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IN THE COMPETITION
APPEAL TRIBUNAL

Case No. 1178/5/7/11

Victoria House,
Bloomsbury Place,
London WC1A 2EB

15 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

Transcribed by Merrill Legal Solutions
2nd Floor, 101 Finsbury Pavement, London, EC2A 1ER
Tel: 020 7422 6100 Fax: 020 7588 7605
London@merrillcorp.com

HEARING (DAY 4)

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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Thursday, 15 March 2012

(9.30 am)

MR DAVID HUW FRANCIS (continued)

Re-examination by MR BOWSHER (continued)

MR BOWSHER: Mr Francis, good morning. I just wanted to finish up with a couple more questions, which I hope won't take too long. Can we go back to your witness statement at C1, tab 4.

THE CHAIRMAN: Sorry, just before you do that, in relation to this document you've given us, I'm just looking at the first of what we're told are board minutes. Is that what they are?

MR BOWSHER: I haven't ...

THE CHAIRMAN: They're certainly minutes of a meeting.

MR BOWSHER: They are --

THE CHAIRMAN: I see, they're identified separately.

Thank you.

MR BOWSHER: Sorry, I haven't been through the list.

THE CHAIRMAN: Let's leave that until later.

MR BOWSHER: The board meeting and minutes are intended to be differently identified.

THE CHAIRMAN: Okay, yes.

MR BOWSHER: You'll see there's also reference to things like board pack and so forth.

THE CHAIRMAN: Yes. You carry on. Forgive me for

1 interrupting.

2 MR BOWSHER: Mr Francis, C1, tab 4, paragraphs 35 and 36.

3 We're back at the Redrow -- what I have called the
4 Redrow/Lidl offers. They're two offers about the same
5 time. The short question I wanted to ask you was: why
6 did you decide or why was it decided not to take up that
7 offer?

8 A. Principally because it was premature. We wanted to wait
9 to see how the rest of the development occurred around
10 the site.

11 Q. And what was 2 Travel's perception of the state of the
12 market at the time?

13 A. The market was growing and it was very good.

14 Q. You were asked a number of questions about the impact of
15 the predation on 2 Travel and how that worked, and
16 I wanted to look at that in a couple of ways. Firstly,
17 Clive Rix; did you ever deal with Clive Rix?

18 A. No.

19 Q. I was going to ask a couple of questions about what the
20 impact of the predation was, and what I wanted to do was
21 ask you to consider a situation where the predation
22 hadn't happened and consider what your assessment is as
23 to how 2 Travel would have acted in one or two
24 circumstances. What I wanted to do was to ask the
25 questions in this way, to ask you, if you imagine that

1 no predation had happened, what do you think would have
2 happened and why do you say that? Can we keep that
3 separate, each question separate in that way. Do you
4 follow what I'm driving at?

5 A. Trying to, yes.

6 Q. Dealing with the land at Swansea, if I can use that term
7 loosely, if there had been no predation, do you expect
8 that 2 Travel would have sold the land earlier, say in
9 2004 or 2005?

10 A. I wouldn't have recommended that, no, I'd have advised
11 it be kept a little longer.

12 Q. And in 2004, if there had been no predation, do you
13 expect that 2 Travel would have followed your advice?

14 A. They did, yes.

15 Q. I'm in this -- I know it's a fantasy world, but it is
16 the fantasy world I'm trying to -- you are best placed
17 to understand this --

18 A. I understand.

19 Q. -- because you were there and the rest of us weren't,
20 with one or two exceptions in court. That's why I'm
21 asking you these questions. If there had been no
22 predation, would you have expected 2 Travel to have
23 spent more on the site, either buying more land, doing
24 some of the work that we've seen in E18 on the
25 surrounding pieces of land and so forth? Would you have

1 expected 2 Travel to do that work?

2 A. Generally, yes, but there was a lot to do in terms of
3 literally doing nothing. As the site stayed there, the
4 surrounding developments took place and that all
5 increased the value of the land. So anything that cost
6 nothing was done, anything that cost money wasn't done.
7 But you could just sit on it and see the value
8 appreciate because of what was happening around it.
9 When we bought the site, it was literally in the middle
10 of a bog. A planning inspector had refused planning
11 permission on it and once the planning inspector's
12 refused, it's a fair assessment that you're unlikely to
13 get it within the next 10 years. But because the
14 company was carrying out several operations on the site,
15 which was not consistent with what the structure plan
16 was suggesting should occur around the site, discussions
17 took place with Swansea City Council and it was put to
18 them that it was a bad neighbour effect on their other
19 development, and they recognised that. And on that
20 basis, they felt that they perhaps would consider or
21 reconsider the planning status of that land in light of
22 the developments that they proposed. And because the
23 site was strategically located at the entrance to the
24 enterprise zone and the entrance to what's now the Morfa
25 and Liberty Stadium development, they didn't want

1 a gypsy caravan site and a scrap yard, which is
2 basically what it was when it was bought. As
3 a consequence of that, I made an application for lawful
4 use. That took a considerable length of time but didn't
5 cost the company anything. And that was climbing the
6 stair towards a full planning permission for the site,
7 when real value would occur.

8 So the company basically, as far as -- well, the
9 board felt anything that could be done to appreciate the
10 value of the land, which didn't cost the company
11 anything, should be done. Anything that would cost
12 money, perhaps ought to be left until there was
13 a prospective purchaser for the site.

14 Q. Now, we know that you took the land off 2 Travel and
15 you've held on to it to this day. If we add another
16 unreality about this or a hypothetical, if the predation
17 hadn't happened and 2 Travel had remained in business,
18 would you have expected 2 Travel to have sold that land
19 at some point before today?

20 A. Yes. The board made it very clear that the company was
21 a transport company and not a property development
22 company. On that basis, their instruction to me was to
23 try and obtain as much as we could for the land, but
24 without entering into any development involvement.
25 I suggested to them that some overage might be

1 a sensible way to look at it, and that if we could find
2 a company that was prepared to share in the profit. The
3 property market was such at that time that those
4 opportunities existed and they were discussed at length
5 with both Sir Richard and Mr Spooner on a regular basis.

6 Q. We know from later on in your statement that there were
7 further offers in 2005, 2006 and 2007 regarding this
8 land. Would you have expected 2 Travel to follow up any
9 of those offers?

10 A. We followed up each and every offer and kept it on file
11 because the opportunity to go back was always there.
12 The site was a key site and it's probably now one of the
13 better sites in Swansea that's available.

14 Q. I want to focus --

15 A. Even in those days.

16 Q. In this world in which 2 Travel holds the key, not you
17 and Mr Short, how do you think 2 Travel would have dealt
18 with that land in 2006/2007?

19 A. Well, again, each offer would have been explored. The
20 opportunity to get the best planning permission existed
21 when the rest of the site around the depot site had been
22 developed. Once those consents were granted, and they
23 were granted for a range of uses from a retail,
24 non-food, food and residential, then the best -- the
25 application which would best suit the site became quite

1 apparent. And it would be at that stage that I would
2 have suggested that we invite somebody to make an offer,
3 take it up with the estate agents and if they were
4 prepared to make an offer that was acceptable, make it
5 subject to planning permission and sell it.

6 Q. When do you think that would have arisen?

7 A. I'd have expected the Barratt site probably by 2008/2009
8 was really looking good and it would have been round
9 about 2007, I think, 2008. Round about that period.

10 Q. If you turn on in your statement to paragraphs 61 to 63,
11 we see your evidence about what was happening then in
12 terms of offers. How would you have expected then, the
13 2 Travel board to have reacted to the developments
14 in the site in that time, 2006/2007?

15 A. Well, they'd have wanted the site to realise its maximum
16 value and they would have sold it.

17 Q. Can I again ask, while we're still on the -- let me then
18 look at a different aspect but of the same imaginary
19 world, as it were, in which there is no predation at
20 all. Assume then, that the Cardiff school contracts are
21 up and running, the Cardiff in-fill contract routes
22 start when they did start and that they generate revenue
23 for 2 Travel. But there is no predation. There will be
24 a later debate in this case as to how much money might
25 or might not have been generated from that, but if you

1 take C2 and go to tab 20. You'll see that this is
2 a report prepared on behalf of the claimant, 2 Travel in
3 liquidation, seeking to evaluate how much profit might
4 have been derived from the in-fill routes, prepared by
5 Mr Good of KPMG.

6 Now, I think this is not the most up-to-date -- this
7 version doesn't include all the corrections, but just so
8 that you can see the format of what he's done, if you go
9 to page 33, you will see on the right-hand side --
10 do you see table 10, "Updated schedules for the
11 tribunal":

12 "Total loss of profits from the Cardiff in-fill
13 services, including interest."?

14 And to emphasise, this is profits from the in-fill
15 services, not revenue. It may be a bit hard to read,
16 I don't know. Mine's fairly microscopic. Do you follow
17 that? So what Mr Good of KPMG is showing here -- and it
18 may be fairly rough and ready -- is that there is a low
19 case in which profit of £200,000 would have been earned
20 up to the date of liquidation and a high case in which
21 £300,000 had been earned up to the date of liquidation.
22 Do you see that?

23 A. I do.

24 Q. So again, I emphasise, this is profits, not revenue.

25 There has been some subsequent tweaking since this and I

1 think this page is not quite up-to-date, to take into
2 account some more data. I think the figures, in fact,
3 now are £160,000 for the low case and £310,000 for the
4 high case, but we're still in the same zone, as it were.

5 So can I just take a mid-point figure for the
6 purposes of the question and say £250,000 profit. Okay?
7 If there had been no predation and, as a result,
8 2 Travel had been able to earn profit from the in-fill
9 routes of something in the order of £250,000
10 between April 2004 and the date of liquidation, would
11 you have expected 2 Travel to have continued in
12 business?

13 A. Yes.

14 Q. Why do you say that?

15 A. Well, the position was -- as far as I was concerned as
16 an investor, the aim was to get sufficient licences to
17 operate in sufficient depots and get sufficient routes
18 and then dispose of the property to discharge the
19 company's indebtedness. That was the plan from day one.
20 It was felt generally that the bus part of the business
21 ought to be the focus of the business. There'd been
22 a problem with coaches from the position in America
23 particularly affecting the business and then the
24 Foot and Mouth. All the management were bus people and
25 wanted to focus on that, and Cardiff as the capital, was

1 where they wanted it to be. It was felt that once those
2 routes started to mature, that would generate sufficient
3 revenue and sufficient profit to warrant going back to
4 the city and, in particular, the investors that were
5 already in 2 Travel, who had indicated that in the event
6 that the PwC projections were realised, that they would
7 have been prepared to invest more money in the company.

8 I was particularly interested because of the
9 property. Mr Short had a history of investing in small
10 businesses and turning them round and making them
11 profitable, and in the discussion I'd had with him, it
12 was generally agreed that in the event that Mr Fowles
13 managed to get the business in line with the PwC report,
14 both Mr Short and myself would make further investment.
15 And I knew that Mr Spooner and Helen Sinclair and a few
16 of the others would also have made an investment.

17 So showing a profit of £250,000 would have
18 encouraged us in that respect.

19 Q. Let me put the question slightly differently. What if
20 it had fallen short and made only a quarter or a half of
21 that, so maybe only £50,000 or £100,000. Would that
22 have changed your view of things?

23 A. No, the advice that we had was that it was an AIM listed
24 company and whereas everybody hoped it would make
25 a profit in the first two years, it was quite realistic

1 that it might not. We would have stuck with it for two
2 to three years at a normal trade or in a normal trading
3 situation. It was very difficult to apply normal
4 trading standards to what was a very abnormal situation
5 when the predation started. If the losses that were
6 being generated were understandable, we would have stuck
7 with it. But these were extraordinary situations and we
8 stuck it as long as we could and then decided that we
9 couldn't take it any longer.

10 Q. You say extraordinary. I mean, businesses, all sorts of
11 odd things happen to businesses. You'll have come
12 across that. You have abnormal, unexpected events. Why
13 is this an extraordinary event such as to change your
14 mindset about whether to let this business go forward?

15 A. It was something that Mr Short and I, in particular,
16 discussed with our legal advisers, before we considered
17 investing more money into the company. We knew that
18 there was a possibility that Cardiff Bus would react in
19 the way that they did and the company had experienced
20 some difficulties in Swansea with the First Group. And
21 albeit that they were very small, little points, they
22 had an effect on the business, you know. I would sit
23 there, Mr Fowles would come in and in the central depot
24 in Swansea, a First Group bus would park in front of
25 a 2 Travel bus and the driver would go off for breakfast

1 but he would park in a way that the 2 Travel bus
2 wouldn't be able to get out. As a consequence of that,
3 the window of opportunity in terms of how early you can
4 be and how late you can be were missed on a regular
5 basis. So there were teething problems there. The cost
6 of being in the Swansea depot and the amount that First
7 Group charged were huge, way beyond what they ought to
8 have been. So we had that experience and were a little
9 apprehensive that that might happen in Cardiff Bus.

10 However, when we looked at it and spoke with our
11 lawyers generally about it -- and whether they were
12 right or wrong, they felt that the Transport Act and
13 section 73, in particular, meant that Cardiff Council
14 wouldn't allow Cardiff Bus to behave in perhaps the way
15 that First Group had behaved. I remember looking at the
16 memorandum and articles and there seemed to be
17 provisions in there that safeguarded us to a certain
18 extent, in that they weren't permitted to do what the
19 controlling authority couldn't do and on the assumption
20 that the controlling authority wouldn't be allowed to
21 break the law, we felt that they wouldn't.

22 We felt, and it was discussed at length, that in the
23 event that Mr Brown and Mrs Ogbonna were prepared to do
24 this, then they would be exceeding their authority in
25 acting ultra vires and would be personally liable, and

1 we didn't think they would take that risk. So we looked
2 at that very carefully before we went in. Mr Fowles was
3 more keen to go in. He'd worked with Alan Kreppel for
4 10 years, knew him and believed that he wouldn't do to
5 him what he might do to someone else. So it was
6 considered at length before the decision was taken to go
7 in and once we were committed, we were committed, and we
8 had to do the best of a bad job in the end.

9 Q. Was there any other way out of 2 Travel's problem by the
10 end of 2004, do you think, once the predation was
11 underway? If the predation wasn't going to stop, was
12 there any other way out of the situation?

13 A. Everyone expected it to stop, you know. It was
14 discussed at length and the chairman felt that this was
15 something which one could expect, there would be a spurt
16 of it and then it would die down. But it didn't,
17 obviously.

18 Q. If there had been no predation and 2 Travel had traded
19 on in the way you've described, is there any reason to
20 suppose, do you think, that the Swansea land would have
21 been sold to you and Mr Short?

22 A. Mr Short and I have many other property interests.
23 I could have bought the Swansea site at the outset, had
24 I chosen to, and had I chosen to buy it when Carl Waters
25 decided to or suggested it ought to be put on the

1 market, I'd have bought it at a far cheaper price. As
2 it is at the moment, when we did buy it, the company was
3 relieved of £2.4 million worth of debt and the company
4 only paid £600,000 for it or whatever, some six or nine
5 months earlier. So the situation is that as far as
6 we were concerned, we made it perfectly clear, and we
7 had open discussions with the board, that it would be
8 better for the company to sell the land at the best time
9 and that was the intention. But once we got into
10 a situation whereby Mr Short and I were expected to lend
11 money to the company or secure loans for the company,
12 again we discussed it, but we told the company very
13 openly that in the best interests of the company --
14 I even suggested that we would perhaps guarantee
15 a development on behalf of the company. Because it was
16 always felt that the property would discharge the
17 company's bank borrowing, the company's hire purchase
18 borrowing. And once the hire purchase borrowing and the
19 bank borrowing was discharged, then the operating profit
20 that the company would make would increase substantially
21 because there was a lot of hire purchase in the company.

22 So the property was key to that and it was discussed
23 many times.

24 Q. In that world, though, where, as it were, 2 Travel is
25 coping, if I can put it that way, coping

1 Q. Is that your signature on page 338?

2 A. Yes, it is.

3 Q. Have you had a chance to check this statement before
4 giving evidence today?

5 A. Yes, I have.

6 Q. Are there any corrections you wanted to make to it?

7 A. No.

8 Q. Are the contents of it true to the best of your
9 knowledge and belief?

10 A. Yes, they are.

11 Q. Thank you. Could I just check a couple of things. In
12 paragraph 5 of your statement, you refer to your
13 investment experience, business experience, and explain
14 that your judgment of the 2 Travel business was based on
15 that experience. Could you just briefly outline, what
16 is your current business experience?

17 A. My initial business experience, I started in the steel
18 industry in 1979. Over 25 years, we built up a very
19 substantial privately owned steel services business,
20 operating across 15 major steel sites in the UK and
21 employing around 1,500 people. That business was sold
22 in 1999 to a conglomerate, a FTSE100 business, who asked
23 me then to stay on for three years, to run the European
24 and North American operations. After that I've invested
25 in a number of enterprises, businesses, and made private

1 investments as well.

2 Q. At the time, sort of 2003/2004, when you were looking at
3 2 Travel, what was your then business involvement? Did
4 you have any directorships? Were you actively involved
5 in managing any other businesses?

6 A. We're going back a while and I've been involved in
7 an awful lot of businesses. Certainly at the time,
8 I would have been a director of Penderyn, a single malt
9 Welsh whiskey. There wouldn't have been too much else
10 at the time because it wasn't long after I'd finished
11 with Brambles.

12 Q. And you are still involved with Penderyn whiskey?

13 A. Yes.

14 Q. And since then you've taken on other business
15 responsibilities; is that right?

16 A. Indeed, yes.

17 Q. We've heard quite a lot already in evidence about how
18 you and Mr Francis were putting money into the 2 Travel
19 business fairly often, I think it'd be fair to say. How
20 did that work? Did Bev Fowles or someone ring you up
21 and say: we need some more cash to tide us over
22 a problem? Was there a procedure that operated?

23 A. Yes, generally I'd attend board meetings one afternoon
24 a month. In between that, there'd be occasional
25 involvement, if there were any issues that I could

1 particularly assist with. So it would just come up
2 periodically in terms of the cash requirement of the
3 business.

4 Q. Was all of the lending you made to the business secured
5 on assets or whatever?

6 A. In the most part, yes. Although it wasn't all by way of
7 a guarantee to the bank, there was cash investment as
8 well.

9 Q. When you say cash, you don't mean in bits of cash, you
10 mean by cheque or some other --

11 A. Correct.

12 Q. Just to tie that up, paragraph 10 of your statement on
13 page 334, there's a reference to a couple of advances
14 you made. Can I try and tie those up? If you take
15 file E18, tab 6, which is bank statements. These are
16 statements for an account in the name of 2 Travel. I'm
17 not sure whether this is the only 2 Travel account, but
18 it is a 2 Travel account certainly. What we can see in
19 your statement at paragraph 10 is you refer to two
20 advances at £75,000 and £25,000, and we can pick those
21 up. The £75,000 payment on 25 November, I think I can
22 confidently take you to that, is on page 49 at line 21.

23 If we go then, on to page 55 at line 27, there is
24 another payment we see that appears to be from you;
25 is that right, for £50,000?

1 A. That seems correct, yes.

2 Q. Is that an additional payment to the £75,000 and £25,000
3 that's referred to in your statement?

4 A. Yes, I believe the total amount advanced during that
5 period was £300,000.

6 Q. Right.

7 MR FREEMAN: Sorry, which line is that?

8 MR BOWSHER: 27 on page 55.

9 Then I can quickly take you through then -- on
10 9 December, that's page 57, that's £40,000 from yourself
11 to 2 Travel; is that correct? Line 36.

12 A. Yes, that seems to be correct.

13 Q. Then the 31 December payment. Line 61 on page 64.

14 A. Mm-hm.

15 Q. Is that the £25,000 referred to in your statement?

16 A. That seems to be correct.

17 Q. And then there is, on 10 January, page 68, line 56;
18 is that another £35,000 from you?

19 A. That seems to be correct, yes.

20 Q. Then there are two £10,000s; on 20 January, which is page
21 71, at line 41, and we can take this fairly quickly, and
22 then at page 81 of line 12, there's two more £10,000s,
23 appearing to be from yourself. Is that right?

24 A. That seems to be correct, yes.

25 Q. I totted those -- I may have missed one in there -- up

1 to £245,000, so I was still £55,000 short of £300,000.
2 Was there any other way that payments would have been
3 made?
4 A. Possibly there could have been a direct transfer as
5 a cheque, but £300 was the total over that period.
6 Q. Some of them are cheques so they might not have your
7 name on, okay. Was all of that £300,000 secured?
8 A. Forgive me, the complexity of the security around the
9 time was great and it was advised by my lawyers, but one
10 way or another there would have been security there,
11 yes.
12 Q. And in terms of taking decisions as to whether to put
13 more money in the company or not, was that a decision
14 you took on your own or did you discuss it with
15 Mr Francis or how did that work?
16 A. It would have been discussed with Mr Francis, with the
17 various other directors of the company and the officers
18 of the company. To an extent, PwC as well, but
19 eventually the decision would have been mine.
20 Q. What was it -- at a certain point, did you decide that
21 you were not prepared to advance more money to the
22 company?
23 A. Yes. At a certain point that decision was made.
24 Q. Was there a sort of moment of illumination when you
25 think: right, that's it, I've had enough?

1 A. No, I think these things, by nature, are more
2 progressive. As more evidence becomes available, then
3 you eventually get to a point, a tipping point if you
4 like, where it's clear that further investment would be
5 not wise.

6 Q. And what led you to that decision, that gradual
7 decision?

8 A. I think it was -- well, it was clear to me that the
9 predation of Cardiff Bus was not going to stop, it was
10 far more orchestrated, planned and well funded than we
11 believed up until that point, and that, given the
12 critical nature of Cardiff to the market in South Wales,
13 was going to be something that would take a very long
14 time to deal with.

15 Q. Did you see any way, as it were, out of the problem for
16 2 Travel while the predation was in place?

17 A. It was difficult. You have to understand at the time,
18 we didn't fully understand, I suppose, the level of the
19 predation. Certainly the management resources in the
20 business, the executive management resources had become
21 increasingly swamped by dealing with the issues. It
22 became all-consuming, really, for the management by the
23 end, even to the detriment of other aspects of the
24 business.

25 Q. In your assessment of 2 Travel, were you looking for

1 a particular level of profitability or to want to
2 continue to be involved in 2 Travel, continuing through
3 2004, 2005, 2006, or -- did you have a particular view
4 as to how you expected the business to go, to be
5 prepared to stick with it?

6 A. Yes. We wanted the business to expand fairly rapidly.
7 There were plenty of examples and benchmarks we could
8 see from other companies in a similar sector who had
9 managed to expand, and certainly the expectation was
10 that we'd be able to do that with 2 Travel.

11 Q. Would you have --

12 A. As for a particular level of profitability, that's
13 difficult to assess from this business.

14 Q. Would you have been prepared to tolerate a situation
15 where 2 Travel was simply breaking even on its Cardiff
16 business in 2004/2005?

17 A. Absolutely, yes.

18 Q. Would you have been prepared to tolerate a modest loss?

19 A. Yes.

20 Q. I think we can put E18 away, the bank statements. Can
21 I ask you about a document in file E9, page 240.
22 I don't think you were here yesterday. This document
23 may need a bit of explanation. You had to have been
24 there to understand what it is, but let me try to
25 explain what I think it is.

1 Evelyn Sarbout, who we see is sending these various
2 messages, seems to be working in the same office as
3 Graham Spooner. Did you come across Graham Spooner?
4 A. This is the NOMAD?
5 Q. Indeed. I mention that because although -- sorry, it's
6 Matrix. I'm jumping ahead. If you see, there's an
7 e-mail from her, but actually the wording is from
8 Graham. I think we infer that must be Graham Spooner.
9 Although it doesn't always come from Graham Spooner, the
10 salutation at the end is always "Kind regards, Graham".
11 A. Which e-mail are we looking at?
12 Q. The right-hand page, 241, and then on the left-hand page
13 again, 240. Do you see?
14 A. Yes.
15 Q. It's the one on 240 I'm interested in because it's
16 Graham Spooner e-mailing Matrix. This is
17 in November 2004, when obviously there are growing
18 concerns about the situation.
19 THE CHAIRMAN: This is after the suspension of the shares,
20 isn't it?
21 MR BOWSHER: Yes. It says:
22 "It transpires that 300K of the bank's facilities to
23 2TG were due for repayment on 31 October 2004. This was
24 not reflected in the PwC model nor advised to the
25 independent directors. We are awaiting the outcome of

1 the Grant Thornton investigations and it would be
2 sensible to debrief Matrix Chrysalis following their
3 initial review."

4 Then it is picked up in a further e-mail. There
5 seems to be some more information that Graham Spooner
6 has. If you see further up, a day later, he says:

7 "I understand, however, that the bank is prepared to
8 continue with all its facilities ...(reading to the
9 words)... Huw Francis, with others, may be prepared to
10 underrate a deep discounted rights issue, subject to the
11 GT report."

12 I've omitted a few words. Would you have been one
13 of the others referred to?

14 A. Possibly, yes.

15 Q. At that point, were you still at least prepared to
16 contemplate investing in 2 Travel?

17 A. Well, subsequently I did, so yes.

18 Q. The bank liability that we see referred to there in
19 those exchanges, is that a liability that would have
20 been swept up when, as it were, you took on all the
21 Barclays' liabilities?

22 A. I assume so, but I can't be categorical on that.

23 Q. Do you have any reason to suppose that it wouldn't have
24 been?

25 A. No.

1 Q. You're not aware of there being a liability that was
2 left hanging over?

3 A. No, I wasn't.

4 MR BOWSHER: Thank you, Mr Short. Could you wait there,
5 there may be some more questions for you.

6 Cross-examination by MR FLYNN

7 MR FLYNN: Good morning, Mr Short. I'm going to ask some
8 questions on behalf of Cardiff Bus, as you're probably
9 aware. You were a non-executive director of 2 Travel,
10 were you not? I think if I ask a question, it would be
11 helpful if you just gave a yes or a no, at least, rather
12 than a nod, because it doesn't come out on the
13 transcript.

14 A. Yes.

15 Q. Thank you. You were a non-exec from, I think you say in
16 your statement, April 2003?

17 A. That would be about correct, yes.

18 Q. As a non-executive, your role was essentially attendance
19 at board meetings; would that be correct?

20 A. Correct.

21 Q. The tribunal has been handed a list of board meetings
22 and I don't think we need to go through, checking the
23 register, as it were. You attended some and some
24 you weren't there for, but you attended board meetings.
25 You did invest in the company, didn't you?

1 A. Yes, I did.

2 Q. You purchased shares?

3 A. Yes, I did.

4 Q. To the value of?

5 A. £150,000.

6 Q. And then you made, as we've touched on already in

7 Mr Bowsher's examination-in-chief, some working capital

8 loans and guarantees to the company. We'll come to

9 those. But you had no involvement on the operational

10 side of the business, did you?

11 A. No.

12 Q. You weren't involved in day-to-day management affairs?

13 A. No, I was not.

14 Q. And your successful business career that you've outlined

15 does not involve any background in bus operations or

16 running a public transport company or anything of that

17 sort?

18 A. No. Transport in general, yes, but not bus operations.

19 Q. On the sort of logistics side, that sort of thing?

20 A. Yes.

21 Q. But not running buses. We've also touched on, I think

22 already, the personal guarantees that you gave to secure

23 2 Travel's bank lending, which came in three tranches.

24 You refer to those, I think, at paragraphs 7, 8 and 9 of

25 your statement, just so we know what we're on. £675,000

1 in April, £300,000 in September, and £650,000 in October
2 by way of personal guarantees for the Barclays lending.

3 When you gave the first of those, the 675, you
4 obtained a charge on the Swansea depot, didn't you?

5 A. That's correct.

6 Q. At that point the value of the Swansea depot would have
7 been known to have been more than £675,000?

8 A. Potentially, yes.

9 Q. Potentially or actually?

10 A. Well, no, potentially because it depends on how you
11 would ascribe [inaudible word] value to the benefit of
12 planning.

13 Q. But the company had just paid that sort of sum to
14 acquire it, hadn't it?

15 A. I believe something less, but I'm not sure.

16 Q. It's very much in that ballpark, Mr Short. So you were,
17 in effect, fully secured for that guarantee at any rate,
18 the 675?

19 A. Quite possibly.

20 Q. When you gave the later guarantees, they were
21 conditional on the company giving to you and Mr Francis
22 the option to purchase the Swansea depot for £2 million,
23 weren't they? And it was part of that transaction,
24 wasn't it, that if you were called to pay under the
25 guarantees, those would be treated as part payment of

1 the option price of £2 million?

2 A. I believe that's the way it would have worked, yes.

3 Q. So once again, given that the guarantees are for less
4 than £2 million in aggregate, because it's £675k, £300k and
5 £650k, which comes to £1.625 million, so as long as the
6 guarantees are for less than £2 million, which they were,
7 you at that point are fully secured, aren't you?

8 A. Well, only if you were seeing the value of the property
9 at that point to be £2 million.

10 Q. You might be -- yes. If you assume the value of the
11 property to be up to £1.625m, yes. You then talk about,
12 in paragraph 10 of your statement -- and I think you've
13 been touching on this with Mr Bowsher -- a further loan
14 of £300,000.

15 A. That's correct.

16 Q. We looked through some of the payments and we got to
17 nearly £300,000 on the bank statement. You confirmed
18 that it would be £300,000 in aggregate, is what you
19 advanced at that time. You refer to the documents in
20 your second exhibit to that witness statement, which
21 you'll find on the file in front of you at page 366.
22 I'm told we may not have the same page numbers,
23 Mr Short.

24 THE CHAIRMAN: What was the page number, please?

25 MR FLYNN: I was giving just the exhibit cover sheet. Mine

1 was 366.

2 It looks as though you have it on the left hand.

3 What page number do you have on --

4 A. That's 367, that's 366 (indicating).

5 Q. In that case, it looks as though we're on the same page.

6 THE CHAIRMAN: Sorry, which file are we on?

7 MR FLYNN: C1, tab 3, Mr Short's witness statement.

8 You'll see at paragraph 10, Mr Short refers to
9 a loan of £300,000, which he says was made on
10 14 January, and I'm just going to explore that with
11 Mr Short.

12 We see in the first place, a loan agreement?

13 A. Mm-hm.

14 Q. Which goes on for a few pages. That's in relation to
15 a loan of £75,000. So that's presumably one of the
16 payments getting to the £300,000, isn't it?

17 A. Presumably, yes.

18 Q. And then on page 373, you'll see a letter to you from
19 2 Travel Group, referring to a sum of £25,000 made
20 available to the company, to be treated by way of part
21 payment of outstanding book debts. And at paragraph 2
22 of that letter, you are granted a fixed charge over book
23 debts of the company. Just to take it shortly, that's
24 what you're given in return for that £25,000 instalment.

25 At page 374, the final document, which is the one

1 you referred to, your statement of the loan, which is in
2 fact an assignment, isn't it? It's headed "Assignment".
3 And what is assigned to you there is the benefit of what
4 I think are called the overage payments under the option
5 agreement. In other words, the company is assigning to
6 you the benefit of the potential uplift in the purchase
7 price if you had exercised the option to buy the Swansea
8 site. That's what's happening there, isn't it?

9 A. That seems to be correct, yes.

10 Q. So in effect, the £300,000 total was really a payment to
11 acquire those overage rights, wasn't it?

12 A. Well, what you've got to appreciate is that these things
13 were dealt with, generally, by my lawyers in terms of
14 the circumstances at the time. The issue at the time
15 wasn't necessarily the security or even the value of the
16 security. The issue at the time was providing the
17 working capital that the business needed.

18 Q. But --

19 A. It would be wrong to characterise this as some sort of
20 property investment because that was not the concern
21 at the time.

22 Q. It's simply what it is, Mr Short. You've paid £300,000
23 in various instalments, but a total amount of that, in
24 return for which you effectively buy the company out of
25 the overage rights. That's what the effect of the

1 document is, isn't it?

2 A. Well, as I say, it'd be wrong to characterise this as
3 some sort of property investment because the position
4 at the time was this was to provide working capital to
5 the business.

6 Q. But you got something in return for this. That's all
7 I'm saying.

8 A. My lawyers would obviously have advised me if there was
9 security available to take that. That would be prudent,
10 of course, but that was not the purpose of the advance
11 of the funds.

12 Q. And as you've said this morning, all the advances that
13 you made were fully secured. That's what you said in
14 answer to Mr Bowsheer earlier on.

15 A. Well, I said if you assumed the property, the value of
16 the property was £1.65m potentially, yes.

17 Q. You say in your witness statement that you made these
18 advances in reliance on the PwC report.

19 A. In part.

20 Q. That's what you say in paragraph 11.

21 A. In part, yes.

22 Q. I think what you're saying and what must be right
23 is that it's also in reliance on your view of the value
24 of the Swansea depot?

25 A. In relation to the security available for the advance,

1 yes, it'd be prudent to take security if it was
2 available. But that was not the purpose of the advance.
3 The purpose of the advance was to provide working
4 capital to the business.

5 Q. Certainly by the time of the payment, the January
6 transaction that we've just looked at, January 2005, you
7 couldn't have been relying on the PwC report at that
8 point, could you? Because just to remind you of the
9 chronology, at that time, Grant Thornton had advised the
10 company that it was insolvent.

11 A. Mm-hm.

12 Q. Are you accepting -- just so we have it clear for the
13 transcript.

14 A. Was there a question?

15 Q. My proposition was that at that point you wouldn't have
16 been relying on the PwC report because any projections
17 in it have been completely falsified?

18 A. It would be wrong for me to suggest I can remember what
19 my thought process was exactly eight years ago.

20 Q. I don't think there's any doubt or any controversy that
21 you would have had the money. You would have had, as
22 you say in your paragraph 12, an investment of 1 or 2 or
23 3 million, and something you could have done.

24 A. That's correct.

25 Q. And there is evidence -- I don't think I need to go to

1 it -- but Mr Francis also made some representations to
2 the Traffic Commissioner, something we will come back to
3 briefly, on the financial standing of the company. But
4 he made some representations there as to his own assets
5 and yours, to inform the Traffic Commissioner that money
6 was available. So we don't need to go into that, but
7 I think it's not controversial. If you had felt like
8 spending 2 or 3 million on this, you'd have had it.

9 A. That's correct.

10 Q. So the real question is: why didn't you? Because in
11 fact, the investment that you put into the company was
12 £150,000 for your shares, wasn't it?

13 A. My equity investment in the business was £150,000 for
14 shares, that's correct.

15 Q. You say --

16 A. To come back to your first question, why didn't I,
17 because by that time it became obvious that we were not
18 going to be allowed to fulfil our strategy to expand the
19 business in the key market that we wished to, ie
20 Cardiff.

21 Q. That is the relevant point, isn't it? Was your decision
22 not to invest further in the company based on the
23 situation in Cardiff, the infringing conduct of
24 Cardiff Bus, or on, generally, the financial situation
25 of the company? Because if we look at paragraph 20 of

1 your witness statement, this is where you're picking up
2 some points on the Cardiff Bus case. You say:

3 "Where we were able to pursue the strategy, the
4 in-fill services were successful."

5 So that's places outside Cardiff, isn't it?

6 A. Possibly, yes.

7 Q. I think you're not going to be saying it had been
8 a success in Cardiff?

9 A. Clearly, it wasn't.

10 Q. So where you say it's successful, you must mean
11 somewhere else other than Cardiff. That's a logical
12 deduction. And the PwC report, you'll recall, says that
13 half the increase in profits that the company was
14 expecting to make under its strategy were from Cardiff,
15 but half was from other new routes in other places in
16 South Wales. Llanelli and Swansea particularly. So
17 only half the contribution expected was to come from
18 Cardiff routes. But the routes outside Cardiff,
19 Mr Short, weren't a success either, were they?

20 A. If you're going into a level of detail, it would be
21 difficult for me to comment on, but that's not my
22 recollection. My recollection is there were successful
23 routes outside Cardiff.

24 Q. That's something you can't comment on in detail because
25 you weren't an operations man, as it were?

1 A. That's correct.

2 Q. You go on to say in paragraph 21 of your statement:

3 "The argument that Cardiff Bus has made that

4 2 Travel suffered from a chronic lack of capital, is

5 a non-starter."

6 A. That's correct.

7 Q. That's what you say there. You'd agree with me, would

8 you, that one of the principal purposes of the AIM

9 flotation was to provide working capital for the

10 company?

11 A. The AIM flotation occurred before I came on to the board

12 as a non-executive director, so at the time that's quite

13 possible, yes.

14 Q. There was a working capital report prepared for the

15 purposes of the flotation. Yet it turned out, for

16 whatever reason, that the proceeds of the flotation

17 weren't enough to meet the company's working capital

18 requirements at the time. That's --

19 A. That's correct.

20 Q. And that's why PwC were brought in. They were brought

21 in to advise on how to deal with the working capital

22 shortage?

23 A. In part, yes.

24 Q. In part?

25 A. Yes.

1 Q. And they make the point -- and we can go to the PwC
2 report if we need to -- that the AIM flotation had not
3 raised sufficient capital.

4 A. I believe they did, yes.

5 Q. And they said the company needed another £650,000 at
6 that point. That was the PwC estimate. That turned out
7 not to be enough and that's why you had to enter into
8 the further guarantees later in the year?

9 A. Correct.

10 Q. Then we have the Traffic Commissioner. The purpose of
11 the Traffic Commissioner's public inquiry into 2 Travel
12 was to investigate whether it had sufficient available
13 funding for an operating licence of 110, covering
14 110 vehicles. You may or may not know this, but the
15 amount that the Traffic Commissioner said that the rules
16 required the company to show that it had readily
17 available for a licence of that size, was about
18 £330,000. That was the sum that was at issue in the
19 Traffic Commissioner proceedings. That inquiry started
20 in August. I simply don't know whether you remember any
21 of this.

22 A. I recall the discussions around the Traffic Commissioner
23 at the time. I wouldn't be able to recall the specific
24 details of it.

25 Q. The inquiry was opened in August. It was adjourned to

1 early October and then adjourned again to December to
2 allow the company to provide, essentially, the
3 paperwork, documentary evidence, that the Traffic
4 Commissioner required, to establish whether or not the
5 company had £330,000 readily available.

6 THE CHAIRMAN: Do you remember that?

7 A. Broadly, sir, but not in detail.

8 THE CHAIRMAN: If there are things you don't remember --

9 A. I'll be clear.

10 THE CHAIRMAN: Tell us, if you don't mind.

11 MR FLYNN: It was Mr Francis who represented the company in
12 those proceedings. But the conclusion, at any rate, was
13 that the company had failed to demonstrate that it had
14 £330,000 available. That was the Traffic Commissioner's
15 conclusion, wasn't it? Do you remember that? I can
16 show you --

17 A. If that was his conclusion ... I don't remember.

18 Q. I can show you the piece of paper if we need to. That
19 indeed was the conclusion. You say in your witness
20 statement:

21 "If cash had been needed, the investors on the board
22 would have made it available."

23 A. That's correct.

24 Q. That's what you say at 29.

25 A. Yes.

1 Q. Yet, the company was unable to demonstrate to the
2 Traffic Commissioner at that time, when he made his
3 final decision in December -- it was unable to make that
4 demonstration?

5 A. Well, there was no request made to me at that time for
6 my assistance in being able to make that demonstration.

7 Q. I suggest to you, Mr Short, that at the time, the
8 company's working capital requirements exceeded the
9 amount of its unencumbered assets. It didn't have
10 anything free, so any additional lending would have had
11 to have been unsecured?

12 A. Possibly.

13 Q. And that's why there was no further £330,000 made
14 available to it?

15 A. Although, subsequently, I did make available, cash to
16 the company in one form or another.

17 Q. Well, that's the January document that we've looked at,
18 the £300,000 totted up, which in the end was treated as
19 advance payments for the overage rights. That's what
20 we're referring to.

21 A. Yes.

22 Q. Let's have a look at one document, at any rate. That's
23 at E8, page 89. You probably do remember this document,
24 Mr Short. Do you?

25 A. Not necessarily in detail, no. It's a long time ago.

1 Q. It was a long time ago. Well, this is the statement
2 which the company made to the stock market on
3 8 October 2004 in relation to various things. There's
4 a trading statement, you'll see from the heading under
5 the company's name. A trading statement, something to
6 do with a related party transaction, and changes in
7 directors.

8 A. Mm-hm.

9 Q. The document covers those three topics. The related
10 party transaction was the granting of the option to
11 purchase the Swansea site to you and Mr Francis, which
12 is why I thought you might remember this. That was
13 treated as what's called a related party transaction, so
14 it had to be approved by the directors, who were not
15 involved in that transaction. Before that, you have the
16 trading statement. You look through the trading
17 statement and the company itself is telling the stock
18 market the reasons for its poor performance. That
19 includes a lack of working capital.

20 A. Where's that?

21 Q. I'm just looking for it myself. In the second
22 paragraph, it starts:

23 "Whilst we were successful in achieving our
24 objective of registering a number of new routes in key
25 expansion areas, shortages of working capital, drivers

1 and suitable vehicles meant that we were unable to
2 operate the services at the intended levels."

3 And there's a reference to the Traffic
4 Commissioner's proceedings in relation to operations.
5 They say:

6 "These operational improvements have become
7 possible, given that we have located the vehicles we
8 require and further working capital facility announced
9 on 13 August."

10 So the company is saying the results have not been
11 as good as they should have been, expected to be,
12 because of a shortage of working capital.

13 You don't see in this, do you, anywhere, any
14 reference to problems being caused by unfair competition
15 in Cardiff?

16 A. Without reading the whole document, I couldn't possibly
17 say. Do you want me to read the whole document?

18 THE CHAIRMAN: Well, we've read it two or three times. You
19 can take that as being correct.

20 MR FLYNN: Thank you, sir.

21 So the --

22 A. Well, sorry, could I just come back on that point? It
23 does go on to say that:

24 "Bus operations continue to improve and in many
25 outperform budget. Staff turnover and absence has

1 reduced during the last six months, bringing additional
2 stability to bus operations, which, in turn, give us
3 confidence to the developing customer base. Our future
4 success is heavily dependent on the success of the new
5 bus routes generating significant additional
6 contribution."

7 It doesn't refer directly to predation, but it makes
8 it clear where the success will come from in the future.
9 That's on the first paragraph of the next page.

10 Q. Yes, indeed. I think we've been through most of the
11 guarantees and so forth. The original £675,000 under
12 the first tranche that you guaranteed had all been
13 spent, hadn't it? So that wasn't available for working
14 capital purposes in the second half of 2004?

15 THE CHAIRMAN: Is that a question? If so, you'd better
16 answer it.

17 MR FLYNN: That was a question, I'm sorry.

18 A. I assume it had been spent, otherwise it would have been
19 available, yes.

20 THE CHAIRMAN: I'm just a bit concerned, Mr Flynn, that
21 you're expertly using Mr Short as a sounding board but
22 you're not asking him a lot of questions that he's
23 giving answers to. Could we focus on the conventional
24 way of cross-examining, please?

25 MR FLYNN: I will try that, sir.

1 Mr Short, do you recall that in -- I haven't got the
2 date in front of me but towards the fourth quarter of
3 2004, there was a demand by the Inland Revenue for
4 a payment of £464,000 of overdue taxes?

5 A. I recall there was other outstanding amounts at that
6 time. I don't recall the specific creditors, but yes.

7 Q. Do you recall a demand for a substantial sum from the
8 Inland Revenue?

9 A. Not specifically, but I wouldn't challenge that there
10 was.

11 Q. At that point you provided the additional guarantee of
12 the £650,000?

13 A. That would seem about the time, yes.

14 Q. Do you remember how much of that was a fee to Barclays?

15 A. I'm sorry?

16 Q. The £650,000 that you guaranteed, do you recall how much
17 of the money that Barclays actually made available to
18 the company was free, as it were? They had a fee
19 involved in it.

20 A. Knowing banks, they would no doubt have had a fee
21 involved. I don't recall specifically how much was
22 available to the company.

23 Q. Would you take it from me that it was £50,000?

24 A. I've got no way to challenge that, sir.

25 Q. I can show you the document if necessary, Mr Short.

1 I don't know if it's controversial, I'm just trying to,
2 as it were, keep it moving. So we've looked through
3 from the flotation to the end of 2004, and at all points
4 it's right to say, isn't it, that the company was in
5 fact, extremely short of working capital?

6 A. The company was at times short of working capital, but
7 working capital was made available to the company when
8 it needed it.

9 Q. The reason it was always short of working capital was
10 because its projections for its business were always
11 over optimistic?

12 A. A lot of businesses suffer from over-optimistic
13 projections, especially young businesses.

14 Q. So really, in fact Mr Short, it's not right to say that
15 it's a non-starter to say 2 Travel was short of working
16 capital, is it?

17 A. It is absolutely correct. I would have made the capital
18 available to the business if I'd been satisfied that we
19 could have succeeded in our strategy, and my track
20 record backs that up considerably.

21 Q. You also say in your witness statement that it's not
22 right that 2 Travel attempted to grow too quickly?

23 A. That's correct.

24 Q. You say there's no such thing as growing too quickly as
25 long as you've got the capital?

1 A. That's correct.

2 Q. Now, the Traffic Commissioner is the regulator for this
3 sector, isn't he?

4 A. That's correct, yes.

5 Q. And he is appointed to govern public transport
6 requirements, financing requirements for public
7 transport businesses. He has some expertise in that
8 area, one might think. Would you agree with that?

9 A. One would like to think so.

10 Q. His conclusion, if we turn up E7, page 591 -- I think
11 we're on the same document. A decision of the Traffic
12 Commissioner, which goes through to page 596. We'll see
13 that the date of that is August 2004. I wanted to look
14 briefly at paragraph 15, which is on page 594. Because
15 you'll see there:

16 "The 2 Travel group are relative newcomers to bus
17 operation. As such, they are welcome as competition and
18 should bring better bus services at lower cost to users.
19 To start an operation from scratch is not easy. Prudent
20 market entrants start off cautiously by ensuring they
21 have enough buses and trained staff, management,
22 supervisors, drivers and engineers available before any
23 route is introduced or expanded. The cost of doing this
24 before income is earned is a start-up cost which any
25 operator has to fund. It appears to me that 2 Travel

1 have been too anxious to grow quickly and have
2 registered services before they had the physical
3 resources to run them reliably."

4 So that's his view of the matter. Are you saying
5 you know better than the Traffic Commissioner about
6 starting up a bus business?

7 A. The Traffic Commissioner would have had, I assume,
8 through this, no knowledge of availability of the
9 capital of the investors to the business, should it so
10 require, and as far as the suitability and availability
11 of drivers and management is concerned, the key issue
12 there, and increasingly as time went on, was of course,
13 the predation.

14 Q. The Traffic Commissioner at this point is looking at
15 outcomes and saying that 2 Travel had grown too quickly.
16 And this is not to do with the predation, is it?

17 A. Well, if we want to take those one by one, those I can
18 comment on. We've already touched on management. As
19 I've said, the management of the business and the
20 available resource and management of the business was
21 increasingly swamped by having to deal with the issues
22 in Cardiff. And swamped to the extent that it became
23 all-consuming by the end, it seemed to me. So that is
24 a management issue. They're quite right, of course, to
25 say that you have to have suitably trained management

1 and availability of management, but if the resource
2 management -- if the management resource is completely
3 taken up dealing with predation of a major competitor,
4 then clearly that's outside the business' control.

5 Q. I'm sorry --

6 A. And even -- well, supervisors would come under the same
7 heading. Availability of drivers was a key issue,
8 although now I'm led to understand that one of the
9 problems there again was the predation.

10 Q. I'm sorry, Mr Short, I should probably have pointed out
11 to you that this inquiry didn't relate to Cardiff. If
12 you look at page 591, the start of it, you'll see that
13 what it is relating to is services in Neath, Llanelli,
14 Newport and Cwmbran, but not about Cardiff.

15 A. No, but the paragraph you pointed to talked about
16 start-up companies needing the availability of such
17 things as management. And the availability of
18 management was affected by Cardiff, for example, and
19 drivers.

20 Q. These are --

21 THE CHAIRMAN: Can I just ask. You're a very experienced
22 businessman, Mr Short, and you've presumably been
23 a non-executive director of a number of companies over
24 the years?

25 A. Not -- usually, no, an executive director but

1 occasionally a non-executive director.

2 THE CHAIRMAN: But you know the responsibilities of
3 directors to the shareholders. Would this be right,
4 that boards consider all kinds of issues, including
5 things like possible acquisitions, some small, some
6 bigger, and one of the -- you're nodding in agreement.
7 And one of the issues that a board would consider is how
8 senior executive time is deployed in relation to any
9 such issue and whether it's worth it. Is that right?

10 A. Correct.

11 THE CHAIRMAN: Do you remember any discussion in the board
12 about how the management should be deployed to deal with
13 the Cardiff problem?

14 A. Again, I'll have to apologise, given the time that has
15 elapsed in between, and even at the time, I had
16 significant other interests and I continue to do so.
17 What I clearly recollect is that from the time of going
18 into Cardiff, obviously that was an exciting time for
19 the business in terms of fulfilling its strategy.
20 Cardiff, in the context of south Wales, is really the
21 only market it's at, that's where you have to go because
22 everything else is, frankly, small-fry. And I recall
23 increasingly over that period the issue of Cardiff and
24 the competition we were facing in Cardiff taking up more
25 and more time at the board level in terms of

1 discussions. From my discussions with the management,
2 it seemed to me that increasingly over that period of
3 six or nine months, it got to a level where it became
4 all-consuming for the executive management in the
5 business.

6 MR FREEMAN: Mr Short, if I follow that up, would we then
7 expect to see quite a lot of that discussion recorded in
8 the minutes of the board?

9 A. Possibly. It was a small business, the boards were run
10 reasonably formally for a small business, given the AIM
11 listing. I don't know, I didn't take the minutes.

12 MR FREEMAN: If it wasn't in the board minutes, where else
13 might we find it?

14 A. Recorded? I'm not sure, sir, we'd have to go through
15 the documents.

16 THE CHAIRMAN: You can't recall?

17 A. No.

18 THE CHAIRMAN: You wouldn't have been present at management
19 meetings, obviously?

20 A. No.

21 THE CHAIRMAN: Do you remember, for example, a discussion at
22 board level or with you as a substantial stakeholder in
23 the business about whether, for example, a manager
24 should be found to deal with the problem in Cardiff so
25 that other managers could get on with the rest of the

1 business?

2 A. I don't remember a specific discussion along those
3 lines. Certainly the issue of how we addressed the
4 Cardiff problem was discussed at length, both during
5 formal board meetings and informally outside the board
6 meetings. I think it is fair to say, with the benefit
7 of hindsight, particularly for Bev and his senior team,
8 it was taking an increasing amount of time, and as
9 I say, in the end, it just became all-consuming because
10 it was so critical to the future of the business. They
11 just didn't know how to deal with it because I don't
12 think at the time, frankly, they had a full picture of
13 the extent of the campaign against us.

14 THE CHAIRMAN: Thank you. Mr Bowsher, Mr Flynn, just
15 in relation to that point, you'll appreciate that the
16 tribunal is interested in evidence of discussions about
17 the Cardiff problem. I'm very grateful -- I'm sure
18 we're all very grateful for the list we were provided
19 this morning, but I wonder if those documents could be
20 put in a single file so that we can look at board
21 meeting minutes and management meeting minutes in one
22 file.

23 MR BOWSHER: Sir, I'm sure that's possible. Obviously,
24 those instructing me are dislocated from their normal
25 office resources, as it were, by some hundreds of miles.

1 So it may not be an instant job.

2 THE CHAIRMAN: Quite. I know there are people who, like me,
3 can get these documents up very quickly on a computer.
4 I can't print them because I forgot to bring a printer
5 with me, otherwise I would.

6 MR BOWSHER: Those instructing me don't have an office,
7 I think, for some distance.

8 THE CHAIRMAN: I'm not saying by this afternoon, but maybe
9 by next week, it'd be helpful if that bundle and any
10 other similar documents could be put in a single bundle
11 for us.

12 MR BOWSHER: We already have in hand the analysis that Mr
13 Smith asked --

14 THE CHAIRMAN: I can see Mr Aldred agreeing enthusiastically
15 to this proposition. If he agrees, it happens, in my
16 experience.

17 MR BOWSHER: We already have in hand the exercise that
18 Mr Smith has in mind, I'm just conscious that that
19 requires a bit more analysis than just -- this obviously
20 was more easily done by just a word search.

21 MR SMITH: Perhaps the chairman's suggestion of pulling the
22 relevant documents could apply to both exercises and we
23 could have a single file that covers both sets.

24 MR BOWSHER: We can do that.

25 THE CHAIRMAN: Thank you very much. Sorry to interrupt you,

1 Mr Flynn.

2 MR FLYNN: Not at all, sir. It's helpful to know what the
3 tribunal finds useful and, of course, what it doesn't.

4 THE CHAIRMAN: Oh, there's a lot of the latter!

5 MR FLYNN: Do tell me if I'm going too far down the latter
6 route.

7 Mr Short, you say in your witness statement that --
8 this is paragraph 25 -- 2 Travel had invested heavily in
9 the infrastructure and the routes. I'm going to try to
10 shorten this, but you say also that Cardiff was the
11 centre. Cardiff was fundamental to the future of the
12 business?

13 A. Absolutely, yes.

14 Q. Can we have a look at file E6, page 140. Do you have
15 that? It's a memorandum of 9 March, an internal
16 2 Travel Group memorandum of 9 March, from David Fowles
17 to -- I think those are the initials of Mr Bev Fowles,
18 Mr Francis and Mr Waters, the finance director; is that
19 correct?

20 A. They seem to be, yes.

21 Q. So it is not a memo that would have reached you
22 directly, probably; is that right?

23 A. Unlikely.

24 Q. Unlikely that you'd have seen it. It's dated 9 March.
25 The point that Mr David Fowles is making there is:

1 "I wrote to you all in February, highlighting items
2 that needed to be addressed in order for our new Cardiff
3 commercial registration to be successful. To date, not
4 one point has been addressed. Our commercial
5 registrations commence in approximately five weeks."

6 So it was mid-April 2004, wasn't it, when the
7 Cardiff in-fill routes began?

8 A. That would have been the time, yes.

9 Q. He says at this time, just five weeks before:

10 "We have nothing in place in Cardiff."

11 And he discusses a number of things that are not
12 there: ticket machines, ticket rolls and vehicles,
13 a shortage of ten vehicles, need to paint them, need to
14 get some destination blinds. He says:

15 "The structure of the depot needs addressing. There
16 is no electricity or mains water. Not enough office
17 space. We need a new controller and we need eight
18 drivers. Those have not yet materialised."

19 He says he's registered the routes and he's being
20 held back and there's a problem that needs addressing
21 quickly or he won't be held to the consequences.
22 That's, I think, a fair summary. So five weeks before,
23 there are no vehicles, you're short of vehicles, short
24 of drivers, and it hasn't got electricity and water.
25 Is that an indication of a lot of investment in these

1 routes?

2 A. It's an indication of a manager within the business,
3 rightfully and properly, bringing up what needs to be
4 done to prepare for a new business.

5 Q. Turn forward to page 205 in that same file. 23 March,
6 a memo again from Mr David Fowles to the same people.
7 The last paragraph says:

8 "We are due to commence services on 19 April. This
9 allows us approximately 18 working days in which to
10 achieve an awful lot."

11 And he lists things which are not there. He's still
12 awaiting clearance to purchase ticket machines, blinds
13 and vehicles. Still waiting permission to install mains
14 water and electricity at the new depot. He's had to buy
15 for cash, a second-hand Portakabin for the site and so
16 forth. Do you see that? Is that an indication of well
17 planned investment for these new services?

18 A. Well, it's an update on the previous memo and it would
19 seem that some things have been achieved and some things
20 were still outstanding.

21 Q. If you go forward to 672 in that file --

22 THE CHAIRMAN: I thought Mr David Fowles was going to give
23 evidence.

24 MR FLYNN: He is, sir.

25 THE CHAIRMAN: What's the point of asking these questions to

1 someone who didn't see any of these memos?

2 MR FLYNN: Sir, it was simply to deal with Mr Short's
3 assertion that the company had invested heavily in these
4 new services. So the point is --

5 THE CHAIRMAN: The point's made.

6 MR FLYNN: I think you would probably say the same of other
7 points that I might otherwise have put to Mr Short, sir.

8 Mr Short, in your statement, you've clearly done
9 your best to put forward a version of events which
10 supports 2 Travel's case, but the reality is that it was
11 management failures across the piece and not only in
12 Cardiff, which led to the demise of this company, isn't
13 it?

14 A. No, that's incorrect.

15 Q. And your involvement was at one remove because you were
16 a non-exec director and you were not involved in the
17 daily management issues of this company?

18 A. Well, that's correct, yes.

19 MR FLYNN: Sir, I'm going to leave it there. Thank you very
20 much, Mr Short.

21 THE CHAIRMAN: Mr Bowsher.

22 Re-examination by MR BOWSHER

23 MR BOWSHER: Mr Short, I don't know what file you've got in
24 front of you at the moment. Do you have E6? Let's make
25 use of that while you have it. Turn to page 705,

1 please.

2 A. Can I apologise and ask which side you're on?

3 Q. Who knows! I'm instructed by the liquidator of

4 2 Travel.

5 A. Addleshaws?

6 Q. Yes. I should have introduced myself.

7 THE CHAIRMAN: That was a friend or foe question. Would you

8 like to respond directly?

9 MR BOWSHER: No, I wouldn't. That would be a leading

10 question!

11 THE CHAIRMAN: Good question, if I may say so, Mr Short.

12 MR BOWSHER: I should have introduced myself properly to

13 start with, I'm sorry.

14 705 in E6. This is a minute of a board meeting to

15 which you conveyed your apologies, we can see on 705.

16 So you obviously can't tell us directly what was said

17 because you weren't there. But when there were board

18 meetings, what was the procedure afterwards? Did people

19 tell you what had happened; did you have a discussion

20 afterwards about what had happened?

21 A. It is most likely that someone would have filled me in

22 on the details of the board meeting after the meeting,

23 yes.

24 Q. And the date is May 21, 2004, so the in-fill routes

25 haven't been running long by this point. They've only

1 been running a few weeks. If you turn over to page 706,
2 we can see that Mr Bev Fowles is giving a trading
3 update, number 4, and I was interested in 4.1.2:

4 "The new services in Cardiff were discussed and the
5 company secretary confirmed to the meeting that the
6 Traffic Commissioner's office and the Office of Fair
7 Trading had been contacted regarding certain practices
8 adopted by the Council-owned Cardiff Bus company."

9 That's all it says and it's a rather laconic
10 reference. But presumably you got the minutes. Did you
11 have any discussions, following up on that reference,
12 with anyone who was at the meeting?

13 A. I quite possibly did. This really confirms the point
14 I was trying to make earlier, that this started off as
15 being a relatively minor issue which might go away and
16 then increasingly built up over a number of months into
17 a much greater issue and, as I said, an all-consuming
18 issue.

19 Q. If we could jump forward, as you say, a couple of
20 months. More than a couple of months actually. We can
21 jump forward to August. Put E6 away, we get to E7,
22 page 447. I think by this point ...

23 THE CHAIRMAN: I notice it's 11 o'clock.

24 MR BOWSHER: Would that be a good point? It would be
25 a sensible time to break. Do you want to break for half

1 an hour now or just have a five minute transcription
2 break? I really don't mind.

3 THE CHAIRMAN: My intention was to break for half an hour
4 now and then continue at 11.30 and then have a short
5 break between 11.30 and 2.20, and we will stop then.

6 MR BOWSHER: Shall we do that? That makes sense, I think.

7 THE CHAIRMAN: I was just adopting my own Maxwell hours
8 experiences, that's all.

9 MR BOWSHER: If everyone else is happy with that, I'm happy
10 with that.

11 THE CHAIRMAN: So we're going to have a break now for half
12 an hour because we're sitting a slightly odd day today,
13 Mr Short. Don't talk to anyone about your evidence
14 in the break, please.

15 (11.00 am)

16 (A short break)

17 (11.30 am)

18 MR BOWSHER: E7, page 270. I'm not sure whether you'll have
19 seen this or not. If I can just ask whether you did and
20 if not, we can leave it. It's just headed
21 "Chief executive report July 2004". It's obviously
22 a report by David Fowles, but I'm not sure who it's
23 a report to. Were you getting documents like this?

24 A. I could possibly have received this at the time, yes.

25 Q. And we see that has a reference to the difficulties with

1 Cardiff. If you then turn the page to 447, this is now
2 a month -- well, we don't know, we are not quite sure
3 what date, that July date is. But this is 2 August.
4 This is a meeting you did attend and it's a fairly short
5 minute, page 447. If you turn the page, at the top of
6 page 448 (iv):

7 "The chairman commented that performance was
8 disappointing and cash position a concern. The ability
9 to deliver forecast was a major concern ...(reading to
10 the words)... current position at Cardiff and the action
11 taken so far with Traffic Commissioner and Office of
12 Fair Trading."

13 Do you recall the discussion that that note relates
14 to?

15 A. In general, that just confirms again, my earlier point.
16 You can see that by August, the issue is starting to
17 build up to become quite a major issue.

18 Q. At that point, do you recall whether or not discussions
19 at that board meeting, the board was going so far as to
20 think: what are we going to do about this? Is this
21 going to be the end of the company, the end of the
22 business, the end of the routes? We need a new
23 management scheme?

24 THE CHAIRMAN: 11 leading questions later.

25 MR BOWSHER: Sorry, I'm trying to get -- what were you

1 thinking about at that meeting?

2 A. Oh, it'd be wholly wrong for me to suggest I can
3 remember what we were thinking about at that specific
4 meeting. All I can do is generalise about the time
5 period, as I said earlier, and over that period of nine
6 or ten months, what started off as a small issue
7 affecting what was a key expansion plan for us, and,
8 frankly, critical to the future of the business,
9 becoming greater and greater and greater until you got
10 to the point, which would have been some time after
11 this, where the thing just became all-consuming for the
12 management in the business. Did they make mistakes?
13 Yes. Bev Fowles, I think, became almost totally
14 consumed by this. He was a man who was watching,
15 frankly, his life's dream go up in smoke. With
16 hindsight, the company should have perhaps supported him
17 better. Bev would be too proud to admit this on the
18 stand, but I can tell you he's not been the same man
19 since, so it really had an effect on him and the whole
20 team.

21 Q. You were asked some questions about the various advances
22 that you made and the monies that you put into the
23 business. I think what was being suggested to you was
24 that, in effect, where you were looking to go in the
25 course of the latter part of 2004 was simply to

1 contribute money to acquire the Swansea land. Standing
2 back from it now, did you, when you started with
3 2 Travel, have any expectation that you'd be acquiring
4 the Swansea land out of 2 Travel?

5 A. No, not at all.

6 Q. What did you see as the significance of the Swansea land
7 for you and, as it were, your relationship with
8 2 Travel?

9 A. Really, at the time, the issue was the availability of
10 capital to the business, the fact that there was
11 security available. Obviously, it would have been
12 prudent to rely on that security. It was not the
13 intention, at the time, to take the property out or to
14 get involved in the development of that property on
15 a private basis. Really, that whole issue was a bit of
16 a red herring. The security was available, it was
17 prudent to take it and I was advised by my lawyers the
18 best way to go about that. As I said earlier, my track
19 record dictates that I would have supported this
20 business regardless of that.

21 Q. Right. Were you having discussions with Huw Francis
22 with regard to what the Traffic Commissioner was
23 requiring of 2 Travel?

24 A. It would have been discussed, I would imagine.

25 Q. When Huw Francis -- sorry, let me put it a different

1 way. Did he discuss with you any specific figures that
2 were needed or that might be needed to satisfy the
3 Traffic Commissioner, to enable the business to keep
4 going towards the back-end of 2004?

5 A. I don't recall a specific discussion with regard to the
6 Traffic Commissioner on that issue, no.

7 MR BOWSHER: Thank you very much, Mr Short. Does the
8 tribunal have any further questions?

9 THE CHAIRMAN: No. Thank you very much, Mr Short. You can
10 leave. You're released.

11 (The witness withdrew)

12 MR BOWSHER: Our next witness is Mr Stephen Harrison.

13 THE CHAIRMAN: Is Mr Harrison in the room? Just before he
14 comes in -- just stop him coming in, somebody, please,
15 one of the legal team. I should just mention that
16 you will be aware, so it's on the record, that
17 Mr Harrison is a member of the Competition Appeal
18 Tribunal. Just so it's clear, I have never met
19 Mr Harrison and neither of my colleagues, knowingly, has
20 met Mr Harrison. And a very substantial administrative
21 effort over recent months has taken place to ensure that
22 none of us ever met Mr Harrison, even at any sort of
23 conference-type, training-type incident. So that's been
24 very carefully insulated because of this case and I take
25 it that there are no issues to raise about Mr Harrison's

1 membership of the tribunal?

2 MR FLYNN: No, sir, we've been round this once before and
3 that's the position.

4 THE CHAIRMAN: I thought we should put it on the record
5 in the run of the hearing.

6 MR BOWSHER: I'm much obliged. I have nothing further to
7 add. As my learned friend indicates, this of course, is
8 already the subject of some considerable record at an
9 earlier hearing. I don't remember what the date was.

10 THE CHAIRMAN: I just thought we should put it on the record
11 of this hearing. Thank you.

12 MR STEPHEN WILLIAM HARRISON (sworn)

13 Examination-in-chief by MR BOWSHER

14 MR BOWSHER: The files that I think we will need will be C1
15 and C2, at least that I will need. If we could go to
16 C1, tab 1, page 1. What are your full names?

17 A. Stephen William Harrison.

18 Q. And your address?

19 A. [Address given].

20 Q. At page 1, there is a first page of a statement which
21 bears your name. If you turn to page 10, at the end,
22 just the signature block. Page 10; is that your
23 signature?

24 A. Yes, it is.

25 Q. That then appears to be a statement of nine pages and

1 a couple of lines. Have you had a chance to review that
2 before today?

3 A. Yes, I've read it.

4 Q. Is there any correction or update you wanted to give on
5 that?

6 A. No.

7 Q. Is that then true to the best of your knowledge and
8 belief?

9 A. It is.

10 Q. If I can then take you to C2, tab 12, page 105, the same
11 drill as before. This is much shorter. I have taken
12 you to the wrong page because you should have at 111A,
13 a version, which we can just about see is the same thing
14 as page 105, but at 111C, is that your signature?

15 A. Yes, it is.

16 Q. I don't know if anyone needs to check. That, therefore,
17 is the signed copy of the statement which we see at 105
18 to 107?

19 A. Yes.

20 Q. Again, have you had a chance to read that statement?

21 A. I have.

22 Q. Is that true to the best of your knowledge and belief?

23 A. Yes, it is.

24 Q. The only question I wanted to ask you was concerning
25 your investigations or the PwC investigations into

1 2 Travel. I wondered if you could describe what the
2 level of effort in PwC was involved, in getting the
3 knowledge to be able to prepare the first report and
4 then the second report. Was the first report something
5 done, one person over a day or a team over longer? How
6 would you describe that?

7 A. My involvement or my firm's involvement came first of
8 all when I met Richard Needham, and that was
9 in November, I think, towards the end of 2003. We then
10 became involved and the report that is -- the first
11 report, which was the February 2004 report, took
12 a number of weeks. It's a long time ago and I'm going
13 to preface a lot of what I'm going to say by saying this
14 is from a memory point of view. It would have taken
15 a number of weeks. The person involved in it was
16 Nigel Ferrand, who was the senior manager who worked for
17 me in the Cardiff office, and he undertook that work and
18 I would have said that it'd be -- whether it'd be over
19 a longer period than three weeks, but I would have
20 thought it would have typically involved about three
21 weeks of constant time doing that, of that sort of
22 order.

23 Q. And do you know how he did that? Was this a purely
24 desktop analysis?

25 A. No, he visited the company, spent time with them and

1 with the company's auditors as well, in arriving at the
2 report that was then produced.

3 Q. When it comes to the second report in July/August 2004,
4 which we see referred to in paragraph 37 onwards in your
5 statement, was the same individual involved?

6 A. No, and the nature of the report, if you look at the
7 2004 report -- and again, I'm happy to take people
8 through it if they wish. But if you look at the nature
9 of the report, the report in 2004 is marked as a draft.
10 I'm not sure if it was finalised in those forms. But it
11 also, it doesn't have the same degree of commentary and
12 so on. This was to do with the preparation of
13 a financial model in order to model financial
14 projections for the business. So that was the purpose of
15 that second report.

16 Q. They're both 2004, one February and one --

17 A. One was the mechanics of producing the financial model.

18 Q. So that's the second report?

19 A. That's right.

20 THE CHAIRMAN: Who prepared the second report?

21 A. One of our people who did financial modelling, which is
22 Cheryl Williams.

23 MR BOWSHER: In order to do that, did she --

24 A. She would have spent a lot of time at the company's
25 premises in order to do that.

1 Q. And what was the report or feedback that you got from
2 her about the state of documentation and records at the
3 company?

4 A. The company, by the time that we were talking about her
5 involvement, was clearly under pressure, with
6 backlogging creditors and creditor payments, so that's
7 the feedback that we had at the time, that they were
8 under financial pressure. That's the feedback that
9 I remember getting.

10 Q. Was an issue raised with you regarding a total lack of
11 documentation or holes in the documentation?

12 A. I think there were problems in pulling stuff together.
13 I think that was rather hard work because of the volumes
14 of it and the availability of staff there. But it
15 wasn't such that we couldn't get there, as it were, at
16 that point in time, in doing the work we were doing.

17 Q. Okay.

18 THE CHAIRMAN: Sorry, I didn't understand. Could you repeat
19 the last bit? I was making a note.

20 A. What I was saying is that the records were such that it
21 didn't stop her doing the financial modelling exercise
22 that she was doing, if I can describe it like that.

23 MR BOWSHER: Was it ever suggested to you that, therefore,
24 by her or by Mr Ferrand earlier on, that you should be
25 taking up issues with the management regarding their

1 documentation or the way they were dealing with their
2 documentation?

3 A. No. Anything that we said would be said, particularly
4 in the first report, because that was one of the
5 commentaries, that was said in that report.

6 MR BOWSHER: Thank you. Could you wait there, Mr Harrison?
7 There may be some questions.

8 Cross-examination by MR FLYNN

9 MR FLYNN: Good morning, Mr Harrison.

10 A. Good morning.

11 Q. I'm going to ask you some questions on behalf of
12 Cardiff Bus, as I'm sure you're aware. You have your
13 statements in front of you. In your second statement
14 you quote the conclusion of Mr Haberman, the accounting
15 expert retained by Cardiff Bus in this case.

16 A. Yes.

17 Q. And you quote, over the page at paragraph 4, his
18 conclusion?

19 A. Yes.

20 Q. "Based on my review of 2 Travel's financial information
21 and other documents set out above, before it commenced
22 the Cardiff in-fill services in April 2004, 2 Travel's
23 financial position and operational performance were
24 already so weak as to be unsustainable."

25 A. Yes.

1 Q. And then you say that the reason -- this is paragraph 5
2 of your statement -- that 2 Travel turned out to be
3 unsustainable was because the revenue and profit that
4 was to be generated by the Cardiff in-fill services
5 didn't come through because of the predation.

6 You don't engage with Mr Haberman's analysis,
7 detailed analysis of that, do you?

8 A. No.

9 Q. You confine yourself to a more sort of high level
10 conclusory statement, if I can put it that way.

11 A. Yes. This is based on my knowledge at the time, when
12 I was doing it, so this is what my view was at the time,
13 of the position of 2 Travel.

14 Q. This is a statement relating to why 2 Travel turned out
15 to be unsustainable, which doesn't relate to the time
16 that you were preparing these two reports, does it?
17 It's a period subsequent to that.

18 A. Yes. I'm saying, but I'm basing it on my knowledge of
19 what was taking place at the time as well, which is
20 relevant to my comment.

21 Q. Shall we have a look at Mr Haberman's report? This is
22 in bundle D at tab 5.

23 THE CHAIRMAN: In our notation, it's D3. D is divided into
24 several files.

25 MR FLYNN: That probably makes more sense than the rather

1 unwieldy one that I'm using.

2 The paragraph that you quote from Mr Haberman, at
3 445, which is to be found on page 26 of that report,
4 comes after a long review of 2 Travel's financial
5 records, does it not?

6 A. Yes.

7 Q. Starting, probably, at section 2 of this report on
8 page 8.

9 A. Yes.

10 Q. What Mr Haberman does, he explains in section 2 what
11 he's going to do and then he, like a good orator, does
12 it and tells you what he has done. So in section 2 he
13 says what he's going to do and in section 3 he deals
14 with the financial position. You can see that on
15 page 12, financial position for the incorporation to
16 listing on the AIM market.

17 In section 4, starting on page 16, he deals with the
18 position from AIM listing to entry into Cardiff.

19 A. Yes.

20 Q. If we just rattle through that, perhaps it's sufficient
21 for the first section of those to look at his conclusion
22 at paragraph 320 and 321, where he says:

23 "Since its early acquisition of Capital Coaches
24 in May 2000, 2 Travel had not raised any long-term
25 capital. It had funded its business through

1 a combination of hire purchase finance of vehicles,
2 factoring of debtors and late payment of creditors.
3 Although it was profitable, it had cash flow
4 difficulties, apparently because of the high level of
5 cash outflow from finance, both debt factoring and hire
6 purchase. As a result of the cash shortage, 2 Travel
7 effectively funded its day-to-day operations by not
8 paying its creditors on time."

9 And:

10 "As mentioned in the working capital report, the
11 proceeds of the AIM listing would primarily provide
12 funds to meet working capital requirements and finance
13 expansion of the fleet."

14 So that's his summary of the position before the
15 listing.

16 A. Mm-hm.

17 Q. And then he does an extremely detailed review which I'm
18 not going to take up the tribunal's time and your time
19 by going through all of that, but you'll see there, in
20 section 4 -- perhaps we could look at paragraph 411,
21 where he notes that:

22 "The PwC report, which was based on information
23 given directly to them by management, gave an incorrect
24 analysis of the use of the flotation."

25 A. Do you want me to comment as you're going?

1 Q. I will want you to comment on that because the point
2 he's making there is that the first PwC report does rely
3 principally on information provided by management,
4 doesn't it?

5 A. As I said, we actually discussed it with the auditors.
6 Could you refer me to the paragraph where you were
7 talking about his report? Sorry.

8 THE CHAIRMAN: 4.11?

9 MR FLYNN: 4.11 on page 18 was the one I was pausing at
10 there.

11 A. What I suggest is -- right. For example, he's referring
12 to the paragraph 4.9. If we look at the PwC report --
13 and again, if someone could refer me to the PwC report.
14 I guess it was in the first bundle, was it?

15 Q. I think maybe you have a version attached to your
16 witness statement.

17 A. I guess it's in tab 1 of C1. Sorry, if I could just
18 turn through it to find the paragraph that he was
19 referring to in his report. Okay, so the paragraph he's
20 actually referring to is on page 32, the one that's been
21 stamped 32. It's not 32 of the report, it's actually
22 32. Has everyone got page 32? Section 2 of the report.

23 Q. Yes.

24 THE CHAIRMAN: Historic cash flows?

25 A. That's right. As you can see from that, the nature of

1 the -- it was just to broadly describe how cash had been
2 utilised and it had been done very much around some
3 terms. The actual terminology of the buses, it refers
4 to buses and other fixed assets acquired, a million. In
5 quoting in his report, he refers to the PwC report --
6 actually, he misquotes it. He uses commercial vehicles.
7 I can't immediately turn it up, but in here somewhere,
8 I think he refers to -- when he says -- yes, "PwC are
9 told that ... was to be spent on vehicles."

10 Actually, what the PwC report has done -- and picks
11 up our conversations with the auditors, actually using
12 what the auditors used in their accounts. So the
13 purchase of commercial vehicles at 801 and the
14 acquisition of CTC, which was the acquisition of fixed
15 assets, it's those two that have been lumped together to
16 come up with the million. So it's not that management
17 provided it, these were actually provided in the
18 accounts. And as I said, it's very much round to the
19 hundred thousand in the analysis there, to give an -- in
20 our -- in the PwC report, it gave an indication of how
21 it was used.

22 So if you look at 4.9 of the EY report, you can see
23 all that's been done is actually, in fact, take what was
24 in the accounts, 801, 84, broadly a million comes from
25 that, that he refers to, and the surplus available for

1 working capital would have gone to reduce creditors.
2 And again, he says in his report that in our report, we
3 refer to the repayment of PAYE and long outstanding
4 PAYE. In fact, as you'll see from the PwC report, it
5 actually says PAYE and creditor arrears in a more global
6 sense. So all it's doing is actually repeating what was
7 actually in the accounts so it wasn't -- I don't think
8 it was from the management, I think it was from our
9 discussions with the auditors and it was a broad-brush
10 analysis of their analysis, which is in 4.9.

11 Q. Just to be clear on that, where he says that the PwC
12 report says 1 million was to be spent on vehicles when,
13 in fact, they were acquired using hire purchase --

14 A. All we were doing was repeating what was in the
15 accounts, historical accounts.

16 Q. So you would say you had swept that point up, would you?

17 A. Yes.

18 Q. Paragraph 4.13 of Mr Haberman's report. He says:

19 "Having previously operated a profit, 2 Travel was
20 now heavily loss making, with a reduced gross profit."
21 You would agree with that?

22 A. Yes.

23 Q. He quotes from the company's contemporaneous records,
24 including a number of memoranda from the finance
25 director. Had you seen those?

1 A. Not until I saw this, this report.

2 Q. And he says in paragraph 4.17, after a further review:

3 "All of the estimates provided by the management to

4 Solomon Hare in January 2003 appear to have been overly

5 optimistic."

6 And he gives some examples there.

7 A. Mm-hm.

8 Q. Do you have any reason to disagree with any of that?

9 A. No. I didn't compare it with Solomon Hare's, so I can't

10 remember what the comparison would have been. I can't

11 disagree with it.

12 Q. You can't disagree with that. If we look at 4.21, he

13 starts to deal with liquidity and he says that these

14 figures bear out the finance directors' concern that

15 operations were not generating cash and that 2 Travel

16 was continuing to rely on creditors to fund operations.

17 Any reason to disagree with that?

18 A. No. No, it was loss making.

19 Q. Finance directors' concerns about the fact that the

20 business just wasn't generating cash, that are set out

21 in 4.23. (Pause). Sorry, I asked if you had any reason

22 to disagree with that?

23 A. No, no.

24 Q. In 4.26 he shows some discrepancies between the

25 statutory accounts and the amounts quoted in your

1 report.

2 A. That, in fact, is wrong. He says that the difference is
3 rationalisation of those differences -- again, I don't
4 have anything to refer to in my report, but I think if
5 I could just refer you to what the principal differences
6 would have been. Because again, as I said, there is
7 a memo from Richard Needham actually to Tony Rawlinson,
8 dated in March, which was supplied to me last week
9 actually, which sets out quite a bit of the background
10 of the discussion between -- which obviously,
11 I personally can't remember now, but clearly was set out
12 in that memo, of our discussions with the auditors. But
13 if you look -- and I'll explain the difference, which
14 is, I think, fairly straightforward.

15 Included in the 2 Travel business was an activity
16 called CTC, so again, if I could refer you to the PwC
17 report, page 31 of the PwC report.

18 MR SMITH: Are you referring to the internal numbering or
19 the bundle?

20 A. The internal numbering. 31. It's page 8 of the report
21 itself. It's page 31 that's been stamped on it.

22 THE CHAIRMAN: Refer to the stamped numbers throughout.
23 What's the heading on the page?

24 A. "Year to date results". Now, as I explained, CTC was in
25 fact, basically equivalent to a travel agent and got

1 commission for arranging coaches. So it wasn't acting
2 as principal in the transaction, it was actually acting
3 as agent in the transaction. The management accounts
4 and the format used on page 31 is that used by the
5 management in the formatting of their accounts because
6 they are management's numbers. But you'll see in the
7 year to August 2003, in the turnover there is £515,000
8 for CTC, and you'll see down the bottom, around about
9 two-thirds of the way down through it, you'll see CTC is
10 a cost of £462k. Can you all see that?

11 MR FLYNN: Stamped number again, Mr Harrison?

12 A. 31. Can everyone see the 461 that I'm referring to?

13 MR FREEMAN: £462k.

14 A. Sorry, £462k. Because it's a commission business, what
15 will have happened for the statutory accounts, because
16 the company itself is not acting as principal in the
17 transaction but acting as agent, that amount of costs
18 would have been deducted. So all they would have shown
19 in turnover in the statutory accounts is the commission.
20 So it's a different treatment from the accounts, but
21 it's quite a simple difference. And if you take £462k,
22 that accounts largely for the difference in turnover
23 that is being shown on page 426. So what has happened
24 is that 426 has been deducted from turnover in the
25 statutory accounts, whereas in the management accounts,

1 it was shown as gross turnover. So there was nothing
2 sort of suspicious about that treatment. In fact, for
3 the statutory accounts it's the correct statement, it's
4 just not how they showed it in their management
5 accounts.

6 THE CHAIRMAN: Sorry, I'm missing the point. What's the
7 point you're seeking to make?

8 A. The difference, which the person writing the report says
9 that ... And I quote 427:

10 "This could mean that PwC were provided with
11 a different version of figures for the two statements."

12 It is not correct. The difference is because in
13 order to show turnover in the statutory accounts, the
14 actual cost of the CTC would have been deducted from
15 turnover, in order merely to leave the commission earned
16 on CTC as part of the turnover figure.

17 THE CHAIRMAN: So that would make the contribution of CTC
18 £53,000, would it?

19 A. That would explain the turnover and the gross profit,
20 because of how it's been shown on this statement, the
21 difference between 515 and 562 is the bulk of the gross
22 profit difference of 117. And in fact, the point that's
23 fundamental to it is that, actually, the profit at the
24 bottom has -- the losses at the bottom were actually
25 higher in the management accounts than actually

1 transpired in the audited accounts. Actually, they
2 reduced the level of losses when they came to do the
3 audited accounts. The difference of that, we'd have
4 just taken the management accounts at that stage. So
5 I don't see a significant difference between the two and
6 I don't think the analysis provided is any different.
7 And as I've said, we discussed these with the auditors
8 and went through a process of discussing them with the
9 auditors prior to finalising this report. If that's of
10 help.

11 MR FLYNN: Mr Harrison, thank you, that's a clear answer.

12 Moving through Mr Haberman's report, at 4.28 he compares
13 projections that the management made at various times
14 for the purposes of the working capital report on
15 floatation, for the purposes of your report and to the
16 actual figures to the end of February 2004. That is
17 a period which is wholly unaffected by any infringement
18 in Cardiff, isn't it?

19 A. Yes.

20 Q. He sets out the figures in a table in 4.29. In 4.30 he
21 says:

22 "Management forecast of turnover at the time of
23 flotation had been overoptimistic."

24 And he sets out some reasons for that. Then he says
25 after the bullets there:

1 "Nevertheless, management's projections as provided
2 to PwC were for turnover in 2004, even greater than had
3 previously been forecast. A similar pattern can be seen
4 at the net profit level. Previous forecasts had been
5 far too optimistic. Management's new projections
6 continued to assume that performance was going to
7 rapidly improve in the near future."

8 A. Mm-hm.

9 Q. So management forecasts in this company have always been
10 rosy, haven't they, Mr Harrison?

11 A. Yes, that was the ... Do you want me to comment again
12 on the statements that have been made?

13 Q. I'm giving you that opportunity. Mr Haberman is
14 saying: look at the projections that were made in the
15 AIM flotation and reactions given to PwC and look at
16 what actually happened.

17 A. I think again, if we look at the report -- because
18 again, this is all I've got to refer to now. Look at
19 page 38 of our report. You can see that the
20 expectations were of the benefit that would be derived
21 from the new routes, which are actually set out on that
22 page. And that shows management's expectations of those
23 new routes. Therefore, what was happening -- and,
24 therefore, what we're referring to in these reports
25 in the way he sets out his comments on page 430, he's

1 actually ... When you look at the increase that was
2 achieved, so ... If you look at his comments on 4.30 of
3 his report, he refers to the actual out-turn for the
4 prior year being 3783, I think it is, and the --

5 Q. 3738, I think.

6 A. Sorry, 3738, rather. And the turnover for the actual
7 six months of 2209 was actually showing that there was
8 an increase over the previous year. So there was an
9 increase over the previous year. In addition, there
10 were these new routes coming on board and fundamental to
11 the projections was the expectation of the profits that
12 were expected to be derived from the new routes. That's
13 what gave rise to it. So comparing it with the earlier
14 year is obviously relevant, but understanding what were
15 the major elements of that increase is fundamental to
16 understanding the projections. And the projections were
17 based upon the fact that they were expecting these new
18 routes to take off and management's expectations are
19 documented there on page 38.

20 MR SMITH: These figures on page 38, do they simply
21 represent 2 Travel's expectations or were they in any
22 way subject to due diligence by PwC?

23 A. No, no, they were -- we went through the exercise, as
24 you would in any exercise of this nature. We went
25 through it with the management and questioned them on

1 it. Nigel Ferrand would have done that and I would have
2 done that, and the judgment taken, based upon our view
3 of Bev Fowles at the time -- and it's throughout this,
4 I have no reason to doubt his ability as understanding
5 buses. He understood buses, he'd had a track record in
6 the First Group, and therefore I believed his
7 explanations behind these assumptions to be credible.

8 THE CHAIRMAN: So it is all predicated on Mr Fowles giving
9 you information that was not over optimistic but was
10 credible?

11 A. I thought he was credible in his assessment of this.
12 He had enough experience of this sector to be credible.

13 MR FREEMAN: Could I ask if Mr Waters was included in these
14 discussions?

15 A. Yes, in fact these projections are Mr Waters'
16 projections. The impression given all the time is they
17 were, like, our projections, they're actually the
18 company's projections on which we commented, so
19 Mr Waters had been the architect of these projections.

20 MR FLYNN: Mr Waters, in doing the number crunching and the
21 spreadsheets, presumably also would rely on Mr Fowles'
22 projections as to what the business could do?

23 A. Undoubtedly, but Mr Waters, I believe, had worked with
24 Mr Fowles for some time as well, so they were colleagues
25 from that point of view.

1 THE CHAIRMAN: Was it a harmonious relationship between the
2 two of them?

3 A. It got tense during the period, I suppose, after this.
4 I think after this period, I think the relationship was
5 getting tense because there were problems manifesting
6 themselves, which gave rise to tensions amongst the
7 people there, including the non-executives and the
8 shareholders.

9 MR SMITH: Just to test the sort of due diligence or kicking
10 the wheels of the figures that PwC would have done, if
11 you look at the operating costs for Cardiff, we see the
12 recurrent figure of 61,316 for March, June, July,
13 September. Then one sees variants from that figure,
14 both lower and higher, for other months. Would you have
15 explored why for certain months the operating costs were
16 low and why, for certain months, the operating costs
17 were lower and certain months, they were higher in these
18 projections?

19 A. Part of it is to do with the fact that the company
20 looked at things on a weekly basis and therefore they
21 weren't, necessarily, strictly calendar months. Okay?
22 It would have been the number of days in the month that
23 would have given rise to that. And one of the features
24 of this business, basically, is that it's a ... Again,
25 you'll see at the earlier part of the PwC report and my

1 letter to Richard Needham, in essence, in the very
2 short-term, this business had a heavy fixed cost
3 business, has enormous fixed costs. Once you decide
4 what routes you're running, you've got massive fixed
5 costs, so you're committed. And therefore, throughout
6 you'll have seen, certainly from my point of view, was
7 to actually get the new routes up and running and that
8 was the way the business could actually start generating
9 profits. Without it, you were committed to fixed costs
10 without getting the revenue.

11 MR FLYNN: This may not be relevant at this point, but
12 another reason things might fluctuate on a monthly basis
13 is whether the schools are open.

14 THE CHAIRMAN: The figures demonstrate that, don't they?

15 A. That's right. For example, August. You'll see August
16 is generally a, you know, a ... Sort of a month that
17 has fluctuations, depending upon --

18 THE CHAIRMAN: April's the same.

19 A. Yes.

20 MR SMITH: It's slightly puzzling though, because August has
21 a very high income for Cardiff.

22 A. The buses will, I think. The coaches won't. Sorry, the
23 coaches will, the buses -- I think it's to do with the
24 amount of children that are off and travelling around on
25 buses, I think. To be honest, I can't remember now.

1 MR SMITH: You thought these were simply setting out new
2 routes, but the figures, you think would include --

3 A. Sorry, I was making a general comment. Specifically on
4 these, they are the income for the new routes.

5 MR FLYNN: Mr Haberman at 4.33 quotes your -- this, I think,
6 is part of your commentary rather than management
7 projection. This is, as it were, PwC commentary on --

8 A. Yes.

9 Q. -- liquidity problems that the company's facing.

10 A. Yes.

11 Q. And presumably those are comments you made then and
12 comments you stand by now?

13 A. Yes.

14 Q. He then goes on to quote various internal documents to
15 do with operational difficulties, from Mr David Fowles.
16 He quotes problems, in the third bullet in that
17 paragraph, with losing school contracts and contracts
18 with authorities outside Cardiff, as you'll see, mainly
19 for unreliability because of shortages of vehicles and
20 drivers, so he says.

21 Then Mr Harrison, Mr Haberman sets out the Traffic
22 Commissioner's decision relating to services in Neath
23 and Llanelli. I should say that I think there's a bit
24 of a competition going on in this tribunal as to who can
25 pronounce Welsh the best, and I'm not entering it, but

1 those are the names of the towns as best I can pronounce
2 them.

3 The Traffic Commissioner says that 2 Travel have
4 been too anxious to grow quickly, registered services
5 before they had the physical resources to run them
6 reliably, and you'll see at 4.36, the failures to comply
7 with the schedule at the percentages that are given
8 there.

9 A. Yes.

10 Q. That's an indication of serious operational failure,
11 isn't it, Mr Harrison?

12 A. Certainly I can read it like ... I haven't seen this
13 before until I saw this report, but yes, I understand
14 it's operational failures.

15 Q. You understand the point. Then Mr Haberman's overall
16 conclusion on this starts at 4.38 and goes through to
17 4.45. I'm not going to read all that on the record.
18 Mr Haberman will be here in a day or two to be asked
19 questions about it. But it does show some pretty
20 serious financial problems at that time, doesn't it?

21 A. Yes.

22 Q. Which is prior to entry into Cardiff. Now, can you
23 maintain in the face of that analysis, that entry into
24 four or five routes in Cardiff, without the white
25 services, would have been capable of overcoming all

1 those problems?

2 A. Well, I can't actually comment, really, on whether or
3 not it would or not. The expectation, certainly, was
4 that the new routes, as set out in our report, would
5 have generated sufficient profits to enable that to
6 happen.

7 Q. But the truth is, Mr Harrison, that report is based on
8 projections from a management that were incurably
9 optimistic about what could be achieved. That's right,
10 isn't it?

11 A. Well, the speed at which the new routes took off was
12 also dependent upon the predation period. So you know,
13 what were the causes of it? I can't actually tell you.
14 I don't know. And certainly my focus during this period
15 of time, my focus when I first got involved in this, was
16 they needed to get those routes up and running because
17 the company had such a large overhead structure that
18 without getting those contributions from those new
19 routes, the overhead structure would clearly drive the
20 company down into insolvency.

21 Q. It did indeed have a large overhead structure, didn't
22 it, as a result, possibly principally, of floating on
23 the AIM? High salaries for the directors?

24 A. I can't recall what they are.

25 Q. £75,000 was the sort of figures that were being paid.

1 A. Yes. I ...

2 Q. Fees for --

3 A. I don't know how you judge ...

4 Q. Fees for independent directors. Those were having to be
5 paid. A fee for Sir Richard Needham as chairman?

6 A. Yes. There were definitely costs associated with being
7 on AIM, and I totally agree with that.

8 Q. And the underlying reality is that this company was one
9 which, for the few years it had been in existence, but
10 before the AIM flotation, and thereafter before it went
11 into Cardiff, was continually firefighting?

12 A. Yes.

13 Q. You'd agree with that. And had a chronic shortage of
14 cash?

15 A. Yes.

16 Q. You say -- and I think you've already said it this
17 morning -- several places in your witness statement,
18 that you had a high regard for Mr Bev Fowles?

19 A. Yes.

20 Q. And you were impressed by him?

21 A. Yes.

22 Q. The tribunal has heard evidence from Mr Fowles, as
23 you're probably aware, and they will form their own
24 view. But isn't the truth that you were effectively
25 charmed by him? You found him plausible and you didn't

1 really stress test the assumptions on which he was
2 making the projections that you were discussing with
3 him. To the extent, I should say, that you were
4 discussing --

5 A. Charmed, no. I'm certainly not charmed by Mr Fowles.

6 Q. I shouldn't have used that word. You, of course, don't
7 have to comment on that.

8 A. The plausible, I believed him to be plausible, and we
9 did stress test it and showed the sensitivities, and it
10 was quite clear, without the new routes coming on, that
11 the company would not be profitable and would consume
12 cash. That's, I think, self-evident and it's
13 self-evident to everyone involved.

14 Q. Let's just go back in time. When you first came into
15 this story, as it were, it was through Mr Francis?

16 A. Yes.

17 Q. You'd advised him previously in connection with other
18 business ventures of his, as I understand it?

19 A. I had known him before in a professional capacity, yes.

20 Q. And the same for Mr Short?

21 A. Yes. Mr Short was a client of the firm. I was involved
22 in parts of his business, but as I was responsible for
23 the Wales and the west practice, yes, I was pretty
24 familiar with Mr Short's financial position.

25 Q. I'm sure no one person could be Mr Short's adviser. But

1 you hadn't previously met Bev Fowles?

2 A. No.

3 Q. So that was new, and you say you're not an expert in bus
4 companies?

5 A. No.

6 Q. So what happened at the outset was you met
7 Sir Richard Needham?

8 A. Yes.

9 Q. And with Mr Francis and Mr Fowles?

10 A. Yes.

11 Q. And then you write a letter to Sir Richard Needham?

12 A. Yes. They came seeking certain advice from me.

13 Q. Can we turn up that letter, please, which again,
14 I suspect is behind you. I'm afraid I was using it in
15 our more general bundles. You may have a copy of it
16 there. We'll find you a reference. It may be in
17 page 12, behind your first witness statement.

18 THE CHAIRMAN: Do you have the E reference handy? If not,
19 say no.

20 MR FLYNN: The answer is that I have the G reference handy.
21 G1 at 313.

22 For anyone who is looking, it's E5, 112.

23 I apologise for this, sir, it's simply a --

24 THE CHAIRMAN: Don't worry.

25 MR FLYNN: We learnt last night of a change of order of the

1 witnesses and I just --

2 THE CHAIRMAN: Don't worry, Mr Flynn. It just helps me if
3 I can have one document on the screen rather than in
4 a file.

5 MR FLYNN: Yes. I've just got two in front of me at the
6 moment.

7 So the letter of 13 November, then, Mr Harrison to
8 Sir Richard Needham. That letter comments, doesn't it,
9 on how to achieve a strategy relying on an aggressive
10 acquisition programme as well as organic growth?

11 A. Yes.

12 Q. Is that a fair summary?

13 A. Yes.

14 Q. On the second page of the -- well, I'm not going to read
15 it all out. You say on the first page you suggested to
16 Bev and Huw that they should articulate their strategy
17 in a document. And over the page, at the top of the
18 second page, you say:

19 "Although, to date, a formal strategy document has
20 not been prepared, both Bev and Huw have clear views on
21 the strategy to be followed."

22 A. Mm-hm.

23 Q. So that was based on, obviously, discussions at the
24 meeting with Sir Richard Needham?

25 A. Yes, that's right.

1 Q. And further meetings afterwards?

2 A. No. I think that was based upon the discussions I had
3 with them at the time.

4 Q. So that was certainly a meeting at which Mr Waters, for
5 example, was not present?

6 A. No, he wasn't.

7 Q. And the sort of things that are talked about, moving on
8 from in-filling, are acquisition of the Swansea Quadrant
9 bus station, £5 million?

10 A. Yes.

11 Q. An opportunity has been identified by the management,
12 that's Bev and Huw, if I can be colloquial, of acquiring
13 the Valleys business of Stagecoach?

14 A. Yes.

15 Q. 17 million. And some smaller local acquisitions,
16 possibly 3.5 million. So if we go over the page, we'll
17 see that's 25.5 that we're talking about.

18 A. Yes.

19 Q. Those weren't all to happen at once, if they were to
20 happen at all, but those are quite big ideas, aren't
21 they, for a company in 2 Travel's position at that
22 point?

23 A. And that's, I think, what I'm saying in the letter as
24 well, isn't it, really?

25 Q. At the top of the third page -- having said at the

1 bottom of the second that, inevitably, the broad
2 strategy outlined by management is high risk -- you say
3 at the top of 317:

4 "Indeed, it could be argued -- "

5 Page 5 within your letter:

6 "Indeed, it could be argued that the acquisition
7 route to growth is less risky than one of pursuing
8 a policy of organic growth."

9 A. Yes.

10 Q. Particularly if there are ambitious growth targets.

11 These truly were optimistic sort of plans to be talking
12 about at that stage in the company's history.

13 A. Yes.

14 THE CHAIRMAN: Can I just ask you, Mr Harrison, you've got
15 an AIM listed company, so there are a number of --
16 listed company. There are a number of ways of raising
17 money for acquisitions, aren't there?

18 A. Yes.

19 THE CHAIRMAN: One is raising money by a share issue.

20 A. Yes.

21 THE CHAIRMAN: Would that have been remotely feasible with
22 the numbers here, given the dilutive effect?

23 A. I wouldn't ... If by issuing shares, you mean paper
24 exchange for an acquisition, then I wouldn't have
25 thought so. It's very difficult to do that if you're an

1 AIM listed company. If someone is selling out their
2 family business, they're not going to take shares in
3 a --

4 THE CHAIRMAN: Some AIM listed companies are very large and
5 can do it. So you'd have to borrow the money?

6 A. Or raise further funds from investors who had bought
7 into the strategy. So you could have raised, perhaps,
8 further funds from institutions who wished to --

9 THE CHAIRMAN: From institutions?

10 A. Who would have invested in AIM companies.

11 THE CHAIRMAN: Of course, institutions do invest in AIM
12 companies, but am I right, generally in companies with
13 much larger numbers than this?

14 A. Funds do have spreads of sized companies they invest in,
15 and this would obviously be a high risk fund. One would
16 perhaps have an element of funding who could invest in a
17 company like this.

18 THE CHAIRMAN: Basically, you'd have to borrow the money or
19 find investors who are prepared to risk their capital?

20 A. Yes.

21 THE CHAIRMAN: And how likely a candidate did you think
22 2 Travel was for, over a period, raising the sort of
23 money that your report suggested could be raised for
24 acquisitions?

25 A. Well, in my sort of recommendations under this, as I was

1 saying in -- the essence behind this letter, having
2 listened to what was being described to me by
3 Sir Richard Needham and Bev Fowles and Huw, was they
4 really needed to articulate the strategy of how building
5 blocks of this growth strategy were going to occur
6 through acquisition. Because I, in a sense, couldn't
7 see how, as is being implied all the way round, they
8 could possibly achieve this level of growth.

9 THE CHAIRMAN: Because the gearing would have been
10 impossible?

11 A. Well, it depends, again, on the source of the funding.
12 They could have raised equity and they could have done
13 it that way. So what I was basically saying -- and if
14 you look on page 18, my thing was, you can ... And ...

15 THE CHAIRMAN: Sorry, page 18?

16 A. Page 7 of my letter, page 18 of the stamp.

17 MR FLYNN: 319, if you're with me on G, sir.

18 A. Okay? Now, what I was trying to get them to do was
19 say: okay, fine, you've got all these plans, you haven't
20 documented these plans, you haven't explained how these
21 plans are going to work. Document these plans, and
22 rather than waste a lot of time going down the route,
23 chairman, that you're testing me on as to whether or not
24 they could raise money, get those plans and get in
25 principle agreement from bankers and nominated advisers

1 that they would be prepared to fund such a strategy. To
2 me, I wasn't going to get into whether I could
3 second-guess it or not. They had nominated advisers who
4 were advising them on the market and raising money
5 through the AIM listing, so my view was: get the
6 strategy documented and seek advice from your bank as
7 a nominated adviser, to understand exactly what appetite
8 they would have to support such a strategy.

9 THE CHAIRMAN: Thank you.

10 A. One of the concerns, again, that I had with it was that
11 there was the possibility of the property as well, and
12 to me, I saw these as potentially big distractions to
13 actually running a bus company, that they could actually
14 identify targets. That is quite difficult and the
15 chances of pulling off an acquisition in the short-term
16 is quite a difficult strategy to follow. You may follow
17 that strategy, and it's okay if you've got a strong
18 business already, which is generating lots of cash. You
19 can then acquire and the timing of acquisitions becomes
20 less critical. For a business that clearly had created
21 the structure, looking for acquisitions, to me, the
22 timing of them would be too difficult to predict.

23 Similarly -- and again, it's experience with
24 businesses of this size -- believing that the property
25 development side can become all-encompassing, everyone

1 can sort of pursue that rather than actually look at the
2 detail of the buses, and that's why I was suggesting the
3 approach I was suggesting in this letter. It should be
4 really -- we should park that to the side and get on
5 with running a bus company.

6 THE CHAIRMAN: So this was a future strategy that should be
7 looked at and agreed, if possible?

8 A. If possible. Yes, that was my view. My thing was, in
9 a sense, in common parlance: get on with the knitting
10 and get the business operational and generating money
11 from an operational point of view.

12 THE CHAIRMAN: Thank you.

13 MR FLYNN: Did this not lead you to think, Mr Harrison, that
14 you were faced with some rather over optimistic people
15 running this company?

16 A. Well, they certainly ... In what they were trying to
17 plan here, was optimistic without ... For the size of
18 the company involved, yes. Sir Richard Needham, having
19 said that, was reasonably experienced on public company
20 boards and is an experienced chairman, so I didn't
21 totally dismiss it as foolhardy.

22 Q. Just picking up on another thing you said. With
23 hindsight, hasn't it turned out that being a mixture of
24 a bus company and a property development company has
25 been an enormous distraction to management in this case?

1 A. Again, it's the causal effect that caused the issues as
2 to whether or not, if the ... you can see from the
3 report, the emphasis that was given to these new in-fill
4 routes. You can see in my report as well, I actually
5 refer to the Competition Act, because one of my
6 challenges of management was you're moving into
7 a territory which is dominated by that company, they're
8 not going to give up that territory easily, and that was
9 one of my big concerns when I first got involved, that
10 the emphasis was given to the Competition Act. That
11 would enable them to cherry-pick the best routes in
12 Cardiff and use those to cherry-pick and therefore scoop
13 the profitable routes in an effective way. And I saw
14 that as being one of the challenges which, as you can
15 see in my report -- I actually refer to that in my
16 report.

17 Q. Let's move, therefore, to your report. It comes three
18 months later, in effect, in broad terms. I think I'm
19 following you in your exhibit.

20 THE CHAIRMAN: I think we all are, for this purpose.

21 MR FLYNN: G1/329, if anyone is doing that. The cover
22 letter, page 22 in your bundle, Mr Harrison,
23 emphasises -- to an extent we've been over these, but
24 the projections were prepared by management.

25 A. Yes.

1 Q. They were the sole responsibility of the directors?

2 A. Yes.

3 Q. And you say you have not verified or audited the
4 projections or other information.

5 A. Yes.

6 Q. So would it be fair to say your view of this report
7 is that it's the management's view of the future with
8 some commentary from PwC; is that a --

9 A. Yes, that would be fair.

10 MR SMITH: Mr Flynn, do we have a copy of the contract
11 referred to in the second paragraph of the letter, dated
12 17 February 2004? It says it's at appendix 1, but it
13 isn't.

14 MR FLYNN: I'm quite sure we don't, sir. I'm sure I haven't
15 seen it. There are many gaps and it's possibly one of
16 the puzzles of this case. This report, I think, has
17 come from 2 Travel files. I don't know at any stage,
18 whether any request has been made to PwC for documents,
19 but we certainly haven't seen any. So we haven't seen
20 any working papers behind this, we haven't seen the
21 contract or indeed, I think it's right, Mr Harrison says
22 that in his witness statement, that the version of the
23 second PwC report is a draft, it's not the final report.
24 It's just the best we have to go on.

25 MR SMITH: I understand.

1 Mr Bowsher, it would be helpful if you do have
2 access to the contract, to produce it, but obviously, if
3 you don't have it, you don't have it.

4 MR BOWSHER: I don't think -- certainly in the custody of my
5 instructing solicitors. It may be that there are other
6 routes. We don't have it. I'm told we've been making
7 enquiries of PwC.

8 MR SMITH: Thank you, Mr Bowsher.

9 MR FLYNN: If you look at page 29, Mr Harrison, 337 for
10 anyone in G. This is key stages of the bus strategy.
11 So what we see here is indeed a strategy of, if you
12 like, getting on with the knitting.

13 A. Yes.

14 Q. It's one of volume growth by getting contracted work
15 from Local Authorities; that's right, isn't it?

16 A. Yes.

17 Q. And then securing in-fill routes. Now, in a number of
18 places in your statement you say -- and again, I think
19 you have said it this morning -- that Cardiff was the
20 key to the company's growth.

21 A. Mm-hm.

22 Q. That's right, isn't it? And paragraph 28 of your first
23 witness statement, you say the strategy was all about
24 getting new operations up and running in Cardiff.

25 A. Mm-hm.

1 Q. And you said in your statement, and I think you repeated
2 it again this morning, you attribute the failure of the
3 company to its inability to expand in Cardiff. But the
4 strategy wasn't all about Cardiff, was it?

5 A. That was a fundamental part of it.

6 Q. If we turn to a page that's called "Sales growth", which
7 is internal 18 -- it'll be 41 for you, 339 in G. What
8 is said there is:

9 "There is forecast to be little growth from the
10 existing bus business ...(reading to the words)...
11 expected to account for 50 per cent of the growth."

12 A. Mm-hm.

13 Q. Cardiff was half the strategy?

14 A. Mm-hm.

15 Q. So it's not right to say it was all about Cardiff, is
16 it?

17 A. Um ... If again, you go back to the profitability, the
18 Cardiff profitability was forecast to be much higher
19 than the other phases. So if you look at page 14, you
20 can see, although on the one you referred me to it's the
21 growth and the turnover, the profitability from Cardiff
22 was expected to be much higher and therefore likely to
23 generate the bigger contribution to the profits than the
24 phase 1 and the Llanelli growth in turnover.

25 Q. Well --

1 A. In precise terms, to say it's all absolutely from
2 Cardiff would be wrong. To say the bulk of it was
3 dependent on Cardiff would be right.

4 Q. It would also be right, wouldn't it, to say, as your
5 report says, that 50 per cent of the growth in 2005 came
6 from Cardiff and therefore 50 per cent from somewhere
7 else?

8 A. From turnover.

9 THE CHAIRMAN: It looks as though you had quite strong
10 expectations for CTC as well.

11 A. Yes. CTC, as I described when I was discussing the
12 turnover, was a commission basis, so the level of
13 commission that they generated was, I think, just over
14 about 10 per cent. So they were almost acting as
15 a travel agent would, except with coaches. In doing it,
16 they weren't the principal in the contract, and
17 therefore the CTC turnover was relatively -- didn't have
18 such an impact on profits, as it was only generating
19 a commission. And, therefore, some of the turnover
20 analyses you have to be careful with because some of
21 them were more profitable than other parts.

22 THE CHAIRMAN: Though CTC didn't require buses, repairs,
23 drivers --

24 A. No, no, it was acting as agent.

25 THE CHAIRMAN: It was relatively low cost?

1 A. Relatively low cost, yes.

2 MR FLYNN: Can we go back to the page, "Key stages in the
3 bus strategy", Mr Harrison?

4 THE CHAIRMAN: 29.

5 A. Yes.

6 MR FLYNN: Thank you, sir. I'm obliged.

7 Now, what is noted here on the third dashed
8 paragraph there, starting "In-fill routes" -- you note:
9 "In-fill routes tend to be operated down main
10 corridors into town and compete against one operator."

11 A. Mm-hm.

12 Q. So it's right, isn't it, that we're looking at routes
13 going into the town centre from somewhere in the
14 outskirts; is that right?

15 A. Yes, as far as I can recall. I'm not a bus man, I'm
16 just reading what's here as well.

17 Q. What is envisaged, say in the case of Cardiff, is that
18 you've got a route going from some estate on the
19 outskirts, going into the city centre and out again?

20 A. Mm-hm.

21 Q. That's right, isn't it? And the choice might typically
22 be where you had school contracts in those outskirts.
23 You would agree with that?

24 A. I'm not sure if that's correct. I don't know.

25 Q. Well, the strategy --

1 A. The strategy was to have school contracts. Whether they
2 needed to be in the estate, as you've just described it,
3 I don't know. You needed to have school contracts which
4 occupied two parts of the day and you used the buses,
5 effectively, in between.

6 Q. Fair enough. Then you take an example and say:
7 "If the current operator has an hourly service with
8 an average of ten passengers per journey during the
9 in-fill period, a new service operated by [something
10 missing but presumably a new entrant], every hour should
11 average five passengers per journey, as the number of
12 passengers using the route will not vary significantly."

13 A. Mm-hm.

14 Q. So that essentially depends on the frequency of service,
15 doesn't it?

16 A. Yes.

17 Q. That's a simple example where you have one an hour and
18 suddenly there are two an hour and you get half the
19 passengers.

20 A. That's right.

21 Q. And you say as one of the key elements of the bus
22 strategy, that the number of passengers using the route
23 will not vary significantly. So you don't expect to
24 change the number of passengers on the route --

25 A. No.

1 Q. -- by this in-fill entry. That's right, isn't it?

2 A. That's right.

3 Q. And you have told us in your witness statement that you

4 were told -- you don't say by whom, but maybe by

5 Mr Fowles -- that a passenger waiting at a bus stop

6 would be likely to take the first bus that arrived?

7 A. Yes.

8 Q. That's what you were told, and that's what you expected.

9 You say that's particularly so because of the high

10 proportion of passengers who are travelling on

11 concessions.

12 A. Yes.

13 Q. I have to be careful what I say because of previous

14 comments in this tribunal. But those who are 60 and

15 over in Wales?

16 A. Yes, I think so. I can't remember precisely.

17 THE CHAIRMAN: You don't have a bus pass?

18 A. Thank you very much. No chairman, I don't. Not yet.

19 MR FLYNN: The chairman's looking for company!

20 THE CHAIRMAN: Mr Freeman has a bus pass. I just thought

21 I would put on the record, Mr Freeman has one too.

22 MR FREEMAN: I don't deny it.

23 A. I'm working towards it, chairman.

24 MR FLYNN: I think we can take it as an uncontroversial fact

25 in this case that people aged 60 and over and registered

1 disabled people can travel free on buses.

2 A. I think that's right. I'm not sure about the 60.

3 Q. That's my understanding. Now, there's one category of
4 passenger who wouldn't be likely to take the first bus
5 that came along and that's someone who had a season
6 ticket for a particular company. Would you accept that?

7 A. Yes.

8 Q. Now, if you look at page 37, "Dynamics of the new
9 routes." 345 in the G bundle. You say there:

10 "The assumption is that the new service will attract
11 30 per cent of all the passengers using the corridors
12 ..."

13 And we've just established what's meant by those
14 corridors, haven't we?

15 A. Mm-hm.

16 Q. "... 30 per cent of all the passengers using the
17 corridors by month 6."

18 So that was your assumption. You start an in-fill
19 route and by the sixth month of operation, you've got
20 30 per cent of the passengers?

21 A. Yes, that was management's assumption, yes.

22 Q. That was management's assumption, yes, of course. And
23 you say:

24 "Brand loyalty was minimal."

25 Is that another way of saying people tend to take

1 the first bus that comes along?

2 A. Yes.

3 Q. You say also in your witness statement that there was no
4 significant customer loyalty that would have created
5 inertia that would have prevented change.

6 A. That would have been the expectation.

7 Q. So the point that's being made there, I think is you
8 operate a new service, but if you turn up to the bus
9 stop, people are likely to get on?

10 A. Yes.

11 Q. That 30 per cent figure relates to all the in-fill
12 services that were planned, doesn't it?

13 A. Yes.

14 Q. So it's Cardiff, the services that are lumped together
15 as phase 1 and Llanelli as well; correct?

16 A. Yes. I think so.

17 Q. The page that you have --

18 A. Yes.

19 Q. -- just above. It's also the other one that's open on
20 your table there. It shows the phase 1, Cardiff and
21 Llanelli and shows the routes and numbers of buses that
22 are used on those routes.

23 Now, in your witness statement, Mr Harrison, you say
24 that your approach was to challenge Mr Fowles to make
25 sure that the assumptions on which the projections were

1 based appeared logical.

2 A. Mm-hm.

3 Q. The 30 per cent assumption, was it not, was absolutely
4 fundamental to achieving the projections that are set
5 out, for example, in the table in front of you now?

6 A. Yes.

7 Q. What you say in your witness statement about it is that
8 it was, in your judgment, an important but achievable
9 target, 30 per cent?

10 A. That's what I thought, yes.

11 Q. How did you reach that state of satisfaction that that
12 was the sensible and logical assumption?

13 A. As I said, by discussing it with Bev Fowles on how these
14 sort of routes worked, and, again, because of the
15 attraction that they didn't expect to achieve the
16 50 per cent by running equal routes. But it was the
17 percentage of buses they were running down the route and
18 actually taking back to 30 per cent.

19 Q. Based on all the elements we've just been through, you'd
20 expect them to be running three out of ten buses in any
21 given period on the route, wouldn't you, to get
22 30 per cent?

23 A. Um, yes.

24 Q. It's all to do with frequency and --

25 A. Yes.

1 Q. -- people getting on the first bus?

2 A. Yes, yes.

3 Q. Had you checked whether that was indeed the case?

4 A. All I can say is what was planned and the routes that

5 were planned and the number of buses that were already

6 on those routes.

7 Q. Have you seen Dr Niels' report in these proceedings?

8 A. No, I haven't.

9 Q. Perhaps we should just have a quick look at that. Maybe

10 a quick look is the wrong way of putting it. That is in

11 file range D at tab 8.

12 A. No.

13 Q. I'm unlikely to be able to help you as to how those

14 bundles are made up.

15 THE CHAIRMAN: D6.

16 MR FLYNN: Does that have a tab 8?

17 A. Yes.

18 THE CHAIRMAN: We'll pause for ten minutes around 1 o'clock

19 for the transcriber.

20 MR FLYNN: Sir, yes.

21 THE CHAIRMAN: It's up to you when.

22 MR FLYNN: If we're just about to start on this, perhaps now

23 would be --

24 THE CHAIRMAN: Okay. Five past, and we'll adjourn at 2.20.

25 (12.55 pm)

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(A short break)

(1.05 pm)

MR FLYNN: Mr Harrison, just before the short break, I think you were given a copy of Dr Niels' report, and I think you said you hadn't seen it before, although maybe you've had an opportunity to --

A. Yes.

Q. -- flick through it. I'm not suggesting that's an adequate opportunity to digest its content. Dr Niels carries out a pretty detailed analysis. He gets to not a 30 per cent figure but an 18 per cent figure and I'm now going to take you precisely to the paragraphs where he does that and that's in page 19 of the bundle numbering, paragraph 3.58.

A. Mm-hm.

Q. He quotes the 30 per cent assumption in the PwC report that we've been looking at.

A. Yes.

Q. And he says that the best way to approach market shares in a hypothetical situation is to consider relative frequency of services offered by the different operators. That's a point we were discussing a short while ago. That's right, isn't it?

A. I understand the -- I guess ... I don't really understand necessarily -- I can understand why it has --

1 it's a function of that, but also presumably, the amount
2 of traffic on individual ... It wouldn't necessarily
3 just be the frequency of people running that route
4 because it would presumably depend upon the revenue that
5 was generated per hour. So it depends over what period
6 you're talking. So for example, over a day, the fact
7 that, let's say, 50 buses went on a route in a day and
8 you ran 10, wouldn't just mean you would get
9 20 per cent. You could end up getting more, depending
10 on the time of day and how the passengers and revenue
11 were skewed during the course of the day.

12 If my reading of that is correct -- because I'm not
13 quite sure of his calculation. You asked me to agree
14 and I'm saying I can't totally agree with it because
15 I can't totally understand. A function over what
16 period?

17 Q. It was the more general statement that it's necessary to
18 look at the relative frequency and then frequency,
19 of course, may vary over different parts of the day.

20 A. Yes.

21 Q. And if you then read on --

22 A. Right, sorry.

23 Q. -- you will see that. Firstly, he says at 3.60 that you
24 don't explain in your witness statement how the
25 30 per cent assumption was arrived at. We have

1 discussed that earlier, have we not?

2 A. Yes.

3 Q. Then he notes that in the PwC report, the 30 per cent is
4 being applied to the entire corridor, in other words the
5 route to the city centre and back out again, or from the
6 city centre out to the outskirts and back in again,
7 whichever is the right way of looking at it. Then he
8 says:

9 "This approach is incorrect because it doesn't
10 consider the fact that there are other Cardiff Bus
11 operations that cover parts of the same corridor, which
12 would constitute viable alternatives for the passengers
13 travelling on those parts of the corridor."

14 And the point that's being made there, Mr Harrison,
15 is that a bus comes in from one outlying area towards
16 the city centre, but the closer it gets in, the more it
17 meets with other routes also heading for the city
18 centre. And there is detailed analysis set out in an
19 appendix to which he refers, and I think it's been
20 slightly updated. We're not going to go through that.
21 My first point is: you didn't carry out any of that type
22 of analysis, did you?

23 A. No.

24 Q. You just took the 30 per cent from Bev, if I can
25 again -- without being disrespectful to Mr Fowles.

1 A. Yes, that was the source of it.

2 Q. Dr Niels arrives at a conclusion at 362, using the
3 assumption that we've discussed, that a passenger boards
4 the first bus and on the assumption that services and
5 passengers are distributed evenly. So, of course, some
6 of these are approximations or hypotheses:

7 "2 Travel might reasonably have been expected to
8 attract, on average, around 18 per cent of passengers
9 across the five corridors."

10 And you'll remember -- or possibly you won't -- that
11 five routes were registered by 2 Travel but only four,
12 in the end, ever operated. Do you remember that?

13 A. No, I don't.

14 Q. So his conclusion there is that to proceed on
15 a 30 per cent assumption is over optimistic.

16 A. Mm-hm.

17 Q. And we should also look at footnote 29, which is at the
18 bottom of that page there. What he's doing there, just
19 so that you see it, is looking at the figures on the
20 page in your report, which is "Dynamics of the new
21 routes", which is open in front of you, page 37 in your
22 version. And he says if you'd taken 18 per cent rather
23 than 30 per cent as the market share applicable to
24 month 6, and using the figures in the PwC reports, its
25 own calculations, as he says, would have shown the

1 in-fill services to be barely covering their costs. The
2 revenue in October 2004 would have been approximately
3 1150 rather than 1920, compared with the cost figure of
4 1035; a gross margin of 6 per cent rather than
5 46 per cent, as in the PwC report.

6 And I think those figures he's looking at are for
7 month 6. The top right of the table in --

8 A. Sorry, I've just done the mental arithmetic and I'm
9 happy.

10 Q. You'll be ahead of me there if you've done it mentally.
11 Those are the figures he's referring to. Did your
12 mental arithmetic coincide with his workings?

13 A. Yes, roughly.

14 Q. Also on that "Dynamics of the new routes" page, you'll
15 see there's -- I'm sorry, Mr Harrison, on your table,
16 "Dynamics of the new routes". The make-up of this page,
17 as I understand it -- there's a table with some
18 financial projections, and on the left there is some
19 commentary. But I think those are, from what has been
20 said, assumptions and information that's been provided
21 by the management. That's not an independent PwC view.

22 What's said under the heading "Cardiff", is that the
23 Cardiff routes are all in-fill:

24 "The gross margin is therefore higher than phase 1
25 or Llanelli because most of the fixed costs are covered

1 by the contracted school routes."

2 A. Yes.

3 Q. Do you see that? That, again, would be something that
4 Mr Fowles had told you or the management had told you?

5 A. That was the principle of the -- from what I can recall,
6 the principle of the in-fill routes, yes.

7 Q. And you simply relied on what you'd been told there, but
8 most of the fixed costs would be covered by the
9 contracted school routes?

10 A. Yes.

11 Q. You didn't seek to examine the underlying contracts
12 or --

13 A. No.

14 Q. -- anything like that, to see if they were covering
15 their costs?

16 A. I certainly didn't. Whether Nigel did or not, I don't
17 know.

18 Q. Just as a sense check, is it plausible to you that
19 2 Travel could have won competitive tenders for school
20 contracts on a basis which, as you said, are at the
21 beginning and end of the day -- and I think the figure
22 that's normally given is 10 working hours for a driver,
23 on a weekly basis for a school contract. Could they
24 have won tenders on that basis and yet be able to pay
25 the drivers for a 45-hour week?

1 A. Sorry?

2 Q. Sorry, it became a little complicated. They won the
3 school contracts on a competitive tender?

4 A. Yes.

5 Q. These are Local Authority tendered contracts, so
6 Cardiff Bus, other operators in the Cardiff area or
7 Swansea or whatever, will pitch for these contracts?

8 A. Yes.

9 Q. The Council looking for best value in that. Now, as
10 we've already discussed, obviously, school contracts are
11 at the beginning of the day, the end of the school day
12 and the in-fill is what comes in between. So it's only
13 a limited part of the day and only five days a week that
14 you have a school contract. And I think we've been told
15 that it's something in the order of 10 hours a week for
16 a driver running the school bit of that.

17 We are also told that 2 Travel paid the drivers on
18 the basis that they get 45 hours a week's work. If
19 that's right, are the school contracts really covering
20 the fixed costs?

21 MR BOWSHER: Sir, the problem with this question is it
22 involves a premise about what happens on these tender
23 contracts. We've already had Mr Bev Fowles, who could
24 have given evidence and been asked about, for example,
25 what were the prices on these contracts and this could

1 have been explored with the factual witnesses. Maybe it
2 could be dealt with by Mr David Fowles, but I'm not
3 quite sure where this question is going. If it's
4 a factual question, it involves analysis of all these
5 other contracts and the prices in them, to understand
6 how the prices in those contracts relate to the costs.
7 If it's some other basis, I'm not quite sure how it
8 takes the matter.

9 MR FLYNN: Sir, firstly Mr West, who conducted the
10 cross-examination of Mr Bev Fowles, says it was explored
11 with him. I couldn't point you to the transcript.

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

13 MR FLYNN: Of course, sir. (Pause).

14 THE CHAIRMAN: We could probably find this on the transcript
15 if we did a search. I don't have it on the screen at
16 the moment.

17 MR FLYNN: Day 2, page 10, sir, line 17. Mr West is
18 examining Mr Fowles in relation to memos from Mr Waters
19 and he quotes Mr Waters as saying:

20 "The contract base is totally underpriced and the
21 commitment to guaranteeing 45 hours is killing any
22 chance of improvement."

23 And the question is:

24 "Is it right that the contract base, that's the
25 school bus contracts and so on, were not generating

1 sufficient revenues to meet the company's running
2 costs?"

3 Then you see Mr Bev Fowles answering:

4 "Some of the school contracts weren't covering all
5 the costs. The majority of the Cardiff contracts were
6 much higher priced than those in Swansea and Llanelli,
7 which is why they were targeted ..."

8 And so on. So it was raised with Mr Fowles.
9 Mr Harrison has said that he didn't look at the
10 contracts and I was raising it with him.

11 THE CHAIRMAN: Let's see how we go. Ask your question and
12 see how we go.

13 MR FLYNN: I'll ask the question again and try to explain
14 it, since it became complicated. I was simply asking
15 Mr Harrison whether, as a matter of bare plausibility,
16 it seemed likely to him that you could win a competitive
17 tender for a school contract against competition from
18 the Local Authority incumbent and other commercial
19 operators, that allowed you to pay 45 hours' worth of
20 wages to the drivers when you're getting 10 hours of
21 work. That was the question on a purely hypothetical
22 basis.

23 A. I don't know and I don't think I could possibly know
24 without going ... But I think you're mixing things up
25 a bit, because if you've already got those contracts and

1 you've already guaranteed those drivers the hours, then
2 looking at it this way is just looking at,
3 incrementally, what you're going to get over and above
4 those fixed costs from a cost point of view.

5 Q. I understand that point. I think my point went more to
6 the premise, if you'd got the contract on that basis,
7 did that seem plausible to you?

8 A. Yes, but it would be -- you know, it's in a sense ...
9 How it impacts the dynamics of these numbers, you know,
10 to be honest, I can't tell you now, at this length of
11 time. But if the costs relating to the school
12 contracts, for example, are built into the coaches'
13 income and cost base, then this is incremental income
14 from the new routes, over and above it.

15 THE CHAIRMAN: I don't think you can answer this, can you?
16 You don't know what proportion of driver wages, of
17 45-hour a week driver wages were incorporated in the
18 school contracts?

19 A. No.

20 THE CHAIRMAN: And Mr Flynn is simply putting to you that
21 it's difficult to imagine how one would win a school
22 contract if you were paying 45 hours a week to drivers
23 who were only driving for 10 hours. But I don't think
24 you can answer that, can you?

25 A. The point I was trying to make, chairman, is the fact

1 that if those costs -- if it was a loss making business
2 and they bid on the school contract to make a loss on
3 the school contract, in the belief that they were
4 getting in-fill income, then of course, those costs
5 would already be built into the system and this would be
6 incremental profits. And, therefore, judging it on
7 a marginal basis would then be appropriate.

8 THE CHAIRMAN: Okay, I understand.

9 A. But you're absolutely right, I don't know. All I was
10 just trying to give some clarity on is a possible way
11 the cost base would have moved. That's all.

12 MR FLYNN: Mr Harrison, you have just heard from the excerpt
13 from the transcript that I read out that 2 Travel's own
14 finance director thought the schools contracts were
15 underpriced and didn't cover the company's costs.

16 A. I go back to the comment I just made. They could have
17 been priced and loss making contracts in order to
18 benefit from the in-fill routes.

19 Q. Were you aware, one way or another, whether the school
20 contracts were --

21 A. I can't, you know ...

22 Q. Going back to the projections for the new routes, it
23 wasn't realistic, was it, to forecast growth on those
24 routes? If we look again at "Key stages of the bus
25 strategy", page 29 in your bundle. It says, almost

1 casually:

2 "... as the number of passengers using the route

3 will not vary significantly."

4 A. Yes.

5 Q. Did the implications of that statement not sink in

6 in the PwC report?

7 A. I'm sorry, when you're saying it grew, could you explain

8 to me what you're referring to?

9 Q. Let's go back to Dr Niels' report because what he does

10 is to look at the actual levels of demand while the

11 2 Travel and white services were operating in Cardiff.

12 He says there is no reason to suppose that the demand

13 would have been any higher if it had just been a single

14 low cost operator rather than two?

15 A. No, I understand that. I was just asking you the gross

16 numbers you were saying was built into our report ...

17 Q. Let's just pursue this with Dr Niels for the moment.

18 A. Okay.

19 Q. If you look at, first of all, paragraph 1.23 in his

20 report. That's part of a summary. Do you have that?

21 Page 6 of the bundle numbering, 1.23.

22 A. Oh yes, I've got it now.

23 Q. "Furthermore, PwC's 2004 assumption of growth, whether

24 it refers to the routes as a whole or only to 2 Travel's

25 market share between April and October 2004, is not

1 supported by the actual level of demand that prevailed
2 when both the 2 Travel and the white services were
3 operating. No reason to believe that one low cost
4 operator would have grown the market more than two. The
5 assumption on market growth is also at odds with the
6 fact that new entry on a bus route that has already
7 frequent services, generally does not increase total
8 passenger demand materially. There is, therefore, no
9 reason to apply an additional growth rate to
10 counterfactual passenger numbers, as 2 Travel and
11 Mr Good have done in their analysis."

12 That's a conclusion of some analysis which is
13 developed in more detail at page 18 of his report, 349.

14 A. Mm-hm.

15 Q. What he effectively says is that the most growth that
16 2 Travel could have achieved is what it actually did,
17 plus a share of those who would have travelled with it,
18 had the white services not been operating.

19 A. Mm-hm.

20 Q. And this may be going to the point you were asking me.

21 At 3.50 he says:

22 "It is useful to distinguish between two sources of
23 growth in the bus market for a new entrant. Transfer of
24 market share from the incumbent to the new entrant ..."

25 So, of course, that, in a sense, is growth of the

1 business for the new entrant, but to be distinguished
2 from:

3 "... expansion of the market as a whole due to
4 additional services and lower fares."

5 A. Yes.

6 Q. Now, he here is addressing aspects of the claim, but
7 saying that it would not have been right to have
8 projected any growth in that second sense, due to the
9 entry of 2 Travel into, really, any market, but
10 including Cardiff.

11 A. No, I understand the point. I'm just trying to work out
12 where you think the market is growing in the report,
13 in the PwC report. Which bits are you referring to that
14 show the growth?

15 MR SMITH: I think if you look at page 37, internal page 37,
16 of C1, tab 1, where you have a page which I hope is
17 headed "Dynamics of the new routes", and then under the
18 heading "General", you have the second bullet point,
19 which says:

20 "The ticket income is assumed to increase over six
21 month period to its full potential. This is based on
22 a profile of some Neath in-fill routes that commenced in
23 late 2003."

24 A. Yes, that was just the build-up of the route, it wasn't
25 suggesting it was all building up to the 30 per cent.

1 So it wasn't increasing beyond that 30 per cent, it was
2 just a staggered build to the 30 per cent, is how those
3 numbers have been calculated.

4 THE CHAIRMAN: Just about the number of buses?

5 A. Yes. It's just the staggering of it.

6 THE CHAIRMAN: You were not working on the basis that would
7 be a great marketing pitch?

8 A. No, no.

9 THE CHAIRMAN: Just how many buses turn up?

10 A. The view was that the market wouldn't increase, it would
11 be a static marketplace. Ultimately we'd get to
12 a 30 per cent share. The question has been challenged
13 on a 30 per cent share and I can't comment, other than
14 to say --

15 THE CHAIRMAN: The 30 per cent share, as far as I understand
16 your evidence, is if you had 30 per cent of the buses,
17 you'd have a 30 per cent share?

18 A. Yes.

19 THE CHAIRMAN: If you had 80 per cent of the buses, you'd
20 have an 80 per cent share. It's as simple as that.

21 A. Yes.

22 THE CHAIRMAN: And that was based on what you were told by
23 Mr Fowles; is that right?

24 A. Exactly right. What I'm saying is, in that second
25 bullet point that is being referred to just now, which

1 is assumed to increase over a six-month period, it was
2 just building to the 30 per cent. So, it was building
3 up to that 30 per cent level.

4 THE CHAIRMAN: By bringing in more buses?

5 A. Yes.

6 MR SMITH: So if we take a look at the table to the right of
7 this bullet point, we see "Cardiff for single bus", and
8 we have then a heading for revenue, and we see the
9 revenue commencing in month one at £576,000. This is for
10 a single bus. And increasing to £1,920,000.

11 A. Yes. £1,920, yes.

12 MR SMITH: Well --

13 A. The thousands are --

14 MR SMITH: So that month 6 figure is based upon achieving
15 a 30 per cent market share?

16 A. That's right.

17 MR SMITH: So that one bus would be operating on a route
18 where there would be two other buses. How does it work?

19 A. That principle, yes.

20 MR SMITH: I see. And that increase in passenger number was
21 simply based upon what Mr Fowles told you they had
22 achieved in Neath; is that right?

23 A. That's right.

24 MR SMITH: Can you remember, were you given any further
25 information about how equivalent, for instance, the

1 Neath in-fill route was, to what was being proposed for
2 Cardiff?

3 A. No, although the -- no, I can't remember.

4 MR FREEMAN: Mr Harrison, you do make projections for 2005.

5 A. Yes.

6 MR FREEMAN: Which do involve figures about turnover in
7 Cardiff.

8 A. Yes.

9 MR FREEMAN: And those show an increase.

10 A. You'd have a full year impact as well because in the
11 build-up in 2004, it's a slow build-up.

12 MR FREEMAN: So that's just an extrapolation, a static
13 figure over a whole year?

14 A. Yes, I believe so.

15 MR FREEMAN: That's page 41 of my copy, page 18 of your
16 report. "Sales growth".

17 A. Yes.

18 MR FREEMAN: So that year to August 2005 figure is simply
19 a full year figure?

20 A. It's just an extrapolation once it had reached its
21 30 per cent.

22 MR SMITH: Just at the risk of trespassing on Mr Flynn's
23 cross-examination, could I just ask you to look again at
24 the month 1 figures of revenue, where we have the start
25 point of £576,000 in terms of revenue.

1 A. £576?

2 MR SMITH: £576,000. Exactly right.

3 A. No, £576.

4 MR SMITH: No, that can't be right. There are three noughts
5 above it.

6 A. I think that's just a typing error.

7 MR SMITH: Very well. How was this calculated? It says
8 again in bullet 4 that:

9 "Ticket revenues are based on market research of the
10 routes. That's been based on current ticket prices and
11 the number of passengers travelling on the routes."

12 A. Yes.

13 MR SMITH: Again, can you help us on what sort of
14 information lay behind that assumption?

15 A. I think the company had looked at these individual
16 routes in order to pick the routes that they were going
17 to target. Therefore, they worked out the passenger
18 numbers travelling on those routes.

19 MR SMITH: And did you ask or would anyone at PwC have
20 asked, for instance, whether there was a strategy with
21 regard to comparative pricing? In other words, whether
22 the 2 Travel prices for a given fare would be lower than
23 the competition's pricing?

24 A. I think, from memory, it was lower to start with.
25 I couldn't understand that. I didn't understand why it

1 needed to be lower because, to me, it could have been
2 the same price. I think that was a view that I had
3 at the time, but I'm going back such a long time now,
4 that I might be wrong. But that's ... I think when
5 we were discussing this, they were talking about having
6 lower prices at the beginning. I couldn't understand
7 the logic for that on the principle, if a bus turns up,
8 why wouldn't you just get on the bus? As long as the
9 prices weren't higher, why wouldn't you have equal
10 pricing?

11 THE CHAIRMAN: What I don't quite understand is why the
12 revenue in month 6 for a single bus would increase by
13 something like 50 per cent, as compared with months 4
14 and 5, if we're simply dealing with the passenger
15 numbers being in proportion to the number of buses that
16 turn up. For one bus, one would expect the revenue to
17 be pretty constant, wouldn't one?

18 A. Yes. Yes, I'm repeating here what management --

19 THE CHAIRMAN: So they told you?

20 A. That's what they thought it would be. From memory,
21 I think I had the same logic. I thought it would be
22 much quicker. You'd get your 30 per cent much quicker.

23 THE CHAIRMAN: Okay, thank you.

24 MR FLYNN: I think there is somewhere where you say that you
25 thought it could be done more quickly. I'm not giving

1 evidence, but it is in there somewhere.

2 I think to summarise that discussion, Mr Harrison,
3 is it right to say that what is projected in these
4 figures, on your understanding, is a projection to the
5 30 per cent target and it is not and it would be wrong
6 to have any additional growth in the market overall?

7 I think --

8 A. That's right. That's certainly where I thought we were.

9 Q. So if we have a look back to "Dynamics of the new
10 routes." I'm following up on a couple of points that
11 have been put to you. Mr Smith referred to the --
12 sorry, it's page 37.

13 A. Yes.

14 Q. Mr Smith referred to the market research point. Do you
15 recall being shown any market research or again, is it
16 simply a statement by management that market research
17 has led to the --

18 A. I can't remember that far back. I believe, but
19 I can't -- I'm not certain. I believe that they did
20 counting and so on on routes, but I can't be certain.

21 Q. The company itself?

22 A. Yes.

23 Q. Now, if we look at the top line figure again, the top
24 row for Cardiff, I think we've established that these
25 are six months and these are what happens in your first

1 six months in operation. Say for Cardiff, that would
2 be April to October, I suppose. It's said to be
3 a weekly profile?

4 A. Yes.

5 Q. So that means weekly amounts?

6 A. Yes.

7 Q. But in a particular month. So what's being said here
8 is that in month 6, the weekly amount for a single bus
9 would be £1,920.

10 A. Yes.

11 Q. That's how to read this. These are effectively the
12 takings from one of the Cardiff buses over a week; is
13 that correct?

14 A. Yes.

15 Q. On the previous page, it's one that's flat open before
16 you, you can see there's a column there, "Number of
17 buses"?

18 A. Mm-hm.

19 Q. And we know that these projections are based on 20 for
20 Cardiff.

21 A. Yes.

22 Q. If you multiply -- in my case getting someone else to do
23 it, but you can probably do it in your head -- if you
24 multiply 1920 by 20, you get to a figure of 38,400.

25 A. Mm-hm.

1 Q. If you assume a four-week month for simplicity, multiply
2 that by another four, you get to 153,600. I'm not
3 asking you to confirm these, but I believe that is
4 right.

5 A. Mm-hm.

6 Q. That would seem to tally with what one sees over the
7 page, the next page beyond you:

8 "Cash requirement of new route."

9 The income for Cardiff six months in, along that
10 line -- so Cardiff is the second line?

11 A. Yes.

12 Q. Total income for six months in, which on this is given
13 as August -- I don't think it matters -- the income is
14 shown as just over £150,000. So broadly, that's the
15 sort of figure you get.

16 A. Yes.

17 Q. If you go through the calculation I've done with
18 a simplification of using a four-week month, and it may
19 well be that they --

20 A. The number of days is shown above, actually, on the
21 schedule.

22 Q. Exactly. So there are ways of doing it, but the
23 calculation is roughly right. Have you any idea how
24 many passengers per journey it would take to achieve
25 that sort of revenue?

1 A. No idea.

2 Q. I wouldn't have had, but we have people who can work
3 that out. Can I just hand you a spreadsheet. (Handed).

4 THE CHAIRMAN: That will be document 5 for the supplemental
5 file.

6 MR FLYNN: So this is, as it says on the top of that:

7 "Calculations of number of passengers required per
8 each 2 Travel bus journey, in order to generate £1,920
9 of revenue per week per bus."

10 And you'll see that it's done on a spreadsheet
11 basis, but we start with (a) 20 buses, (b) 1,920. We
12 multiply 20 by 1,920 and then at (d), divide that by
13 five, five days in the week, to get to that figure.
14 We have a figure for the number of journeys on the
15 in-fill routes, which was taken from 2 Travel's expert,
16 Mr Good, of 153. If you divide (d) by (e), so if you
17 divide the total revenue by the number of journeys, you
18 get a revenue requirement per journey of £50.

19 Then we take the price of tickets. (g) shows full
20 fare and (h) shows, I think, the payment that the
21 company will get for carrying a concessionary passenger.

22 A. Mm-hm.

23 Q. The average of those is in (i). You take (f), £50, and
24 divide it by the average of 71p per journey, you get to
25 a number of 71.2 passengers required for each journey.

1 Those are our calculations using 2 Travel figures and
2 reconstructing, as best we can, what is projected in the
3 PwC report.

4 A. Mm-hm.

5 Q. 70 passengers per journey. We suggest that something
6 must have gone wrong, Mr Harrison. 70 passengers per
7 bus journey.

8 A. Well, I -- it's the first time I've seen this. I can't
9 really comment.

10 MR SMITH: Do we know the capacity of the 2 Travel buses?

11 MR FLYNN: I don't offhand, sir. 70 would be packing them
12 in, I think.

13 MR SMITH: Yes.

14 MR FLYNN: Not necessarily that you'd have to have 70
15 passengers on the bus at any one time, but nevertheless,
16 this is quite a loading being suggested.

17 THE CHAIRMAN: This would include passengers getting on at
18 stop number 2 and getting off at stop number 4, for
19 example?

20 MR FLYNN: Yes, it would.

21 THE CHAIRMAN: It's the footfall?

22 MR FLYNN: That's another way of putting it, but I think
23 it's a high footfall, if I can put it that way. Our
24 suggestion is that that's not an unfeasible projection
25 but a highly unrealistic and over optimistic one.

1 Are you able to comment on that?

2 A. I can't. You know, it's predicated on the number of
3 journeys that comes from Mr Good's report, and I don't
4 know.

5 Q. That's 2 Travel's evidence in this case.

6 A. Yes, I understand that. I wasn't involved and haven't
7 looked at Mr Good's report, so I can't comment. I don't
8 know.

9 Q. I understand that. It's simply, we have tried to
10 extrapolate from the projections set out in the PwC
11 report, by reference to figures which are put forward by
12 2 Travel. That's where we get it. I think you have
13 said you can't comment further and let's leave that.

14 If we try something slightly different. Could
15 Mr Harrison please be given file E5? Page 428. Here is
16 an e-mail from Tony Rawlinson. Did you meet him at all
17 in your --

18 A. Yes, I think I met him. I think I did.

19 Q. So you remember who he was?

20 A. He was the nominated adviser, I think, wasn't he?

21 Q. Exactly. He was the NOMAD, as I think they've come to
22 be called, from the company called City Financial
23 Associates, I think it is, although -- yes. You'll see
24 his e-mail address has some abbreviation of that kind.
25 He sends an e-mail to various people, the directors,

1 basically, at 2 Travel Group.

2 A. Mm-hm.

3 Q. And he's commenting on the PwC report.

4 A. Mm-hm.

5 Q. He says:

6 "I'm surprised the report encompasses a review of
7 the business strategy as well as the projections. It is
8 unusual for accountants other than management
9 consultants to comment on commercial matters, as this is
10 outside their area of competence."

11 Would you have any comment on that?

12 A. No, I would disagree with him. In the report that deals
13 with working capital, people normally comment, otherwise
14 there's no context in which you're putting any new work
15 you're doing. So what people are trying to achieve is
16 normally -- normally commented upon. I wouldn't -- in
17 a report like this, I disagree. It would normally be an
18 area that you would cover, as the strategy of
19 the business, to put what you were looking at in
20 context. I wasn't, in the report, either approving or
21 critical of it, I was just stating that was the basis on
22 which the projections were based and describing the
23 basis. So I think that's ... I disagree with it
24 fundamentally, actually.

25 Q. In his fourth bullet point he says:

1 "I have ignored the section on bus operations
2 ...(reading to the words)... matter for the board not
3 us."

4 That's the NOMAD.

5 A. Yes.

6 Q. He makes a lot of detailed points, and I'm not going to
7 go through all of those with you, Mr Harrison, I think
8 that will be tedious for us all. But can I draw your
9 attention to his point on P15, the new route cash
10 requirements, and that's the table we were just looking
11 at a moment ago. Internal page 15 of your report:

12 "The new route cash requirements need to be
13 buffered, given adverse past performance."

14 THE CHAIRMAN: What does buffered mean in that context?
15 Reduced?

16 MR FLYNN: Mr Harrison, would you have a --

17 A. Sorry, I don't know. I wasn't the -- my guess would
18 be ...

19 THE CHAIRMAN: If counsel can help, I'd be grateful.

20 A. I would guess, if you want a guess, that he's talking
21 about putting in a contingency of £300,000.

22 THE CHAIRMAN: I see.

23 MR FLYNN: They need to be buffered, in that sense, "given
24 adverse past performance":

25 "There is no reason to assume they are going to

1 achieve a target for the first time on these new
2 routes."

3 And then he assumes a contingency, I think as you
4 say, Mr Harrison, for £300,000 for that. But I draw
5 attention to the comments that he makes, that those cash
6 requirements did need to have some security around them,
7 given adverse past performance, and he says:

8 "No reason to assume they are going to achieve
9 a target for the first time."

10 That's true, isn't it? That's again what we see,
11 this company is just perennially optimistic about the
12 future?

13 A. I don't understand how you ... He's stating what his
14 opinion for the level of sensitivity is. I was sent
15 this, actually, last week. There is a response from
16 Richard Needham to this letter, dated March, and he
17 actually responds in detail to this letter, and he
18 actually sets out contemporaneously what his view or
19 what the views of the rest of the board were on
20 Mr Rawlinson's comments.

21 Q. I'm sure Mr Bowsher will take you back to that letter in
22 re-examination if necessary. Mr Rawlinson is also
23 saying there is no reason to assume they're going to
24 achieve a target for the first time. So it's not just
25 the level of sensitivity that I'm drawing your attention

1 to, he's saying: we have experience of these people and
2 they don't hit their targets. And that's right, isn't
3 it?

4 A. Yes.

5 Q. Always optimistic. We can put that away.

6 MR FREEMAN: Just before you do, could I just ask a question
7 arising from that e-mail. I think in the third bullet,
8 it says:

9 "The report needs to encompass the proposed related
10 party transaction as part of the scope, ie consider the
11 implications for the company in granting security, in
12 circumstances where working capital is very tight."

13 Is that something that you recognise?

14 A. There was discussions concerning the property. I'm not
15 sure precisely where those discussions were. Going back
16 in time, I can't -- I don't know if this was relevant at
17 this date. It certainly was relevant later on because
18 there was security relating to the property and funds
19 being advanced in that area. I didn't think, actually,
20 at this stage, that they'd actually put money in that
21 was secured. I thought the investors put money in that
22 was unsecured at that point, but I'm ...

23 MR FREEMAN: In your letter the previous year, which we
24 discussed before the break, one of your recommendations
25 was that the property should be ring-fenced, I think

1 that was the term, so that it didn't distract
2 management. And that's the property on which all this
3 security was going to be granted. We're talking about
4 the Swansea depot.

5 A. Yes.

6 MR FREEMAN: Am I right that in your February report you
7 didn't really address the issue of whether property was
8 a distraction and whether management should put it on
9 one side?

10 A. No.

11 MR FREEMAN: That wasn't in your recommendations at all?

12 A. No, I was dealing with just the financing requirements
13 going forward.

14 MR FREEMAN: But if Mr Rawlinson, in February 2004, talks
15 about the proposed related party transaction, what would
16 you think he meant by that?

17 A. The way it's worded here, I guess it's relating to that
18 property and whether funds were going to be advanced by
19 the directors to secure it on the property. I guess at
20 that -- reading this, it can only be that property, and
21 it must be the prospect of loans coming in to provide
22 finance to the company and securing it on the property.

23 MR FREEMAN: But that wasn't something that you had
24 addressed in your report?

25 A. How they were raising the money, I was identifying

1 the -- you know, commenting upon their estimation of
2 financial need.

3 MR FREEMAN: Thank you.

4 MR FLYNN: This may be taking us slightly off course, but
5 it is a fact, isn't it, that Messrs Short and Francis
6 did give guarantees on a number of occasions, the first
7 of which was, I think, ultimately April of that year,
8 and took a charge over the property at that time? It
9 was eventually signed in -- I say eventually, it was
10 signed in April, but it's perfectly plausible that that
11 was being discussed at the time, isn't it?

12 A. It is. I'm sorry, I don't have anything to check that
13 with, so I don't know. I can't remember. Certainly
14 they did give guarantees and they did advance. When
15 precisely these things occurred, whether it was April or
16 later, I don't know.

17 Q. Well, I think you can take it from me that from that
18 point of view, the first of the guarantees by Mr Francis
19 and Mr Short was given in April 2004 and they did take
20 a charge over the Swansea depot to back that. So it may
21 well be that at that point, Mr Rawlinson was concerned
22 about whether that should be regarded as a related party
23 transaction.

24 A. Um ... If they did a guarantee, presumably the
25 guarantee was to the bank.

1 Q. That's correct.

2 A. The bank itself would have had a charge over -- I would
3 have thought if it's a standard banking arrangement, it
4 would have had the charge over the property. They were
5 presumably guaranteeing any shortfall under that charge,
6 so they themselves wouldn't have secured it. I don't
7 know, but what you're telling me -- if it was
8 a guarantee, how they would put security in place for a
9 guarantee if the bank already had security and they were
10 only guaranteeing the shortfall of the security.

11 Q. We probably don't need to get far into it.

12 A. Sorry, does that make sense?

13 MR FREEMAN: I'm beginning to regret I raised it. I just
14 wanted to know whether it had been discussed with you.

15 A. I can't remember. Certainly it was later, when it
16 was ...

17 MR FLYNN: I think your instincts are good in this, that as
18 I recall that first charge -- I shouldn't say that, but
19 the charge that Messrs Francis and Short took was the
20 second charge over the property, but they did indeed
21 charge the property in April and we've looked at those
22 documents with other witnesses.

23 A. Okay, fine. Sorry, I'm interfering.

24 Q. So I think we can now put away E5.

25 THE CHAIRMAN: We still have C1.

1 MR FLYNN: That's exactly where I want to go next.
2 Paragraph 39 of your first witness statement. You move
3 on to the second PwC report.
4 A. Mm-hm.
5 Q. And you say there you were asked to provide it in July
6 or August, I think, of 2004, setting out projections for
7 the business up to August 2005 and considering the
8 working capital requirements of 2 Travel up to
9 31 August 2005. This is just an extract but it's not
10 a complete report.
11 A. No.
12 Q. Was there anything that you recalled being in that
13 report that --
14 A. I don't think there was a report like that. I think
15 this was -- looking at it, I think this was a set of
16 projections and actually trying to help the company
17 build its model for financial projections, I think,
18 looking at it and how it's been constructed. So
19 certainly summaries are there, but as you can see,
20 there's appendices at the back, which set out
21 assumptions, and that was really, I think, for
22 management to build its assumptions and to build its
23 model, because you can see in it, there's details of
24 what I would regard as input documents to a financial
25 model. So for example, on page 96 ...

1 Q. Is that the table headed "Current routes"?

2 A. Yes, current routes. That looks like, in financial
3 modelling terms, an input document which you could vary
4 in order to sensitise the numbers or run different
5 numbers or change the assumptions.

6 Q. So --

7 A. So that was to enable them to prepare projections more
8 effectively and efficiently.

9 Q. So are you saying this document is really, as it were,
10 a sort of draft of a management tool rather than --

11 A. Yes. Clearly, there is some commentary and some
12 summaries in there and so on, but I don't think it was
13 a sort of detailed report in the same way as the first
14 one was.

15 Q. We've all called it a report and so have you, but it's
16 as much a document that the management was supposed to
17 take away and work with and --

18 A. Yes. I mentioned Cheryl Williams who was in there, who
19 basically did lot of financial models. That's her skill
20 set. Therefore, I know she was helping them do the
21 detail, to build up the details of financial models to
22 try and get to weekly reporting, I think.

23 Q. Because it's right, isn't it, that there was a sort of
24 interregnum between finance directors?

25 A. Yes.

1 Q. And at that point, were PwC filling in that role or
2 would you still have been in an advisory --

3 A. We would have still been in an advisory role, but
4 helping them build this type of information because they
5 didn't have it readily to hand.

6 Q. But I think it's right, Cheryl Williams was effectively
7 seconded or made available --

8 A. Well, she was made available to them, yes, to build this
9 model.

10 Q. You say in paragraph 38 of your witness statement that
11 you would have expected to have been engaged to prepare
12 a second report in order to monitor the progress of the
13 company against the strategy set out in the first --

14 A. Yes.

15 Q. So is what you're saying that actually what we have and
16 what we've been calling the second report isn't really
17 that document?

18 A. Well, it provides the information as to how they were
19 performing, obviously. But what it -- the principal
20 purpose of it was to generate a model looking at this,
21 to generate a model that allowed them to update their
22 projections on a regular basis. Because at that stage,
23 as you said, Carl Waters, I think, had gone at that
24 stage and a new finance director was there and therefore
25 this was to try and create something they could do

1 themselves and update on a regular basis.

2 Q. Yes. We've had some debate about exactly when people
3 left and when they started, but we're all comfortable
4 that it was over the summer, at any rate, of 2004. Then
5 you say in paragraph 38:

6 "Had Cardiff Bus not acted unlawfully towards
7 2 Travel, I believe the report would have looked
8 considerably different."

9 A. Yes. Well, based upon the first report, they should
10 have been generating cash and they should have been in
11 a position, based on the first report and expectations
12 of the first report, that they would be generating cash,
13 and clearly they weren't.

14 Q. Because you say that the change of fortunes of 2 Travel
15 was marked.

16 A. Mm.

17 Q. What do you mean by that?

18 A. Well, they were burning cash at a much faster rate.

19 Q. Faster rate than what?

20 A. They had previously, before they invested in the new
21 routes and also relative to the projections that had
22 been done in January time, they were clearly off against
23 those projections.

24 Q. Those are two separate things, aren't they?

25 A. They were off against projections and they were also

1 burning cash at a faster rate than they were prior to
2 the -- that they'd done in the prior year.

3 Q. As far as the projections go, how they are doing -- it
4 can only be a function of how good the underlying
5 projections were, can't it?

6 A. It'd be the basis of them, yes.

7 Q. So to say its fortunes have changed markedly, if it's
8 not living up to the projections, is really to confuse
9 two different things, isn't it?

10 A. Can you explain why?

11 Q. Well, the projections -- I may be reading too much into
12 this -- but the projections are projections. They're
13 what might happen. Fortunes are what does happen to
14 you.

15 A. Yes. And therefore, the difference between what was
16 expected and what actually came about, came about for
17 physical reasons, one of which is that the Cardiff
18 in-fill routes did not generate the profits that were
19 expected.

20 Q. You can only say that the change of fortune in that
21 sense was marked if the projections were good, can't
22 you? If the --

23 A. Well, by definition, what you're saying -- if the
24 fortunes changed relative to projections, that
25 doesn't ... Then the projections are bound to be wrong,

1 aren't they, if the fortunes have changed? Yes? So the
2 position of the company was expecting to make money out
3 of the in-fill routes, it's not making money out of the
4 in-fill routes, and therefore its position is getting
5 worse.

6 Q. But by reference to the projections?

7 A. Yes. And to the prior year.

8 Q. I'm conscious that you've set a time, sir, and by my
9 watch and the court --

10 THE CHAIRMAN: I think I said 20 past. Can we go on to
11 quarter past or have you reached a natural --

12 MR FLYNN: I've probably reached a natural moment.

13 I wouldn't anticipate being very long tomorrow, but
14 there are --

15 A. I'm happy to continue. I'm not feeling ...

16 THE CHAIRMAN: I've got a problem. I've got an engagement
17 in London in the early evening, which is why we're
18 sitting odd hours today. I'm sorry about that,
19 Mr Harrison.

20 A. Right.

21 THE CHAIRMAN: You'll want to re-examine anyway.

22 MR BOWSHER: Yes. There are some scheduling issues with
23 tomorrow, which had completely slipped my mind.

24 Are you okay for tomorrow morning, Mr Harrison?

25 A. Well, I would prefer not to have been, but ...

1 THE CHAIRMAN: I don't think you're going to get the choice,
2 I apologise.

3 MR BOWSHER: I had rather lost grip of where we were getting
4 on the timetable today.

5 MR FREEMAN: Performance has not lived up to the projection.

6 A. It's definitely a change in my fortunes!

7 MR BOWSHER: I won't need to be terribly long.

8 THE CHAIRMAN: We're going to have another three-quarters of
9 a hour left with this witness, broadly?

10 MR BOWSHER: Altogether I would say so, yes.

11 THE CHAIRMAN: Okay. I know I hardly need to say this to
12 you, but please remember not to discuss your evidence
13 with anyone overnight.

14 A. Certainly.

15 THE CHAIRMAN: And thank you for coming today. I'm sorry
16 you've had to come back tomorrow.

17 You can leave, Mr Harrison.

18 (The witness withdrew)

19 Shall we take stock of where we are timetable wise?

20 MR BOWSHER: It's wise to do so. Can I just note, I expect
21 that the tribunal will find, overnight, a very short
22 written application from us.

23 THE CHAIRMAN: Is that something that we heard about
24 earlier?

25 MR BOWSHER: It has been foreshadowed. I will not say any

1 more. I expect that, at the latest, you'll have
2 something in writing, as it were, when you arrive
3 tomorrow morning.

4 THE CHAIRMAN: That's fine.

5 MR BOWSHER: There is a witness statement.

6 THE CHAIRMAN: Will you want us to deal with that first
7 thing?

8 MR BOWSHER: We can probably interpose it at an appropriate
9 time. I would have thought that's a sensible thing to
10 do.

11 THE CHAIRMAN: Obviously Mr Harrison should finish his
12 evidence as soon as possible because he's having to come
13 back.

14 MR BOWSHER: Indeed. We can try and find the most efficient
15 way of dealing with that.

16 We then have left Mr David Fowles and then
17 Messrs Jones, Cartwright, Conway and Sutton, plus this
18 application. That strikes me, at the pace we've been
19 running, a fairly hefty diet for one day. None of them
20 strike me as being as substantial witnesses as we've had
21 so far, but that's still five witnesses plus an
22 application in a day. That doesn't seem very likely to
23 me. So I suspect our evidence will trip into Monday, so
24 I suspect we're probably not going to get to start with
25 Mr Brown until some time late Monday, I'm guessing.

1 Where that does take us in the long run, I suspect, is
2 getting the expert evidence completed next week may be
3 a realistic target, but your aspiration of getting
4 anything meaningful done with closing submissions is
5 probably not.

6 THE CHAIRMAN: Let's consider that. I don't want people to
7 be forced to do unnecessary work over the weekend.
8 Shall we consider that tomorrow afternoon before we
9 finish?

10 MR BOWSHER: We can consider that tomorrow afternoon, yes.

11 MR FLYNN: It would be a good idea to see how we get on
12 tomorrow, because tomorrow we should be getting --
13 obviously the order has changed a bit, but we should be
14 getting on to witnesses who will take less time. It
15 depends on the length of the questions, the answers and
16 the re-examination.

17 THE CHAIRMAN: The length of the questions is in other
18 people's hands.

19 MR FLYNN: We should speed up tomorrow, sir.

20 THE CHAIRMAN: Right. We'll adjourn until 10 o'clock
21 tomorrow.

22 (2.15 pm)

23 (The hearing adjourned until 10.00 am the following day)

24

25