8 2 December at page 421. This simply set out the amount  
9 of money which would be required in the short term for  
10 2 Travel to be able to continue operating. There are  
11 a number of exit strategies proposed. Exit strategy 1  
12 was ceasing to trade on December. Exit strategy 2 was  
13 again ceasing to trade on 3 December, but this time  
14 paying the employees' wages. Exit strategy 3 was  
15 continuing to trade -- it's page 427 -- until  
16 10 December, which was going to require another  
17 £140,000. Exit strategy 4 was ceasing to trade on  
18 17 December, which was going to require another  
19 £210,000. As we've seen, Mr Short was prepared to  
20 provide £300,000.

21 A. Mm-hm.

22 Q. The basis of this report is that 2 Travel was inevitably  
23 going to cease to trade by 17 December 2004. But  
24 that isn't what happened, is it? 2 Travel in fact  
25 continued to trade after that date?

1 A. Yes, they suggested that we apply for an MBO, which we  
2 tried to do with the Traffic Commissioner. The MBO was  
3 dependent on us acquiring an operator's licence or  
4 getting the operator's licence moved to the new company,  
5 but the Traffic Commissioner prior to Christmas 2004  
6 refused to do that.

7 Q. And that was because of your association with 2 Travel?

8 A. Yes, it was. He said that if we resigned, he might  
9 consider it, and the two remaining directors at the time  
10 did resign.

11 Q. So that was -- sorry, that was when Mr Cook and  
12 Mr Jenkins resigned, was it?

13 A. No, no, that was when I offered my resignation and  
14 David Fowles offered his.

15 Q. But on 17 December, 2 Travel did stop operating its  
16 services in Cardiff and closed its Cardiff depot?

17 A. And Cwmbran.

18 Q. Then on 24 December 2004, the Traffic Commissioner  
19 decided to revoke 2 Travel's operating licence for  
20 failure to establish financial standing. That's at  
21 page 465 of this bundle.

22 A. That's right.

23 Q. That was a decision which 2 Travel then appealed --

24 A. That's right.

25 Q. -- to the Transport Tribunal. But you had by this stage

1           been advised by Grant Thornton that 2 Travel was  
2           insolvent, so the Traffic Commissioner was plainly  
3           right, wasn't he, to conclude that 2 Travel lacked  
4           sufficient financial standing?

5   A.   The Transport Tribunal didn't think so; they remitted it  
6           back to him for further consideration.

7   Q.   Let's have a look at that.

8   A.   I think they said he'd misdirected himself or his  
9           financial adviser had misdirected him.

10   Q.   We can see the decision at E10, page 15.  Sorry,  
11           paragraph 13 on page 20.  Mr Laprell, this is your  
12           lawyer:

13                 "The second point is that Mr Callaghan's report  
14           [he was the financial assessor to the Traffic  
15           Commissioner] did not contain any mention of the funds  
16           available under a factoring agreement.  On any view,  
17           these were substantial.  His conclusion was there was no  
18           evidence of financial standing, but it must be viewed in  
19           the light of this serious omission.  We think that in so  
20           stating, Mr Callaghan was plainly wrong.  The extent of  
21           the funds available was a different matter and we would  
22           have expected him to have made an attempt at quantifying  
23           them on a spreadsheet or the equivalent with pluses and  
24           minuses clearly set out ...(reading to the words)...  
25           accepting that overall substantial funds were available.

1 This passage is inconsistent with his later comments  
2 agreeing with Mr Callaghan's conclusion.

3 "We have to say the Traffic Commissioner was plainly  
4 wrong to go so far as to conclude there was too little  
5 money available for 110 vehicles ...(reading to the  
6 words)... before expressing any concluded view."

7 Now, what was the status of the factoring agreement  
8 at this time?

9 A. I can't recall that, I'm afraid. We were still being  
10 factored, I know.

11 Q. Could you look again at the Grant Thornton report  
12 of December, which is at bundle E9, page 290. In  
13 particular, page 294. Aston Rothbury Factors Limited,  
14 Thursday 18 November:

15 "Aston wrote to the company withdrawing the  
16 variation it had previously granted, allowing an  
17 increased drawdown ...(reading to the words)...  
18 deteriorated since 1 March and that ineligible and  
19 disputed debts account for 29 per cent of the ledger.  
20 This has brought about their decision to reduce the  
21 advance percentage to 75. The effect of the above  
22 ...(reading to the words)... introduced into the company  
23 in the next few days."

24 What had actually happened was that Aston had  
25 suspended the facility in light of the company's

1           uncertain financial position in December 2004.

2    A.   They continued to factor us into January and they were  
3       paid out extremely quickly in January when we ceased to  
4       factor.  I think it took them 18 days to recover  
5       everything and there was a small surplus.

6    Q.   But the decision of the Transport Tribunal is dated  
7       24 February 2005, by which stage the Aston Rothbury  
8       facility had come to an end.

9    A.   The decision by the tribunal was reflecting back on the  
10       Traffic Commissioner's decision, which was prior to  
11       Christmas.

12   Q.   And all of the monies that you obtained from Aston  
13       Rothbury were immediately required by the company to pay  
14       its wages and its other immediate commitments?

15   A.   That's right.

16   Q.   If you look at E10/246, we can see the end of the  
17       factoring facility.  This is a letter from you to the  
18       Traffic Commissioner.  On the fifth substantive  
19       paragraph:

20               "Following the recent closure of Cwmbran and Cardiff  
21       depots ...(reading to the words)... accomplished  
22       on January 18th."

23               So why was the Transport Tribunal being told that  
24       2 Travel had substantial funds available by reason of  
25       a factoring facility which didn't exist?

1 A. It had the 350K, quite clearly, but it bought itself out  
2 of that. That was the money that the factor held. It  
3 had to prove financial standing of three hundred and  
4 something thousand pounds. At the time when the  
5 decision was made by the Traffic Commissioner, his  
6 financial adviser failed to take into account any aspect  
7 of the factoring facility. The decision of the tribunal  
8 would then reflect back on those figures as presented.

9 MR WEST: Perhaps that's a useful point to stop.

10 THE CHAIRMAN: We'll adjourn then until 2 o'clock.

11 (1.00 pm)

12 (The Short Adjournment)

13 (2.00 pm)

14 MR WEST: Mr Fowles, we had previously discussed that  
15 2 Travel made a complaint to the Traffic Commissioner  
16 after the white services started in April 2004 and that  
17 some VOSA monitoring then took place in June and July.  
18 The result of that was that a meeting took place between  
19 2 Travel and Cardiff Bus before the Traffic  
20 Commissioner's clerk, Mr Furzeland, in November 2004.  
21 Were you aware of that?

22 A. Yes.

23 Q. Mr Furzeland then wrote a letter to the Traffic  
24 Commissioner, setting out his conclusions, which is at  
25 E9/273. At paragraph 1 it sets out the purpose of the

1 meeting. The meeting was held at your request. This is  
2 to Mr Dixon, who was then the Traffic Commissioner:

3 "... following allegations made by 2 Travel that  
4 Cardiff City transport services, Cardiff Bus, were  
5 acting in an illegal and uncompetitive manner. The  
6 purpose of the meeting was to establish the evidence  
7 that 2 Travel was basing these accusations on and give  
8 Cardiff Bus the opportunity to present their defence  
9 ...(reading to the words)... case to answer."

10 And you can see over on 275, reference is made to  
11 video evidence. Paragraph 24, Mr Furzeland says:

12 "We watched those parts of the video that had been  
13 highlighted by 2 Travel."

14 Have you seen these videos before that 2 Travel took  
15 at the time? I think it was your son David Fowles who  
16 took them.

17 A. Yes.

18 Q. And at 29 and 30, reference is made to two particular  
19 incidents. 29 refers to the actions of a driver who  
20 stopped his bus to go and berate the cameraman, in the  
21 process, knocking the camera away. At 30, at one point  
22 a driver pulled a bus on to the pavement, and that was  
23 wrong and the driver shouldn't have done it and should  
24 be spoken to.

25 Over the page at 32 there's mention made of

1 registrations. This is a point we were discussing  
2 earlier, as to whether the white services were properly  
3 registered:

4 "A lengthy conversation took place ...(reading to  
5 the words)... high frequency routes. Both parties  
6 agreed that buses operating on high frequency services  
7 do not have to operate along the entire ...(reading to  
8 the words)... adhered to."

9 That would be operating six services an hour, not  
10 more than 10 minutes apart, and so on, would it?

11 A. Mm-hm.

12 Q. 35:

13 "Some of the services operated over ...(reading to  
14 the words)... under the guise of high frequency  
15 services, but that the purpose was to drive 2 Travel out  
16 of Cardiff, and Mr Francis claimed that Cardiff Bus  
17 vehicles were parked up along the routes, waiting for 2  
18 Travel. Mr Brown stated the vehicles would only be  
19 parked at or around the terminal points."

20 38:

21 "Following the meeting, I telephoned Mr Brown  
22 ...(reading to the words)... told to operate at half  
23 hourly frequencies --"

24 THE CHAIRMAN: Do I sense a question coming on, Mr West?

25 Because you have read an awful lot out to the witness.

1 He may not know where you're going with this. It might  
2 be best to preface this with a question.

3 MR WEST: Well, here is a question. At 43 you'll see the  
4 Traffic Commissioner's clerk concludes:

5 "Cardiff Bus has operated in line with their high  
6 frequency registrations."

7 So 2 Travel's complaint that those buses weren't  
8 registered and were not, therefore, operating legally,  
9 was rejected. Is that right?

10 A. It was rejected, yes.

11 Q. It was rejected by Mr Furzeland and, were you aware of  
12 this, that the Traffic Commissioner subsequently  
13 accepted that rejection?

14 A. The Traffic Commissioner did accept it and he was wrong  
15 to do so.

16 Q. So your complaint was fully investigated and found to be  
17 wholly without foundation?

18 A. I think there was a lot of confusion on the traffic area  
19 officer's understanding of what was going on on the  
20 street. They said that they established the no frills  
21 services were operated on the high frequency routes,  
22 which they were. It didn't have a timetable and they  
23 weren't registered. They were not registered under no  
24 frills. If they had been registered under no frills,  
25 they would have carried the same number, destination

1 number, as the standard green liveried buses, but they  
2 didn't, they had different numbers. And whilst they had  
3 those different numbers, there therefore had to be  
4 different registrations.

5 Now, Cardiff Bus knew this and Cardiff Bus knew this  
6 when they went in front of the Traffic Commissioner  
7 because they avoided bringing this to the surface at  
8 that time. There was no defence and I suggest that  
9 their solicitor at the time, when they went in front of  
10 the Traffic Commissioner at a later date, probably  
11 instructed them that there was no defence on what they  
12 had done.

13 Q. Well, I don't understand that. The accusation was  
14 rejected by the Traffic Commissioner, so --

15 A. And I said he was wrong.

16 Q. And at 38, which I was reading out before, Mr Furzeland  
17 was clearly aware that there was no timetable because  
18 Mr Brown confirmed that?

19 A. No, he said they were given an internal timetable to  
20 operate from.

21 Q. An internal timetable?

22 A. Yes.

23 Q. But there was no external timetable?

24 A. Exactly, because he was under the assumption that they  
25 were under the high frequency regulation. They weren't

1 under the frequency regulation at all. They already had  
2 six buses an hour travelling on those streets, so the  
3 extra two or three white buses on there were under  
4 a different number. You cannot put 117 on a bus when  
5 it's meant to be 17. You cannot put 145 on a bus when  
6 it's meant to be 45. You can't do it. It is just  
7 a different service totally.

8 Q. Again, the Traffic Commissioner was well aware of that,  
9 wasn't he, because you had explained that in your  
10 complaint to him?

11 A. Yes.

12 Q. But his conclusion was still, at 43, that Cardiff Bus  
13 was not on the high frequency routes but in line with  
14 the high frequency registrations?

15 A. And he was wrong.

16 Q. So the Traffic Commissioner got it wrong, did he?

17 A. Yes. The wording on a registration is for frequency  
18 services, and there is one stipulated word, and it says  
19 they must always run. These services, 17 and **18**,  
20 started early in the morning and finished late at night.  
21 They weren't always frequent, they were frequent at  
22 a particular time. That time would have meant in the  
23 afternoon, for instance, when our buses went on to  
24 schools, those white services should have kept running.  
25 They did not.

1 Q. Well, so your position is that you know better than the  
2 Traffic Commissioner what the rules require?

3 A. On this point, yes.

4 Q. Then at 46:

5 "After having reviewed the video evidence ..."

6 And also at 39, which I was going to read, the  
7 request by the bus compliance officers or the visit by  
8 the bus compliance officers to Cardiff, the conclusion  
9 was:

10 "There was no evidence Cardiff Bus had a case to  
11 answer."

12 Was the Traffic Commissioner wrong about that as  
13 well?

14 A. It depends which part you're looking at. As far as the  
15 operation of the buses was concerned, that was the  
16 vehicle that was used to create predation, and therefore  
17 it was anti-competitive and it could have been avoided.  
18 It should have been avoided and the Traffic Commissioner  
19 should have stepped in and said that it should have been  
20 avoided and he should have instructed them to have taken  
21 those buses off. If they were so convinced that the  
22 white no frills services was a marketing exercise or  
23 whatever, they would have brought that to their defence  
24 in front of the Traffic Commissioner in 2009. They  
25 didn't do that.

1 Q. I think we're getting a bit mixed up here because at  
2 paragraph 41 it says+  
3 any accusation of cross subsidies and unfair  
4 competition should be dealt with by the OFT, "but the  
5 allegations of dangerous driving, sandwiching, operating  
6 otherwise than in accordance with the registrations,  
7 they were matters for the Traffic Commissioner and  
8 they were rejected.

9 A. They were rejected, yes.

10 Q. So this is the Traffic Commissioner, having reviewed the  
11 evidence, rejects the allegations of dangerous driving  
12 and sandwiching and so on, just as VOSA had rejected it  
13 earlier. We saw that earlier on. And my suggestion to  
14 you is that whilst isolated examples of bad driving are  
15 inevitable and two of them are referred to here at  
16 paragraphs 29 and 30, or bad driver conduct, there was  
17 no systematic campaign of intimidation or harassment or  
18 illegal driving or indeed sandwiching.

19 A. The very fact that the vehicles were there each morning,  
20 all day; each evening, every day, day after day after  
21 day, is intimidation in itself. The fact that they were  
22 there. And they were there, they were very good at it.

23 Q. If there had been intimidation above and beyond simply  
24 the presence of the vehicle, which I accept shouldn't  
25 have been there, that would have been spotted by VOSA.

1           2 Travel would also have been able to take videos of it  
2           in such a way as to convince the Traffic Commissioner  
3           that it had happened?

4   A.   And was noted by Sian Thomas in her letter of the 26th,  
5           where she said it was noted that the white services did  
6           tend to operate within a minute of 2 Travel's services.

7   Q.   I'm not going to debate that letter with you again.  On  
8           a slightly different point, page 522.  This again goes  
9           back to the Swansea depot.  You're writing to  
10          Wally Hoggan, offering to purchase his freehold property  
11          in Swansea and his vehicles, plant and fixtures, the  
12          name Hoggans and all of the school contract work.  That  
13          letter wasn't written in the name of 2 Travel, was it?

14  A.   No, it was written under Jamfell Limited.

15  Q.   And can you explain what the intention was of this  
16          approach?

17  A.   The approach was to purchase the company and it was  
18          a very small company, six or seven vehicles, and it was  
19          to purchase that off Walter Hoggan, which eventually was  
20          successful.

21  Q.   And why was that not done in the name of 2 Travel?

22  A.   2 Travel at the time, you're talking in January, were --  
23          we had our licence revoked, we had been subject to  
24          a serious leak from the Traffic Commissioner's office,  
25          which had undermined the remainder of the company, and

1           it was felt that possibly acquiring Hoggans would assist  
2           in what was left on the Swansea depot.

3   Q.   So was the intention to run this as a new company,  
4           effectively a different company?

5   A.   It might well have been.  We had approached the Traffic  
6           Commissioner for an MBO, as I said before lunch, and if  
7           there was a possibility of doing that, then we may well  
8           have done it.

9   Q.   The plot of land in question is immediately adjacent to  
10          2 Travel's Swansea depot?

11  A.   That's right.

12  Q.   And was it the intention at this time that that land  
13          would effectively be combined with the existing Swansea  
14          depot to form a larger, more valuable plot of land?

15  A.   It was a very small part of the five, six acre site.  
16          Perhaps, I don't know, as much as half an acre, if that.

17  Q.   But did Mr Hoggan -- didn't his land have some rights of  
18          way over the Swansea depot?

19  A.   He did have a verbal right of way over the site, given  
20          to him previously before we purchased Capital.  But it  
21          was a verbal, nothing else.

22  Q.   But by purchasing this land and combining it with the  
23          larger plot, you would avoid any difficulties about  
24          rights of way?

25  A.   Mm.  It was Hoggan who approached us to -- on the

1 potential of selling out. So we took it for what it  
2 was.

3 Q. We've seen already, I think at page 450, the agreement  
4 whereby the overage rights were sold, 2 Travel's overage  
5 rights under the option agreement for £300,000. That  
6 was signed, I think, by yourself at page 452?

7 A. Yes.

8 Q. There was no shareholders' resolution at this stage, was  
9 there, to approve this further transaction?

10 A. There was no other board apart from Nigel Short and  
11 Huw Francis, myself. As you pointed out before lunch,  
12 the others had resigned. It was -- well, the shares had  
13 been suspended. It was dubious whether we were in fact  
14 an AIM registered firm at that time.

15 Q. But ordinarily you would require a shareholders'  
16 resolution to approve a related party transaction,  
17 wouldn't you?

18 A. The related party transaction had already been passed,  
19 if you recall. I didn't see any purpose in taking that  
20 any further. It had been passed by the chairman  
21 in November. This was just an addendum to it in many  
22 respects.

23 Q. It wasn't quite that, was it? Because under the option  
24 which the shareholders had approved, 2 Travel had the  
25 right to 20 per cent of any increase in the value of the

1 land, which it swapped under this agreement for  
2 a payment of £300,000?

3 A. That's correct.

4 Q. So it did substantially alter the terms and conditions  
5 of the deal, didn't it?

6 A. Yes, but you will recall that the Grant Thornton report  
7 had suggested that we needed that kind of money in  
8 at the time to keep ongoing until 22 or 23 December, and  
9 it was felt that this was the best way round it.

10 Q. The option itself was then exercised. This is E10,  
11 page 25. March 2005. That, again, was signed by you.

12 A. Yes.

13 Q. You'll remember that under the terms of the option it  
14 couldn't be exercised before May 2008, without the  
15 company's written consent?

16 A. Mm-hm.

17 Q. So this presumably also counts as the company's written  
18 consent for those purposes, does it?

19 A. Yes, I would think so.

20 Q. It also couldn't be exercised before the grant of  
21 planning permission. And I see in the second paragraph  
22 there at the end:

23 "We confirm our discussions whereby you have agreed  
24 to waive the requirement for planning condition."

25 So you waived that requirement as well, did you?

1 A. Mm-hm.

2 Q. Again, there was no attempt to obtain the approval of  
3 the shareholders by any resolution for these further  
4 amendments to the terms of the option?

5 A. There wasn't enough time for that, I'm afraid.

6 Q. And the way that the exercise of the option worked was  
7 that Mr Francis and Mr Short assumed the bank debt owed  
8 by 2 Travel to Barclays, which was thereby taken off  
9 2 Travel's balance sheet. Is that how it worked?

10 A. It was, yes.

11 Q. So in effect, the bank lending, which had been provided  
12 by Barclays in exchange for or on security of the  
13 guarantees given by Mr Short and Mr Francis, was then  
14 assumed by them, rather than the making of any cash  
15 payment to 2 Travel, in order to exercise the option?

16 A. Yes. The option came to something like 2.4 million,  
17 I think.

18 Q. So the amounts which had been provided by the bank under  
19 the guarantees from Mr Short and Mr Francis were  
20 effectively treated as part payments towards the  
21 exercise -- the payment of the option price?

22 A. Yes.

23 Q. So to the extent that Mr Short and Mr Francis had  
24 provided such guarantees, they were fully secured for  
25 those guarantees because they could be treated as part

1 payment towards the £2 million option price?

2 A. Yes.

3 Q. 2 Travel then lost its contract with the Carmarthenshire  
4 County Council and decided to close the Llanelli depot.  
5 Do you remember that?

6 A. Yes.

7 Q. There's a document at page 376 if you need to look at  
8 one.

9 A. The contract with Carmarthen County Council, if our  
10 licence was revoked, which it had been earlier  
11 in January, then they had the right to take all  
12 contracts off us and they chose to take that. Other  
13 authorities didn't, but Carmarthen did.

14 Q. And then a winding up petition was made on 20 May 2005  
15 by Haydock Finance. They were one of the companies  
16 providing you with HP finance, were they?

17 A. That's right. They had taken their vehicles back once  
18 the leak to the press came out.

19 Q. I'll just find the reference. If you look at page 166  
20 of this bundle, this is one of the documents of the  
21 petition.

22 A. Mm-hm.

23 Q. You can see that the petition was supported by none  
24 other than City Financial Associates Limited, who had  
25 been your NOMAD. Were you aware of that?

1 A. Yes.

2 Q. And then on page 167, the petition was also supported by  
3 Mentor UK, who had been one of your non-executive  
4 directors?

5 A. That's right.

6 Q. And it was also supported by VCT, who were the loan  
7 stock holders?

8 A. That's right.

9 Q. You can get that from page 529 of this bundle, which  
10 refers to VCT as one of the petitioning creditors. If  
11 you look at 216 of the bundle, this is again evidence in  
12 the winding up petition. This is some evidence provided  
13 on behalf of Haydock. Of course, when they repossessed  
14 the vehicles, they were obliged to give credit for the  
15 value of the vehicles, the resale value, against the  
16 debts which you owed them under the HP agreements;  
17 is that right?

18 A. Yes.

19 Q. And one of the points taken initially, in opposition to  
20 the petition, was that the vehicles were very valuable  
21 and indeed worth more than the outstanding debt?

22 A. Yes, they were.

23 Q. You see here what Mr Steve Fury says about that,  
24 paragraph 4:

25 "On taking custody of the vehicles, I prepared

1 reports on the repossessed vehicles and copies of them  
2 are attached hereto."

3 I am afraid we don't seem to have that:

4 "It can be seen from the reports that ...(reading to  
5 the words)... many parts had been taken out. The Volvo  
6 model B10M had been almost completely stripped of its  
7 parts and was worthless."

8 So is it right that by December 2004, which is the  
9 date he's referring to here, as you see in paragraph 3,  
10 2 Travel had been forced to start cannibalising its own  
11 hire purchase vehicles for parts?

12 A. Well, he managed to drive them all away out of our yard.

13 Q. I am not sure I understand what you mean by that, Mr  
14 Fowles.

15 A. He managed to drive all these vehicles away and he took  
16 them to this place in Manchester. So they couldn't have  
17 been in that bad a condition if they went all the way to  
18 Manchester.

19 Q. I'm not sure you answered my question. Had you been  
20 cannibalising hire purchase vehicles for parts?

21 A. No.

22 Q. 2 Travel didn't ultimately oppose the winding up  
23 petition. Is that right?

24 A. Eventually, yes, we opposed it about three times.

25 Q. One of the other supporting petitioners was Darwin Gray,

1 is that right, 2 Travel's own solicitors?

2 A. Yes.

3 Q. Who had drafted a complaint letter to Cardiff Bus  
4 following the introduction of the in-fill services?

5 A. That's right.

6 Q. So they were never paid either?

7 A. That's right.

8 Q. But it's not surprising that 2 Travel should face  
9 a winding up petition by May because, as you knew from  
10 Grant Thornton's report, it had been insolvent since the  
11 previous November?

12 A. Well, certainly the December, but because of appeals to  
13 the Traffic Commissioner, then we went forward.

14 Q. The case ultimately came back before the Traffic  
15 Commissioner in May 2005 and his decision is at  
16 page 541. This is the remitted case following the  
17 appeal. The decision is set out at paragraph 10:

18 "Licence revoked with immediate effect --"

19 THE CHAIRMAN: 541?

20 MR WEST: 541, paragraph 10:

21 "The company no longer satisfies the requirement to  
22 be of appropriate financial standing."

23 Again, not terribly surprising since you had in fact  
24 been wound up by this stage?

25 A. Correct.

1 Q. Over the page at 13, your actions. Here he's talking  
2 about -- beginning at 12:

3 "Section 28.5 of the Transport Act ...(reading to  
4 the words)... any officer of the company. For this  
5 purpose, I treat both directors and the company  
6 secretary as being officers. According to Companies  
7 House records, the sole director has been  
8 Mr David Fowles ...(reading to the words)... appear to  
9 me to justify their disqualification for a lengthy  
10 period. Before reaching a conclusion on this, I invite  
11 each of them to make written submissions."

12 So the Traffic Commissioner took the view that the  
13 behaviour of the officers of 2 Travel was such that they  
14 should be disqualified for a lengthy period?

15 A. That was his opinion at the time. He didn't disqualify  
16 us.

17 Q. He didn't ultimately disqualify you?

18 A. No, he didn't disqualify us. In fact, when I applied  
19 for my licence with Jamfell a year later, he actually  
20 apologised to me for the leak from his -- or his staff,  
21 as he put it. They weren't his staff, they were VOSA's  
22 staff, and he understood that that leak was very, very  
23 important to us at the time and shouldn't have been  
24 disclosed. The hearing was in chambers in December and,  
25 as such, should have been conveyed to us, and nobody

1 else.

2 Q. But your application had ultimately to be made to  
3 a different Traffic Commissioner; is that right?  
4 Because you took the view that the Welsh Traffic  
5 Commissioner had a conflict of interest or was biased  
6 against you?

7 A. You have to declare bias prior to -- so it's a decision  
8 that you have to make. I was represented by James  
9 Backhouse, one of the better companies in the country,  
10 and in fact the same people that defended Cardiff Bus  
11 when they went to the Traffic Commissioner. Backhouse  
12 Jones explained to me that if I felt I wasn't going to  
13 get a fair hearing from this Traffic Commissioner, and  
14 after he'd written things like this, I had to say  
15 beforehand. Obviously, Backhouse Jones couldn't give me  
16 advice on that, he could only advise me on the  
17 consequences. So I decided I would have to tell  
18 Mr Dixon at the time that I felt that in view of some of  
19 the stuff that he had written, that I might not get  
20 a fair hearing. He then arranged for another -- he  
21 decided none of his deputies in Wales could hear it, so  
22 they had to swear in another deputy in Leeds and I had  
23 to go to Leeds for my application.

24 Q. And your son David Fowles, he was disqualified for  
25 a period, was he not, before being allowed to have his

1 licence back? I think it was around June of 2005.

2 A. He was granted his licence, but the Traffic Commissioner  
3 felt that he couldn't have it for six months. I don't  
4 think he disqualified him.

5 Q. I may take that up with him. At 16, the Traffic  
6 Commissioner says:

7 "I take the view that poor operation by the company  
8 created unnecessary problems for passengers and public  
9 transport generally, which reflects on the good reput  
10 of those involved. While I make no finding ...(reading  
11 to the words)... under close scrutiny, should they wish  
12 to be involved in any other licences."

13 But it's true, isn't it, that 2 Travel had created  
14 unnecessary problems for passengers and public transport  
15 generally in South Wales during the period when it was  
16 in operation?

17 A. I would suggest not much more than any other transport  
18 company. I think he had a belief at the end that we had  
19 caused problems, but in many respects we hadn't caused  
20 those problems. I mean, we ran on until the end  
21 of December so that no schoolchildren and no authority  
22 were affected and had the school holiday period to  
23 reinstate services, which they did. Any time that we  
24 made applications to register services, and we didn't  
25 operate those services or didn't start to operate those

1 services, we didn't advertise them and we notified the  
2 Traffic Commissioner at all times that we weren't going  
3 to run them or we failed to run them.

4 Q. The Traffic Commissioner's view was that 2 Travel's poor  
5 compliance was the result either of a lack of resources  
6 or incompetence in its management. Were you aware of  
7 that?

8 A. Yes. It's stated there.

9 Q. That's what he says, strangely enough, in the public  
10 inquiry into Cardiff Bus, which can be found at  
11 paragraphs 45 to 47 of E11, 743. There's no need to  
12 look it up now. But I suggest to you that actually,  
13 2 Travel's poor compliance record was the result of both  
14 a lack of resources and management incompetence.

15 A. Right. I disagree, obviously.

16 Q. And you'll remember that earlier on we saw a memo from  
17 Mr Waters in mid-2003, where he suggested that the best  
18 approach for this company would be to sell the Swansea  
19 depot and use the profits to pay off the creditors and  
20 wind up the company. My suggestion to you is that  
21 that is, with hindsight, precisely what the company  
22 ought to have done?

23 A. That may be the case, but Mr Waters always wanted to  
24 sell the land, and we disagreed with him, so -- the  
25 board disagreed with him as well.

1 Q. And you could have gone back to running a relatively  
2 small bus company, like you currently do, rather than  
3 the complications involved in seeking to run a listed  
4 plc?

5 A. Hindsight is great.

6 Q. Now, as you may be aware, three of 2 Travel's computers  
7 were found to be unreadable when taken over by the  
8 liquidators. One of them was subsequently read, but no  
9 relevant documents were found on it. So far as the  
10 other two are concerned, the hard drives were found to  
11 be missing. Were you aware that it's suggested in 2  
12 Travel's evidence that they must have been removed and  
13 lost by the Official Receiver?

14 A. I've read papers along those lines.

15 Q. And the basis of that is said to be assurances from you  
16 that no one at 2 Travel would have removed the hard  
17 drives?

18 A. No one at 2 Travel after December, certainly, would have  
19 had -- would have done it. The managers that had access  
20 to those computers or to the computers, I don't know  
21 which ones they are, wouldn't have done anything like  
22 that. There would have been no cause for them to do  
23 anything like that. As far as I'm aware, all the  
24 officers of the company throughout the 2 Travel business  
25 would have had no reason to remove any of the hard

1 drives.

2 Q. Can I suggest to you that one reason they might wish to  
3 do so would be to seek to conceal evidence of the  
4 incompetent management of 2 Travel?

5 A. You can put it to me, yes. Certainly I would disagree  
6 with it, obviously.

7 Q. It may just be worth showing you this. Well, perhaps we  
8 don't need to look at it, but the Official Receiver has  
9 been in contact with the parties to this case to say  
10 that it is the policy of the Official Receiver not to  
11 remove hard drives from computers. E19/277, if you want  
12 to look at it. Over the page at 278, there's an e-mail  
13 from Mr Pheasant, the instructing solicitor, Mr Baxter  
14 of the Official Receiver, summarising the contents of  
15 a conversation. It's 278 over the page.

16 At number 1:

17 "In relation to the suggestion that the Official  
18 Receiver may have removed and subsequently lost hard  
19 drives from 2 Travel computers ...(reading to the  
20 words)... risk of compromising the integrity of any  
21 evidence held on the drive. Instead, its usual practice  
22 is for the entire base unit ...(reading to the words)...  
23 Official Receiver."

24 Mr Baxter's response is on the preceding page. The  
25 response on 1 says -- sorry, just before 1:

1            "I can confirm the contents are generally correct  
2            ...(reading to the words)... from computers, for reasons  
3            mentioned."

4            That is why I'll be suggesting in due course that it  
5            wasn't the Official Receiver who removed the hard  
6            drives, the overwhelming likelihood is that they were  
7            removed by someone at 2 Travel.

8            A. I have no knowledge of that.

9            Q. You say in your statement that if it hadn't been for the  
10            predation, 2 Travel would be in a similar position to  
11            companies like Rotala or Veolia today, now, today;  
12            is that right?

13            A. Yes, the potential was there.

14            Q. Do you stand by that?

15            A. I do.

16            Q. Can we look at E11/716.

17            THE CHAIRMAN: 716? It says, "Intentionally left blank", on  
18            my 716. Ah, it's the next page. "2 Travel bosses back  
19            in business once again"; is it that one?

20            MR WEST: That's right.

21            THE CHAIRMAN: That's my 717. I'm looking at these E  
22            documents on my laptop, using the stick that was  
23            provided. It doesn't matter, I can find them, but we  
24            may be one out.

25            MR WEST: The bit I was interested in, this is a report of

1 an interview with yourself in Transit magazine of  
2 19 December 2008. The part I'm interested in is at the  
3 end of the first page, the penultimate paragraph:

4 "The experience has left Fowles disillusioned with  
5 the model of shareholder founded business."

6 Just at the bottom of the preceding page:

7 "... and entrepreneurialism in general ...(reading  
8 to the words)... We would have gone slowly with 2 Travel  
9 but when you're working for a plc board, they drive you  
10 on and on. Sometimes figures dictate what you're going  
11 to do, never mind about resources. First Group floated  
12 in 1994. They're still acquiring because they have to.  
13 They may not be in this country, but they've got to keep  
14 growing. Once you're a listed company, unless you get  
15 mega organic growth ...(reading to the words)... We  
16 found that if we wanted to achieve the quality we  
17 wanted, we had to go to the stock market. Extra funds  
18 were needed. It was a quiet time in the market so  
19 a good time to float. Even within South Wales, the  
20 scope ...(reading to the words)... resources to acquire,  
21 we did not."

22 And it's true, isn't it, that when PwC advised you  
23 in November 2003 to spend £25 million acquiring a number  
24 of other companies in south Wales, 2 Travel simply  
25 didn't have the money to do it?

1 A. 2 Travel didn't have £25 million to raise money to buy  
2 companies. We would have had to go back to the Stock  
3 Exchange, which was one of the options open to us, and  
4 as I said earlier this morning, we did actually start  
5 negotiations with several people.

6 Q. But in fact, the funds which were actually raised in the  
7 AIM flotation in January 2003 were insufficient even to  
8 meet 2 Travel's own working capital requirement, never  
9 mind any acquisitions. That's right, isn't it?

10 A. That's right, yes. I mean, it does say in the article  
11 that it was a very difficult time to float.

12 Q. And as you say here, 2 Travel was under huge pressure to  
13 grow because it was a listed plc, and as the Traffic  
14 Commissioner found, it was that desire to grow too  
15 quickly which got you into trouble. Was he right to  
16 hold that?

17 A. I don't think he should have written that, but  
18 [inaudible] said that. As with everything, it's a press  
19 report. Certain things were misquoted. I had words  
20 with Rhodri Clarke after it. I still talk to him.

21 Q. The fact is that the reason why 2 Travel failed was  
22 nothing to do with the infringement in Cardiff, it was  
23 because of the long-standing problems which the 2 Travel  
24 business had had since long before it entered Cardiff.  
25 That's right, isn't it?

1 A. I disagree. The predation took much more management  
2 time away from us, at a period when we needed that  
3 management time. The predation was extremely difficult  
4 to cope with. It was remorseless and I think, as  
5 managers, we overspent our time on it.

6 Q. Just out of interest, and I don't place a lot of weight  
7 on this, if you go to page 715 in this bundle, we see  
8 a letter to the editor from a Mr Matthew Evans. Any  
9 idea who that might be?

10 A. No idea.

11 Q. This is on 5 December 2008, and Mr Evans notes that:

12 "Bev Fowles, chief executive of 2 Travel, is  
13 considering taking action to recover some of the  
14 £500,000 he lost when 2 Travel went bankrupt and he  
15 believes that as a consequence of predatory conduct, his  
16 reputation took a hammering."

17 This is 5 December 2008, so shortly after the OFT  
18 decision. Mr Evans says:

19 "I trust that ...(reading to the words)... bus  
20 market under the 2 Travel banner some years ago in  
21 Cardiff, Cwmbran and Swansea, came about from the manner  
22 in which it was managed and run rather than the actions  
23 of the respective incumbent operators ...(reading to the  
24 words)... enough drivers to be employed to cover work,  
25 in order that the basic requirements of the successful

1 bus business might be met. Cardiff Bus might well rue  
2 the day they decided to deal with Mr Fowles' company  
3 in the manner they did, but only because it must be  
4 clear to them now that had they done nothing ...(reading  
5 to the words)... of you and your fellow directors."

6 At the end of the day, the hammering, he says, his  
7 reputation suffered, was wholly self inflicted. I would  
8 never be so rude as to make such a statement, but the  
9 fact is that Mr Evans has hit the nail on the head,  
10 hasn't he?

11 A. I don't know what expertise Mr Evans makes his comments  
12 with. I don't think he operates a bus company, if any  
13 company. I just don't know him.

14 Q. Whether or not he's an expert, what he says there is  
15 true?

16 A. I would disagree with you.

17 Q. I have now got to the end of the chronology, but there  
18 are a few points to pick up from your second witness  
19 statement, if I may?

20 A. One of the things that is true is that Cardiff Bus might  
21 well rue the day they decided to deal with Mr Fowles'  
22 company in the manner that they did and I'm sure they  
23 do.

24 Q. Well, I am sure they do as well. You give a second  
25 statement in this case, dealing with various points

1 in the expert reports. You refer in paragraph 4E to the  
2 fact that your buses need a new engine or rebuild every  
3 200,000 miles. So if 2 Travel had run additional  
4 services, that's an additional cost which would have to  
5 be factored in. And this relates to what Mr Good said  
6 in his report, which is that the buses you were using  
7 were fully depreciated, so the only additional cost, you  
8 say, would be the engines; is that right?

9 A. Yes.

10 THE CHAIRMAN: Which paragraph are you looking at?

11 MR WEST: It's 4E of Fowles 2.

12 But a fully depreciated bus is, by definition, an  
13 older vehicle, isn't it?

14 A. Mm-hm.

15 Q. And the flip side of using an older vehicle is you're  
16 going to have higher maintenance costs?

17 A. There is a likelihood.

18 Q. So it's not simply a question of an additional engine  
19 every 200,000 miles, but also, for example, new  
20 gearboxes. Would those be required?

21 A. There's a potential. We weren't on high mileage. In  
22 Cardiff, in-fill services very rarely are high mileage.  
23 We didn't go out and buy vehicles that were at the end  
24 of their operating life.

25 Q. But still, with an older fleet, you might need

1 replacement suspension units?

2 A. We might need replacements for any of the parts on  
3 a bus.

4 Q. And in fact, the 2 Travel buses did suffer from a high  
5 rate of breakdowns, did they not, because of the use of  
6 an older fleet?

7 A. I wouldn't have thought it was any higher than any other  
8 operator operating the same type of fleet.

9 Q. And indeed, as we've seen, 2 Travel ended up having to  
10 cannibalise its own vehicles for parts?

11 A. That's common practice in the industry.

12 Q. Even with vehicles which are still on hire purchase so  
13 you are still paying the finance costs on them?

14 A. I told you we didn't do that.

15 Q. Paragraph 17 of your second statement. These are rather  
16 detailed points.

17 A. Did you say 17?

18 Q. 17:

19 "We operated a timetable, which scheduled our buses  
20 at least 10 minutes away from Cardiff Bus's timetable  
21 ...(reading to the words)... large estates."

22 That can't be right, can it, because we've seen that  
23 Cardiff Bus had six or perhaps even eight vehicles per  
24 hour on some of these routes?

25 A. Part of their area of operation at the far end was

1 circular, hence their 44/45 operation. One would go  
2 clockwise, one would go anti-clockwise. We would only  
3 go one way. Therefore they had three buses going round  
4 an estate and three buses going the other way. That was  
5 their six buses. They weren't exactly the same, but  
6 they covered the same roads.

7 Q. So you're saying that even with six buses an hour, you  
8 could schedule your buses to be at least ten minutes  
9 away from Cardiff Bus?

10 A. We were ten minutes away because they were 20 minutes  
11 one way and 20 minutes the other way. Working opposite  
12 each other.

13 Q. And these were also frequently served routes, were they  
14 not?

15 THE CHAIRMAN: Sorry, if you wanted to go from an estate  
16 into the city centre, you could get on in either  
17 direction?

18 A. That's exactly it. They would be 20 minutes on one side  
19 and 20 minutes on the other side but it wouldn't be the  
20 same 20 minutes, so quite clearly, we were able to  
21 register against one of the circles, whether it be  
22 clockwise or anti-clockwise.

23 MR WEST: Picking that up at paragraph 19, you say:

24 "Taking the 144 service, Cardiff Bus have two buses,  
25 the 45 and 44. 2 Travel have the 245, where we had two

1 buses."

2 That's just nonsense, isn't it, because if you're  
3 talking about the number of buses per hour, Cardiff Bus  
4 had four buses per hour on each of the 44 and the 45,  
5 did it not?

6 A. I thought it had three buses on 20-minute intervals.

7 They may well have altered during that period, I don't  
8 know.

9 Q. Why have you said only one bus on each of the 45 and 44?

10 A. We didn't, we used the 45. We put two buses on the 45.

11 Q. That says "Cardiff Bus have two buses, the 45 and 44."

12 A. It should say "two routes", not "two buses" there.

13 Q. Ah.

14 A. Sorry.

15 Q. But if it is four buses on the 45 and four on the 44,  
16 that would undermine your figure of 30 per cent, would  
17 it not?

18 A. Again, we would have to go back to the type of service  
19 that we operated and possibly the unpopularity of  
20 Cardiff Bus and, in particular, the fact that it didn't  
21 give change and the crew attitudes. Our drivers were  
22 meant to be and were, in most cases, very friendly,  
23 tried to talk to people, pass the time of day with  
24 people, and provided that different aspect to the  
25 service.

- 1 Q. But some passengers might have the contrary preference,  
2 mightn't they? For example, older people and young  
3 parents with buggies might have a preference for  
4 Cardiff Bus, might they not, because of the low floors  
5 and buggy spaces?
- 6 A. On some of the estates they didn't have low floors  
7 at the time but I can understand why a buggy would look  
8 for a low floor.
- 9 Q. And you refer to that in paragraph 55 of this statement,  
10 an example of somebody refusing to get on one of your  
11 buses because they had a push chair?
- 12 A. I don't think I referred to it, I think it was referred  
13 to by the Cardiff Bus independent person who was out  
14 there at the time.
- 15 Q. And whilst you might have some benefit from lower prices  
16 with fare paying passengers, in fact for concessionary  
17 passengers, that would be a positive disbenefit because  
18 of the 70 per cent or 73 per cent reimbursement rule?
- 19 A. I don't see it's a disbenefit.
- 20 Q. Well, if your average fare is lower because you're  
21 cheaper and you're only getting 70 per cent of your  
22 average fare from the Welsh Assembly, then the lower  
23 your fares, the less money you'll get from the  
24 Welsh Assembly?
- 25 A. I see what you mean. That was calculated and fed in, as

1           it happens. It's a fixed amount now, so you get -- it  
2           used to be of your own fares, but now it's of  
3           a calculation that the Welsh Assembly came out with, so  
4           everybody gets the same now.

5   Q.   At some point 2 Travel decided to change its fare  
6           strategy. We see this in E7/420, which is the second  
7           PwC report. If you look at page 420, there are a number  
8           of notes at the bottom of the table of figures. The  
9           second one says:

10                 "Price increase of September of 20 per cent on  
11           on-bus and concessions to current market levels and  
12           ...(reading to the words)... supported incomes."

13                 So supported incomes, those are the tendered routes  
14           or subsidised routes?

15   A.   That's right.

16   Q.   And the other reference there to "on bus and  
17           concessions", at that stage the proposal was that your  
18           prices should be increased to current market levels.  
19           Was that a decision taken in August 2004?

20   A.   Yes, it was.

21   Q.   It's referred to also at page 431 under "Price  
22           increases". Reference again to 20 per cent  
23           and 5 per cent, and it says:

24                 "Following the price increases, bus fares will be  
25           approximately 5 per cent below that of competitors on

1 the same routes."

2 So to the extent that you were in a better position  
3 with passengers due to being cheaper, that benefit would  
4 largely be wiped out by these price changes?

5 A. Well, we were encouraged by the numbers of people  
6 we were carrying. Clearly, once you've established  
7 yourself in the market, then there is a tendency that  
8 you don't have to be as cheap as you have been. You've  
9 made your entry and then there's the time to start  
10 increasing fares. We found that there was a potential  
11 to do that, and quite clearly, that's what we would do.

12 Q. The last point, you referred yesterday in  
13 examination-in-chief to needing three additional drivers  
14 to run the 258 service to Pentwyn. Is that right?

15 A. Pentwyn?

16 Q. Sorry. How long does that route take to operate, to go  
17 out there and back?

18 A. I honestly can't remember, from this far away. I would  
19 suggest you're talking about between 30 and 40 minutes.

20 Q. Pretty correct, yes. If we look at I1, we have the  
21 timetable in tab 2. Tab 2 at (a), there's a number of  
22 timetables. This is the fourth page. Route 258. You  
23 can see there, the first bus in the morning, 8.45, and  
24 you can follow that down the first column. It arrives  
25 at Westgate Street at 9.26. 45 minutes.

1 A. Yes.

2 Q. And then if you follow the column down again, St Mary's  
3 Street, this is the same bus setting off back again,  
4 isn't it?

5 A. Yes.

6 Q. 9.30, and arriving at the other end at 10.14.

7 A. That's right.

8 Q. So overall it takes 1 hour and 45 minutes to get back to  
9 where it started?

10 A. That's right.

11 Q. The next bus you can see is the 9.15.

12 A. It's a four bus operation.

13 Q. Yes. And then there's one at 9.45.

14 A. Mm-hm, and then you have the --

15 Q. 10.15.

16 A. You have the 8.45 repeating.

17 Q. That 10.15, the fourth bus on this timetable, is the  
18 same bus as the one that arrived at 10.14, the first  
19 bus, isn't it?

20 A. Yes.

21 Q. So you require three buses operating at all times?

22 A. Yes.

23 Q. In order to serve this route. In which case three  
24 drivers are not going to be enough, are they?

25 A. I did say yesterday that there was already flexibility

1 in the roster, and I did say that it'd be two or three  
2 drivers.

3 Q. But it's not two or three, is it, it's more than three  
4 because you'll need to factor in meal breaks, statutory  
5 breaks?

6 A. That's what I'm saying, you would do that but there'd be  
7 flexibility in the roster and in the depot working.

8 Q. But there certainly isn't flexibility in these schedules  
9 because the Traffic Commissioner insists that you comply  
10 with the published timetable?

11 A. Mm-hm.

12 MR WEST: Sorry for taking so long. Thank you very much.

13 THE CHAIRMAN: Mr Bowsher?

14 Re-examination by MR BOWSHER

15 MR BOWSHER: I have a few questions, Mr Fowles. Just  
16 picking up that last question, you were being asked  
17 about the timetable from Pentwyn -- I don't think you  
18 need the timetable in front of you. I think you and  
19 Mr West may have been at slightly cross-purposes. When  
20 you say that you only needed two to three additional  
21 drivers because there's flexibility in the depot, how is  
22 it that you imagine you're going to cover this  
23 timetable, which involves, as you've agreed, three  
24 buses, with just three additional drivers?

25 A. You would put them into duties and shifts. They would

1 all have to have had a meal break. A meal break driver  
2 would be in employment during the day and would be  
3 available. It may well be that it would be a driver  
4 coming off coaching duties to do it, which was only used  
5 between am and pm, and he would go out there.

6 Q. So some other driver?

7 A. Yes, some other driver, and there would be that  
8 flexibility. There always is in a depot. You have that  
9 flexibility to absorb on occasions.

10 Q. So is the roster you refer to, just a roster of these  
11 three additional drivers or is it of the drivers in  
12 general?

13 A. No, it'd be the whole depot.

14 Q. Okay. You were asked a number of questions, which  
15 Mr West very fairly, I think in the end, put it pretty  
16 bluntly to you by means of the comment of  
17 Mr Matthew Evans, that really put in question your  
18 experience and competence. I think it's fair that I ask  
19 a couple of questions about that. Could we just take  
20 your witness statement, the first witness statement, in  
21 C1, tab 2. Paragraph 6, you talk about your previous  
22 history. First Bristol, which you refer to in  
23 paragraph 6. When you say that is a First Group plc  
24 company, how many First Group plc companies are there  
25 within the UK? Do you have any sense?

1 A. 14, 15, 16 perhaps.

2 Q. Something like that, okay. First Bristol, was that  
3 a plc or run as a wholly-owned First Group company?

4 A. They were all run as fully owned subsidiaries.

5 Q. As managing director, did you have complete management  
6 responsibility for that company?

7 A. Within the organisation of First Group, yes.

8 Q. And do you have at this distance, any recollection now,  
9 of what the sort of turnover of First Bristol was?

10 A. In excess of 30 million at the time.

11 Q. And is that running buses just in Bristol or Bristol and  
12 beyond?

13 A. Bristol and beyond, yes. Bristol, Bath, all the areas  
14 of Bristol, Portishead.

15 Q. So north Somerset?

16 A. Yes.

17 Q. Since 2 Travel, what bus companies have you been  
18 involved in?

19 A. Since 2 Travel?

20 Q. Yes.

21 A. Hoggans Coaches, which we bought, and now South Wales  
22 Transport.

23 Q. And you continue to run those? You continue to be  
24 involved in the bus industry then?

25 A. Yes.

1 Q. How large are those companies?

2 A. The Hoggans Coaches was very small, seven or eight  
3 vehicles. South Wales Transport that I run at the  
4 moment, has an operator's licence of 20 and we have  
5 24 vehicles.

6 Q. Where are they being run?

7 A. Neath and into the Swansea area.

8 Q. Can we go then back to the I file. You were asked this  
9 morning a number of questions about the 2 Travel routes  
10 and there are some depictions of that in this file,  
11 which I wanted to look at briefly. The questions that  
12 were being put to you, I think, on more than one  
13 occasion -- Mr West started his question or prefaced his  
14 question on the basis that all things were equal. Did  
15 you regard all things as being equal between 2 Travel  
16 and the Cardiff Bus services?

17 A. No.

18 Q. Why was that?

19 A. I think for the reasons that I've stated and we debated  
20 with Mr West this morning. We felt that they were  
21 unregistered, not registered services, and therefore  
22 shouldn't have been there. It was a response that was  
23 illegal and we just couldn't believe that it was  
24 maintained during that period and for the length of  
25 period that it was. It went back to the bus wars of the

1 early 90s, just after the act of deregulation in 1985.  
2 Companies felt they had to protect their networks, their  
3 areas of operation. Although the act of 1985 outlawed  
4 cross subsidisation, it still went on; certainly with  
5 care, but it went on. Not as much as before. You  
6 certainly had managers from that era that were managers  
7 under the new era, and I think they found old habits  
8 died hard. But the Competition Act of 1998, which came  
9 into force in the early 2000s, we thought would offer us  
10 the protection that was needed, and by that time the  
11 majority of bus companies had ceased bus warring, if you  
12 like.

13 Q. Let's take Mr West's assumption that all things were  
14 indeed equal and that you entered with 2 Travel on an  
15 advantageous price basis, put it that way, as against  
16 a liveried service. Let's just take the Ely route. Ely  
17 sticks in my mind because I think Mr Jones referred to  
18 Ely yesterday, the 217. It may not be the best example,  
19 but if you have those little coloured charts, we can see  
20 the numbers in section 1 and 2 at tab 5 of I.

21 Go to tab 5. These are the numbers. So in the area  
22 that -- if you have the 217 chart, those are the numbers  
23 of buses that would be running in the outer areas in  
24 section 1 and section 2. Do you see that?

25 A. Yes.

1 Q. And I think, again on the all things being equal basis,  
2 and let's assume Mr West is right, the Cardiff Buses are  
3 liveried, will be frequent, there'll be six buses. They  
4 won't be running to a timetable. That is what you and  
5 he agreed. Isn't that right?

6 A. Yes. They'd be running within the laws of frequency.

7 Q. Exactly. How would it be that you would hope to be able  
8 to draw customers away from those six Cardiff buses?  
9 What are the features of your service that you're  
10 looking to draw customers from the Cardiff Bus service?

11 A. Quite clearly, we were cheaper and we thought that our  
12 crews were more friendly. Those were two of the main  
13 marketing tools that we used.

14 Q. What does being friendly mean?

15 A. Just being pleasant. Cardiff Bus drivers didn't give  
16 change. Probably large company mentality, wouldn't want  
17 to get familiar with passengers. Perhaps more than  
18 their job's worth, as it were. We wanted to give  
19 change, we felt that it was important. We'd read the  
20 complaints, we'd noted the complaints and the volume of  
21 complaints that Cardiff Bus took on board, and a lot of  
22 it was to do with change, a lot of it was to do with  
23 unpleasant drivers or not pleasant drivers, should  
24 I say, sorry. And we felt there was an opening in the  
25 market there for us. We encouraged our drivers to be

1 polite and I think even Cardiff Bus's own surveys or  
2 Cardiff Bus's employees' own surveys indicate that, as  
3 being disclosed that the drivers were reasonably smart,  
4 they were very friendly, they did have a "Good morning"  
5 for everybody and a "Hello" and a welcome and a "Bye  
6 bye" at the end. And that was probably alien to  
7 passengers in Cardiff, as it was elsewhere in the  
8 country. In certain other areas of the country.

9 Q. Do you have any experience of being able to draw  
10 passengers who have a choice, away from just the first  
11 bus that comes along?

12 A. We do it, we still do it now. Part and parcel of the  
13 company that I run now, all our drivers are encouraged  
14 to do exactly the same. We are very successful in the  
15 small part of South Wales that we operate.

16 Q. Do you have any experience as to whether people plan  
17 their journeys by reference to timetables if they have  
18 a choice?

19 A. Yes, they most definitely do. They will go for the ten  
20 to, if they're told the ten to runs. And providing the  
21 ten to does run with regularity -- monotonous regularity  
22 is better -- then they'll come out for it, particularly  
23 if they know the driver's name and they know they're  
24 going to get a smile and a friendly face. It makes  
25 a lot of difference to people. It's an added value

1           actually, if you like.

2   Q.   Are you able to get any penetration into the concession  
3       market as well by these other --

4   A.   You get more.   The over 60s market is the most  
5       vulnerable to kindness, you know.

6   THE CHAIRMAN:   I'm not going to win this, am I?   I think  
7       I should put my bus pass there.

8   MR BOWSHER:   What about season tickets?   People are  
9       obviously tied in with season tickets.   Is there any way  
10      of penetrating a season ticket market?

11  A.   It's very limited, extremely limited.   I don't think we  
12      targeted that anyway.

13  Q.   Do you have any experience of being able to wean people  
14      away when their season ticket expires?

15  A.   There's certainly potential, but that's normally through  
16      the fare box.   If your fares are more reasonable than  
17      a standard period ticket, then quite clearly people are  
18      price conscious, and funnily enough, the people who buy  
19      season tickets are possibly more price conscious than  
20      others.

21  Q.   We've had the figures for the Ely route.   It might be  
22      helpful to look at the pictures.   There are some maps  
23      further back in tab 3.

24  THE CHAIRMAN:   They do show the circularity that Mr Fowles  
25      was referred to, as I remember.

1 MR BOWSHER: Yes.

2 THE CHAIRMAN: At both ends.

3 MR BOWSHER: At both ends, yes. So we've got the first one,  
4 which is a map. That's a map of your Ely route.

5 A. Mm-hm.

6 Q. And then C is a map of the Cardiff Bus Ely routes or  
7 routes that went in that direction; is that correct?

8 A. That's correct.

9 Q. As we have you -- sorry to do it this way, it's perhaps  
10 convenient that someone does explain this for the  
11 tribunal. Are you able to match up the sections -- just  
12 taking your map, 217, and match up the sections with the  
13 map? If you just take it out and show the tribunal what  
14 we're talking about.

15 A. We would go one way round the loop. Their six or eight  
16 buses would go either way round the loop. So they'd  
17 have -- if they had six buses on it, three would go that  
18 way, three would go the other way.

19 MR SMITH: And they have different designations. So if you  
20 take liveried bus numbers 49 and 50, 49 might go  
21 clockwise --

22 A. Would go one way and 50 would go the other way. The  
23 same as these are 17 and 18.

24 MR BOWSHER: And section 1 is Heol Trelai, which is in the  
25 estate, and I have to check this on a map, actually,

1           where it is. I can't now see it on another map and see  
2           where it is. Where's the Pendine section, section 2, on  
3           this map?

4   A.   South of the main road, I think.

5   Q.   This bit here (indicating). So you've got section 1,  
6           section 2.

7   THE CHAIRMAN: Heol Trelai is this bit here.

8   MR BOWSHER: And the Pendine is up here, is it?

9   A.   Mm-hm.

10   Q.   That's what I thought. Then Ely Bridge, section 3 is  
11           when you get on to the Cowbridge Road, is it?

12   A.   That's right.

13   Q.   You can see the industrial estate. And section 4, I'm  
14           not quite sure where it starts, but it's somewhere as  
15           we're getting into the city centre.

16   A.   Yes.

17   Q.   Just taking this route as an example, you explain in  
18           your statement what your marketing strategy is. Can you  
19           just show the tribunal with the picture, where it is  
20           that you are planning to pick up customers?

21   A.   In areas 1 in particular and areas 2. If you note  
22           distribution of houses in those two areas, it's pretty  
23           dense stuff. The third area is not particularly dense  
24           and covered by a main road to the north anyway, and then  
25           through Canton, yes, it's quite dense, but in many

1 respects, on a fine day, within walking distance of the  
2 city centre.

3 THE CHAIRMAN: Presumably, once you're in Canton, there will  
4 be more Cardiff Bus services coming from different  
5 places, from the north particularly, coming down into  
6 the city centre?

7 A. Exactly. We would not have targeted that area. Any  
8 passengers we picked up there would have been purely  
9 opportune.

10 MR BOWSHER: Again, I'm just cross referring from the bar  
11 chart to the map. Would some of the buses coming in at  
12 Ely Bridge, some of the 19CB liveried buses, be coming  
13 in from the A40 and so on and so forth?

14 A. Certainly, yeah, from various other areas of Cardiff.  
15 Some of them coming in Culverhouse and down the main  
16 road. From various places. And that's where you had  
17 a really turn up and go service, just because of the  
18 numbers of vehicles coming through.

19 Q. And is there any sort of planning difference, really,  
20 between these different routes? When you look at them,  
21 they all -- as a layperson, I can sort of see that the  
22 same logic might apply to those other routes. Is there  
23 any difference between the other three routes?

24 A. No, it was the start of the high density areas that came  
25 in on the umbilical cord, if you like, of the main

1 route, into the city centre.

2 THE CHAIRMAN: I'm thinking of the transcribers.

3 MR BOWSHER: Exactly. I haven't finished re-examination,  
4 but that's a useful place to stop.

5 THE CHAIRMAN: And we will rise at 4 o'clock exactly today.  
6 (3.10 pm)

7 (A short break)

8 (3.20 pm)

9 MR BOWSHER: Mr Fowles, we can put the maps away. I want to  
10 look at E7, page 597, Sian Thomas' letter. You had  
11 a lengthy discussion with Mr West about what this letter  
12 means. I want to look at the numbers and what we  
13 understand from the numbers on the first page. Maybe  
14 we can leave it at that.

15 I think what was suggested to you was that  
16 Cardiff Bus services were frequent, therefore they don't  
17 operate to a timetable, the liveried services, and  
18 plainly, also, it was being suggested to you, although  
19 you don't agree, that the white bus services were also  
20 being operated without regard to a timetable because  
21 they were treated as a frequent service. That seems to  
22 be the premise upon which you were being questioned  
23 about that. If that's right, all the 627 observations  
24 on the Cardiff Bus service are in respect of  
25 non-timetabled services. Whatever you may think about

1           what they should be, that's the basis upon which it  
2           seems to be being dealt with. Does that seem a fair  
3           recollection of what Mr West was saying?

4   A.   Yes.

5   Q.   And we know that you were, by contrast, timetabled?

6   A.   Yes.

7   Q.   I just wanted to understand. There are three different  
8           things here. What are the rules that you had to comply  
9           with in order to be a timely service?

10  A.   Compliant.

11  Q.   Compliant, thank you very much. Compliant service.

12  A.   Either one minute late or -- sorry, one minute early or  
13           five minutes later. It's a window of opportunity, it's  
14           a tenth of an hour. That's the way the Traffic  
15           Commissioners measure it. So you'll have six minutes.

16  Q.   That's at every single stop?

17  A.   It's at stops that are on your timetable.

18  Q.   Right.

19  A.   It can't possibly be every single stop. You'll  
20           appreciate a bus could do 40, 50 stops, whereas the  
21           timing points of the service, you couldn't have  
22           a timetable with every bus stop on it.

23  THE CHAIRMAN: I don't get that. Does that mean that  
24           certain bus stops are what are called fare stages or  
25           something of that kind?

1 A. Yes, they can be called that, yes.

2 THE CHAIRMAN: So what I would call a fare stage,  
3 a non-request stop, would be a timing point?

4 A. Um ... Normally, timing points are points of  
5 recognition along a route.

6 THE CHAIRMAN: Right.

7 A. Like a pub or a cafe or something like that. There  
8 could be three or four bus stops in between two timing  
9 points.

10 THE CHAIRMAN: It's a recognition point along the route?

11 A. Yes.

12 THE CHAIRMAN: Thank you.

13 MR BOWSHER: But if you're frequent, therefore  
14 non-timetabled, you can't be either late or early, you  
15 just are; is that right?

16 A. Yes, on a frequent service. As long as there's two  
17 buses within 10 minutes, then you comply.

18 Q. Right. So it's quite a different rule. On a 2 Travel  
19 timetabled service, what would be the circumstances  
20 which you would expect might lead VOSA to say that you  
21 failed to operate the service, the 91?

22 A. They didn't note them at a particular point.

23 Q. Why would that happen?

24 A. As I alluded to this morning, there was always a white  
25 bus, at least one, possibly two. The tendency is -- and

1       if this monitoring was done, as I suspect, in the centre  
2       of Cardiff, then our drivers would probably have been  
3       looking to get on to the bus stop in front of the white  
4       bus to take the exit route out of Cardiff, ie the return  
5       journey, on the basis that they knew they would have the  
6       white buses with them on the way back, as well as on the  
7       way into town. They might come down. If they dropped  
8       all their passengers off, say, at the Capital Centre,  
9       coming in from St Mellons, but the place for picking up  
10      to go back out was Wood Street, then they might -- but  
11      the route had said that they were supposed to come down  
12      St Mary's Street, they might have come down Westgate  
13      Street, or some other street, just to get on to the bus  
14      stop to go back that much earlier. The VOSA monitor, if  
15      they were then in St Mary's Street, just wouldn't see  
16      the bus and, quite clearly, would mark it as  
17      a non-operation. But quite clearly, the amounts of  
18      passengers that we were carrying, from our ticket  
19      machine information and the amount of cash that we were  
20      taking and Cardiff Bus's own suggestion that we were  
21      operating at least 70 per cent -- and they did that,  
22      I think, in disclosures that I have seen, June, July and  
23      through to August -- would make this not quite right.

24    Q.   Okay. So you might fail to operate if you skip a stop  
25      or turn round early or whatever?

1 A. Yes. The science of monitoring wasn't in a very  
2 detailed stage in these days. I think monitors only  
3 started in 2002/2003, when monies became available from  
4 the Welsh Assembly. It's now a particularly good  
5 science and very helpful to bus operators, largely  
6 because of people like Sian Thomas and Michael Anderson.

7 Q. Okay. Is there anything about operating late or early,  
8 other than what it says on the tin? In other words,  
9 that you arrived two minutes early or six minutes late?

10 A. The monitor would make that observation. You'd have  
11 your time of departure, shall we say, and there would be  
12 a minus 3 behind it. So it'd be 3 minutes later than  
13 the departure time, as Michael Anderson would have our  
14 timetable or Sian Thomas would have our timetable. They  
15 would have our timetable that said we were supposed to  
16 leave at 3.55 and we left at 3.58. There would be a  
17 minus 3. Then there's a box then, that they tick  
18 "Compliant" or "non-compliant". But quite clearly,  
19 three minutes after the event is compliant, it's within  
20 the window. If there was minus 6 there, then you'd have  
21 been outside of the window.

22 Q. Were there any particular factors on any of these routes  
23 which affected your ability to be on time?

24 A. Two white buses, usually.

25 Q. What do you mean by that?

1 A. Well, they were always there.

2 Q. And why does that affect your timing?

3 A. It gives you an unusual traffic stream that the driver  
4 has to deal with, besides which, if they pulled on to  
5 a bus stop, you pulled on to a bus stop, it slows the  
6 general route for the driver down, gives him a lot more  
7 to think about, a lot more to deal with. You imagine  
8 you're getting up in the morning and going to your car  
9 and there's a white car outside the front and there's  
10 a white car behind you and you have that car all day  
11 with you, or those cars all day with you, and that's  
12 what our drivers would put up with.

13 Q. I'm a bus passenger myself, Mr Fowles.

14 A. You'd have objected, I'm sure, then, because you'd have  
15 seen it.

16 Q. Would those scheduling issues affect why people come to  
17 your bus?

18 A. It could work both ways. You could get a sympathy vote,  
19 obviously, because people did see what was happening out  
20 there. But obviously, if we're saying that our people  
21 came out to a timetable, so it could put them off if  
22 that timetable wasn't reliable. Buses are extremely  
23 boring and the more boring they are, the better. It's  
24 an inevitability. People want the bus at ten to the  
25 hour, they come out for the bus two minutes before ten

1 to the hour, they want to get on that bus and they want  
2 it to be there. Quite clearly, anything that detracts  
3 from that could create passenger loss.

4 Q. When you were talking to PwC about your plans for the  
5 in-fill business, and you were asked a great deal of  
6 questions about the PwC reports and so forth, how much  
7 input did you give into that PwC investigation?

8 A. 40 to 50 per cent, I would imagine. It's very difficult  
9 to judge.

10 Q. 40 or 50 per cent of what?

11 A. Of the contribution. All the other managers  
12 contributed, the traffic people, traffic managers, east  
13 traffic managers, west, Mr Waters. Everybody was  
14 involved in the plan.

15 Q. I won't get it out, but you recall you were asked some  
16 questions by Mr West about the references in the first  
17 report to market research, and you were asked: what does  
18 that mean? You said that is what you were providing.  
19 What is it that you were providing? How were you  
20 conveying that to PwC?

21 A. From our own observations, through forms, through on  
22 street surveys, and we agreed then, that those were the  
23 numbers that we could achieve because those were the  
24 numbers that were there. The number of OAPs on  
25 a vehicle had been surveyed. We saw them as a real

1 target market, with our friendly drivers. And we did  
2 all that in the November, December, run-up to Christmas,  
3 prior to the report coming out in February.

4 Q. Was growth any part of that research and analysis?

5 A. Establishment first and growth afterwards, yes.

6 Q. And what was your thinking about how the growth might  
7 work?

8 A. I think the report shows the growth flowing through.

9 There were certain estimates that we put to PwC and we  
10 underestimated, we sold ourselves short. I'm sure there  
11 might be one or two areas where we overestimated. It's  
12 the nature of an estimate. Growth will have been steady  
13 up to a six-month period, seven-month period,  
14 eight-month period possibly, I think. Clayton Jones  
15 alluded to it taking a year to establish a bus service,  
16 yesterday, to its full potential.

17 Q. You were asked a number of questions about Carl Waters'  
18 financial assessments and so forth, particularly where  
19 he was suggesting that an optimistic view was taken in  
20 earlier projections; his suggestions that basically, you  
21 should just sell up the company and liquidate, get  
22 whatever money you could out of it, out of the company,  
23 at whatever point before the in-fill. What was the  
24 sense among the rest of the management as to why that  
25 wasn't the course that should be taken?

1 A. I think everybody felt that the creation of a mid-sized  
2 bus operation in a region, and the region of  
3 South Wales, was a good idea. They backed our plan. We  
4 felt it was a good idea in 2003 when we floated. The  
5 market obviously felt it was a reasonable idea and they  
6 went along with the theory of in-fill services and the  
7 transference of the coach and bus business to, largely,  
8 a bus business. The fact that we were virtually totally  
9 underpinned by the value of the land and the  
10 development, which I'm sure you'll hear more about --  
11 and we had several people who wanted to invest in the  
12 company and were prepared to invest regularly, and  
13 I think you will probably hear from them as time goes by  
14 in the next fortnight. It was just felt that there was  
15 a need for it, the timing was right, the operators of  
16 bus services in South Wales were purely large ex-NBC  
17 companies, national bus companies, which were broken up  
18 under the Act of 1985, or ex-municipals. And therefore  
19 it was felt that some kind of independent regional bus  
20 company was needed.

21 Q. You were asked about various specific difficulties that  
22 2 Travel had previously had. There's the 88/89 route,  
23 the Gorseinen College route, which you were asked about.  
24 Was that actually ever taken away from 2 Travel before  
25 it went up for tender?

1 A. No, it was taken over once they regained the tender. It  
2 was a strategic move on their part to deny us the  
3 opportunity to tender. Once they had tendered and won  
4 it, then they gave us notice. It might interest you to  
5 know that the company that I operate at the moment now  
6 does the Gorseinon College contract.

7 Q. Right. The Llanelli businesses, again you were being  
8 asked some questions about. The Llanelli tenders in  
9 spring 2004. What business were you able to get out of  
10 those tenders?

11 A. We were successful in most of the tenders that we  
12 applied for in between the Llanelli and the Carmarthen  
13 areas. The main operation was between Llanelli and  
14 Carmarthen in two directions. Well, on two routes.  
15 They were very intensive. They started early in the  
16 morning, 6 o'clock-ish, and they finished, went on until  
17 midnight, and although it was a lesser operation, there  
18 was a Sunday operation as well.

19 Q. Were there other new routes that you were getting in the  
20 course of 2004 to grow the business?

21 A. Yes, the plan was that there were certain operations in  
22 Swansea that we had got ourselves involved in and had  
23 registered against First Group, in most cases. Some  
24 were purely commercial, but the majority were  
25 commercially against First Group.

1 Q. When you say "commercially against First Group", do you  
2 mean competing on the same route or tendering against  
3 them?

4 A. Competing on the same route and tendering against them.

5 Q. You then talked about the effects of the predation upon  
6 the business and you referred to its effects upon  
7 management, but you didn't really spell it out. What  
8 actually was the effect of the predation on the running  
9 of this business? What did it really mean on  
10 a day-to-day basis? You have used adjectives like  
11 "remorseless" and "distracting" and so forth?

12 A. It debilitated both managers and crews.

13 Q. How is it -- is it something that they had to do that  
14 they couldn't otherwise do? Could you explain?

15 A. I think it's just the frustration of -- I don't think  
16 anybody can appreciate what it was like. I can only ask  
17 you to try and imagine, every morning our vehicles would  
18 go out and do the school journey. They'd end up at the  
19 terminus that had been selected for them and there would  
20 be two vehicles waiting for them, the two vehicles they  
21 knew shouldn't have been there. Those vehicles then  
22 would proceed to follow them. Whatever time they went,  
23 the white buses went. And this wasn't just one vehicle,  
24 this was most of the vehicles that we operated, and they  
25 would follow us and absolutely, wherever we went, they

1           went. I think it was a bit of a joke to start with for  
2           the crews. It was different, and they enjoyed the  
3           competition, if you want to call it that, at the time.  
4           After a while, it ceased to become fun, it ceased to  
5           become competition, it was just that they were there  
6           every day and our crews couldn't understand why we stood  
7           for it. Our crews knew that what they were doing was  
8           wrong and they couldn't understand why we didn't  
9           understand what they were doing was wrong. But  
10          of course, we did; we just couldn't move the powers that  
11          existed to try and do something about it.

12        Q. It was being suggested that one of the problems was that  
13          you, as a business, just moved too quickly into Cardiff;  
14          you were driven by the needs of the listing or whatever;  
15          you just moved too quickly. Looking back at it now, did  
16          you have any choice as to the timing of the in-fill  
17          services in Cardiff?

18        A. We thought we'd chosen the best time to go: April.

19        Q. Can you explain why? Why April 2004 and not April 2003  
20          or 2005?

21        A. Okay. Our plan was to come into an area, obtain  
22          contracts, school contracts, school service contracts,  
23          tenders, and then, when other tenders or the commercial  
24          opportunity opened itself up, when we were set, then we  
25          introduced in-fill. We were granted contracts in

1 Cardiff in 2002. Those were the first ones, but it was  
2 just a small tranche of contracts. The major contracts  
3 came out in September 2003, where we were very  
4 successful and obtained quite a lot of school contracts.  
5 I go back to the eight weeks' notice given to the  
6 Traffic Commissioner. We didn't introduce services in  
7 late 2003, in-fill services that is, because we needed  
8 to get the schools base of operations bedded down  
9 properly. By the time we did that, it was the end  
10 of September. So giving eight weeks' notice, we would  
11 have been in perhaps the first or second week  
12 of December, which is not really -- well, it is a good  
13 time on the bus, but it's followed then by a very quiet  
14 time in January and part of February.

15 So the next busman's time to register services, if  
16 you like, is -- or the next most opportune time to  
17 register bus services is usually when the sun starts to  
18 come out in Easter, and so we took Easter 2004 as our  
19 launch for the in-fill services, but the preparation  
20 took 18 months to 20 months prior to the in-fill  
21 services and was necessary.

22 Q. Having won that group of contracts in autumn 2003, why  
23 not just wait 14, 15, 16 months before starting the  
24 in-fill services and go a bit more slowly?

25 A. I think we were quite happy that we could accommodate.

1 The school period was, as is still the same, I believe,  
2 between three and five years. So once we'd got the  
3 school contracts, it was essential we made the most of  
4 them because some of them might have been only backing  
5 the in-fill services for three years. So it was  
6 important that we didn't wait and wait and wait but got  
7 going as soon as possible. We wanted to make sure that  
8 the school services had bedded down properly and that  
9 didn't give us any window of opportunity prior to  
10 Christmas. The earliest time after that was April.

11 Q. You were asked a number of questions about what you were  
12 thinking as the business starts to, as it were, reach  
13 the other end of its life. You've said that at a  
14 certain point you didn't think it was fair to ask the  
15 investors to put up more money. Just describe, why was  
16 it not fair to ask them to put up more money?

17 A. There was no end to the predation. Whatever we did,  
18 they kept on coming, they were there, and we couldn't  
19 move the powers that be to see that what was going on  
20 was wrong. Nine months is a long time for that type of  
21 predation and that type of anti-competitive behaviour.  
22 It was an awful long time, testament to how good they  
23 were at it and we succumbed.

24 Q. I wanted to ask you -- you were asked to comment about  
25 the Grant Thornton documents in file E9, if you could

1 just take E9. The Grant Thornton reports. I want to  
2 look at the first one, which is page 290. There's  
3 a particular paragraph that you weren't taken to that  
4 I wanted to ask you about, paragraph 2.12 on page 294.  
5 Just read that to yourself. (Pause).

6 Did you have any discussions with Grant Thornton  
7 about that paragraph?

8 A. They were aware and they were made aware of what had  
9 gone on the previous nine months or eight and a half  
10 months before this. They found it difficult to  
11 understand why it had gone on so long.

12 Q. Were they pressing you or 2 Travel more generally for  
13 information, for some assurance, something they could  
14 put in the report to help them?

15 A. They did, yes, they did. Obviously, people wanted  
16 positive news, not negative news, at that time.

17 Q. Right.

18 A. The fact that this relates to Aston Rothbury Factors --  
19 they certainly couldn't understand what was going on and  
20 why it had been allowed to go on for as long as it did.

21 Q. But does that really reflect your state of feeling  
22 at the time about your inability to tell them anything  
23 about any expectation as to what would happen?

24 A. Yes, I didn't know.

25 Q. Had you had previous experience of making this plan work

1 in other parts of Wales?

2 A. Yes, we were very successful in Neath, where we had  
3 achieved over 40 per cent growth on our in-fill  
4 services, and they were -- and certainly some in Swansea  
5 as well. They were used as a blueprint, if you like,  
6 for elsewhere.

7 Q. Did you have any actual evidence to suppose that you'd  
8 built up any loyalty from the customer?

9 A. Yes, certainly there were letters, quite a lot of  
10 letters. The Local Authorities in Neath, Port Talbot  
11 and Swansea had commented, and our driver feedback was,  
12 yes, that they were carrying people on the same day  
13 during each week.

14 Q. Going back then to Mr Matthew Evans, who you were asked  
15 about -- that's E11, page 715 -- whoever he may be,  
16 a pseudonym for someone. Firstly, if you've got that  
17 letter, no doubt there are many things we could look at  
18 here, but let's just look at the headlines. They refer  
19 to the 2 Travel business in Cardiff, Cwmbran and  
20 Swansea, suggesting that it was a shambolic operation.  
21 Did you regard the operations -- let's take Cwmbran and  
22 Swansea first. Were they shambolic operations?

23 A. No.

24 Q. Cardiff, was that a shambolic operation?

25 A. It certainly wasn't when it started. It became less

1           efficient as time went by and the effects of the  
2           predation on the staff, all the staff, became evident.

3   THE CHAIRMAN: This certainly arises from cross-examination,  
4           but it wouldn't take a wild guess to suggest that  
5           Mr Fowles is going to reply, "No, I don't agree" in  
6           answer to every rhetorical question.

7   MR BOWSHER: Okay, it's a fair point, sir. You know where  
8           we're going.

9   THE CHAIRMAN: I've got the point.

10   MR BOWSHER: I think we've probably covered most of the  
11           individual points in there. I wanted to give Mr Fowles  
12           the opportunity to refute the wild(?) views from  
13           Pontypool.

14   MR FREEMAN: Denied, not necessarily refuted.

15   MR BOWSHER: Fair point as well. It's getting late.  
16           Indeed. I have no further questions for Mr Fowles  
17           unless the tribunal has further questions.

18   THE CHAIRMAN: No.

19           Thank you very much, Mr Fowles.

20   MR WEST: Could I just mention one thing? I just mention  
21           that I'm instructed that we don't accept the  
22           interpretation of Dr Niels' maps and diagrams, which we  
23           went through at the beginning of re-examination.

24   THE CHAIRMAN: Can we cross that bridge later?

25   MR WEST: I thought I'd better mention it when the witness

1           was here just in case I was asked why I hadn't done.

2   MR BOWSHER:  Maybe we could have an explanation as to what's

3           wrong with the interpretation.  I was just trying to use

4           them as convenient maps to try and understand how the

5           charts refer to routes.

6   MR WEST:  Sections of the routes are actually marked on the

7           maps themselves.  For example, if you look at this one,

8           which is tab C, you see the little numbers here, 1, 2,

9           3, 4.  So the sections of the routes are actually marked

10          on these diagrammatic maps.

11   THE CHAIRMAN:  Is that flag C?

12   MR WEST:  That's flag C of tab 3.

13   THE CHAIRMAN:  Yes.

14   MR WEST:  I'm also told that where there's a loop in the

15          route, such as in this example in Ely, the numbers of

16          buses which are referred to in Dr Niels' diagrams in

17          tab 5 are for only one section of the loop and not for

18          both sections of the loop.  So for example, the 217

19          service, where there's reference to six liveried buses

20          in section 1, that is only the 117, not also the 118.

21          It would actually be 17, the liveried service number.

22          117 is the white service that we can forget about.

23   THE CHAIRMAN:  But is this something that Mr Fowles can

24          really deal with at this stage?

25   MR WEST:  Probably not, but it did arise out of what he was

1           asked at the beginning of his re-examination.

2   THE CHAIRMAN:   Maybe you'd like to consider how it can be  
3           resolved.  If you'd like to recall Mr Fowles at some  
4           stage to deal with this, you can.  I would have thought  
5           there's a simpler way of dealing with it than in further  
6           cross-examination.

7   MR BOWSHER:   I would have thought so.  I was really just  
8           trying to use the maps as a sort of convenient  
9           geographical tool, just identifying which bits of  
10          Cardiff we were talking about, and I don't think my  
11          point was --

12   THE CHAIRMAN:   And to show off his Welsh pronunciation!

13   MR BOWSHER:   Only by marriage.

14   THE CHAIRMAN:   I did guess.

15   MR WEST:   To be fair to Mr Fowles, he really ought not to be  
16          under threat of being called back here again.

17   MR BOWSHER:   That was my next question, to ask to release  
18          Mr Fowles.  If it becomes important, no doubt we can  
19          call him back.

20   THE CHAIRMAN:   Mr Fowles will be released.

21                I'm sure, Mr Fowles, if we say you're released,  
22          they'll find another way of dealing with any outstanding  
23          question.

24   A.   Thank you very much, sir.

25   THE CHAIRMAN:   Thank you, Mr Fowles, very much.

1           What befalls us tomorrow?

2   MR BOWSHER:  Mr Francis is our next witness.  At this stage  
3           in the game, I'm somewhat in my learned friend's hands  
4           as to timing.  Although Mr Fowles has taken longer than  
5           timetabled, far be it from me to guess how long my  
6           friends will be.  I had always assumed they might be  
7           a little longer with Mr Fowles and Mr Francis than  
8           others.

9   THE CHAIRMAN:  It always gets quicker.

10  MR FLYNN:  It certainly should.  I expect I'll be able to  
11           deal with Mr Francis and start on the next witness, who  
12           I think is Mr David Fowles, tomorrow.

13  THE CHAIRMAN:  Right, good.  Thank you.

14  MR BOWSHER:  I can call Mr Francis now if you wish.

15  THE CHAIRMAN:  There's no point.  It's 3.55.  Right,  
16           10 o'clock tomorrow morning.

17  (3.55 pm)

18  (The hearing adjourned until 10.00 am the following day)

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