

This Transcript has not been proof read or corrected. It is a working tool for the Tribunal for use in preparing its judgment. It will be placed on the Tribunal Website for readers to see how matters were conducted at the public hearing of these proceedings and is not to be relied on or cited in the context of any other proceedings. The Tribunal's judgment in this matter will be the final and definitive record.

IN THE COMPETITION
APPEAL TRIBUNAL

Case No. 1178/5/7/11

Victoria House,
Bloomsbury Place,
London WC1A 2EB

19 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 6)

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.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Monday, 19 March 2012

(10.00 am)

MR DAVID FOWLES (continued)

Cross-examination by MR WEST (continued)

THE CHAIRMAN: Good morning, I hope everyone has passed a pleasant weekend and has come back to Cardiff, refreshed and ready for action. Mr West?

MR WEST: I think we're in E6, page 668. This is a memo written by yourself, is it?

A. It is, yes.

Q. This time it concerns the Cwmbran depot.

A. Mm-hm.

Q. That's the other depot for which you were responsible?

A. Yes.

Q. You'll see what it says. You might think it rings a bell when you read it:

"I was instructed to register commercial registrations ...(reading to the words)... suffered in Cardiff as a direct result of lack of forward planning, and I sincerely hope we have learned from our mistakes in this depot. If we don't take action soon, I am not prepared to take responsibility for the failure of this venture. Please can we meet as soon as possible to discuss?"

It's a rather familiar story, isn't it? There's a lack of vehicles.

1 A. Which we sourced before the services commenced.

2 Q. And also a lack of drivers?

3 A. That was an ongoing problem.

4 Q. And you say further problems in Cardiff were the result
5 of a lack of forward planning, which rather ties in with
6 the memos you wrote about Cardiff, doesn't it?

7 A. Well, I disagree.

8 Q. When you say you disagree, you disagree that there was
9 a lack of forward planning?

10 A. I think it may have been prudent at the time to try and
11 get the second depot online quicker than we did, but
12 apart from that, I don't think there was anything else.

13 Q. Could we then go back in this bundle to page 215. This
14 is the number 99 again. This time a letter of
15 29 March 2004 to yourself. You will see the first line
16 of that, the Council says:

17 "I am becoming extremely concerned about the
18 operation of the above service."

19 Were you aware that the Council was extremely
20 concerned about this at the time?

21 A. I think I can remember them writing to us once or twice
22 before this.

23 Q. But it's still your position, is it, that these were
24 occasional failures rather than any broader pattern?

25 A. I would say so, yes.

1 Q. Could you then go forward to page 553. This is now
2 about a school bus, the number 649, written again to
3 yourself, at the end of April 2004:

4 "Complaint. I have recently been contacted by
5 a parent of a child on the above service. It is alleged
6 the driver, on the afternoon journey on 27 April, stopped
7 at the Grand Avenue shops and then informed pupils they had
8 to get off the bus in order for him to use it to
9 transport pupils from another school bus, which had
10 broken down. This resulted in a number of pupils having
11 to walk a considerable distance back home."

12 Were you aware that bus drivers had told children to
13 get off before their stops and walk the rest of the way?

14 A. I don't recollect the incident.

15 Q. And the problem with buses breaking down, which is
16 referred to there, was no doubt due to the insufficient
17 engineering facilities at the Cardiff depot, to which
18 you referred in your memos?

19 A. I disagree. Buses are machines at the end of the day,
20 and they will break down at some point.

21 Q. But that's something for which you have to plan,
22 Mr Fowles?

23 A. I think any bus operator in the country will disagree
24 with you on that. You can't plan for breakdowns.

25 Q. Could we next go to E7, page 36. This is again to

1 yourself, from the Council, Cardiff Council on 8 June
2 and what they are saying is they:

3 "... wish to advise you that your company has failed
4 to provide written explanations for a number of
5 operational failures, as requested by the County
6 Council."

7 So you had failed to respond to a number of these
8 notifications of complaints; is that right?

9 A. From what I can remember, a conversation with Aman
10 Singh -- I can't remember exactly when, but there were
11 letters that got mislaid at the Council's offices, for
12 whatever reason, which had been forwarded as requested,
13 but hadn't turned up at the relevant desk.

14 Q. We certainly have a very large number of complaints from
15 the Council in these bundles, but we have very little
16 in the way of responses from 2 Travel. But you say
17 there were responses, do you?

18 A. Yes.

19 Q. You'll see in the next paragraph what is said is that
20 you're not going to be paid for these failures and
21 in addition, as part of the contract conditions, a £20
22 administration charge is going to be issued for each
23 operational failure. So it's now going to hit the
24 bottom line as well, if you fail to provide these
25 services; is that right?

1 A. It says in writing, yes, so part of the terms of the
2 contract.

3 Q. But we don't see that up until now, so it looks like
4 a hardening of the Council's stance at this stage?

5 A. Or part of the campaign to drive us out of Cardiff,
6 whichever way you look at it.

7 Q. Page 211, if we go forward in the same bundle. This is
8 the school bus service 655, another letter to you from
9 the Council:

10 "I wish to advise you that following my formal
11 letter of warning of 17 June, I have received further
12 complaints regarding the above service. As a result of
13 these recent complaints, the Council has terminated this
14 contract with effect from 20 July."

15 So this contract -- you then lost another school bus
16 contract at this stage; is that right?

17 A. According to the letter, yes.

18 Q. That's again what you had been warning about in your
19 memos, that this was going to happen if things did not
20 improve?

21 A. I think by this time the predation was getting so bad,
22 the drivers were obviously an issue. I don't know the
23 individual problems relating to the 655 in regard to
24 this letter, but I can only assume it was due to that.

25 THE CHAIRMAN: Did you respond to that letter at 211?

1 A. I wouldn't have thought so, sir. It was a termination,
2 so we would have just provided the necessary documents.

3 THE CHAIRMAN: The effect of a termination on the viability
4 of in-fill services would have been significant,
5 wouldn't it?

6 A. It would have been. I can't recollect what this
7 actually linked into in terms of the overall operation,
8 but, yes, it could have been certainly, yes.

9 THE CHAIRMAN: Right.

10 MR WEST: Page 216. This is now a different school bus
11 service, the number 623, and reference is made there to
12 a meeting at which you advised the Council that your
13 company would "continue to operate the above service on
14 a commercial basis" if the Council terminated the
15 contract.

16 So is this right, that if any company is prepared to
17 operate a school bus service commercially, then
18 the Council cannot award it on a supported basis to
19 anyone else. Is that the position?

20 A. As far as I'm aware, that's the position for any bus
21 service, not just school services.

22 Q. So when the Council threatened to terminate your
23 contract for the 623, you said: in that case we will
24 continue to operate it commercially so you can't award
25 the contract to anyone else?

1 A. I know it wasn't because of the reasons you describe.
2 It would have been because it was obviously tying in
3 with some sort of in-fill service.

4 Q. But the result of that would have been that you would
5 not receive any subsidy from the Council for that
6 service?

7 A. For the school part of the service.

8 Q. Or the in-fill part?

9 A. Or the in-fill part, obviously.

10 Q. And the Council says it now wishes to give formal notice
11 for the termination of the contract to the end of this
12 term. Do you know whether 2 Travel did in fact continue
13 to provide the service without subsidy until the end of
14 the term?

15 A. I can't honestly remember, but I would have thought so
16 if we said in --

17 Q. Sorry, I may be misleading you. Actually the letter
18 says the decision was taken to allow your company to
19 continue to operate it until the end of the school year.
20 So it may be that you simply continued under the
21 contract until the end of that year?

22 A. Yes.

23 Q. At which point the contract came to an end?

24 A. Yes.

25 Q. And you'll see the Council also says:

1 "Please note that past performance of operators on
2 country ride ...(reading to the words)... future
3 contracts."

4 So if you like, there was a black mark against your
5 name and that would count against you if you applied for
6 subsequent contracts in Cardiff?

7 A. As would it with other operators, as it says in the
8 letter.

9 Q. Then could I ask you to go to 340. Another letter to
10 yourself, now 9 July. Countryride bus services:

11 "I can confirm the Council has no record of your
12 letter ...(reading to the words)... issuing a formal
13 warning, in addition to £60 administration charge.
14 Complaints regarding 656 have been confirmed by the
15 escort and no payment will be made... Formal warning is
16 also issued for this contract... Please note that this
17 authority is very concerned over the level of complaints
18 it has received regarding services operated by your
19 company. I must insist that I receive immediate
20 explanations."

21 Were you aware that the Council was now saying that
22 it was extremely concerned about the level of complaints
23 about 2 Travel?

24 A. Yes, I am.

25 THE CHAIRMAN: Forgive me for interrupting. We don't have

1 a signature on this letter, but I presume, like most of
2 the others, it comes from Aman Singh because it has an
3 "AS" at the end of the reference at the top. Would that
4 be right?

5 A. I would assume so, yes.

6 THE CHAIRMAN: Did you meet Aman Singh at all?

7 A. Myself personally? On several occasions.

8 THE CHAIRMAN: To discuss the shortcomings he was
9 complaining of?

10 A. During that time in Cardiff, both before the in-fill
11 services and after the in-fill services, there were
12 several meetings took place. I would say that the
13 relationship between the two bodies, 2 Travel and
14 Cardiff Council, got worse after the in-fill services
15 commenced. Before the in-fill services commenced, they
16 thought we were a breath of fresh air in the area.

17 THE CHAIRMAN: In your meetings with Aman Singh, were your
18 meetings with Aman Singh recorded in some way? I don't
19 mean voice recorded, but recorded in writing?

20 A. I don't recall that. He may have made notes.

21 THE CHAIRMAN: Did you make notes?

22 A. Possibly. Depending on the meeting -- as I say, we had
23 several meetings prior to the in-fill services, in
24 regard to we won quite a few park and ride services for
25 when --

1 THE CHAIRMAN: But in mid-2004, when you met Aman Singh
2 during that time, what was the thrust of the discussion?
3 A. They were normally meetings to call us for issues that
4 had cropped up, whether it be school bus services or
5 tendered work through the authority.
6 THE CHAIRMAN: What did you say to him when you had these
7 meetings? What was the thrust of what you were telling
8 him?
9 A. Very often, sir, it didn't really matter what I was
10 saying. I got the impression that --
11 THE CHAIRMAN: That's not what I asked you. I asked you
12 what was the thrust of what you said to him?
13 A. I was trying to convey the issues we were facing in
14 Cardiff. I tried to get over the illegal competition,
15 or we believed at the time, illegal competition, which
16 tended to fall on deaf ears. He often wished to
17 distance himself from those types of conversation and
18 concentrate on the issues that he had, the complaints
19 that he had.
20 THE CHAIRMAN: But this isn't recorded in writing?
21 A. Not that I can remember, no.
22 THE CHAIRMAN: Thank you.
23 MR SMITH: Mr West, I see that this letter actually refers
24 to a letter from Mr Fowles dated 16 June 2004. Do
25 we have that in our bundles or is that one of the

1 letters that has gone missing?

2 MR WEST: I don't believe we do, but I could check that.

3 Can I now move on to the Traffic Commissioner

4 inquiry of August 2004. You attended that inquiry, did

5 you not?

6 A. I did.

7 Q. And one of the matters which the Traffic Commissioner

8 considered was the high number of prohibition notices

9 imposed on 2 Travel by the vehicle examiners. Is that

10 right?

11 A. It was, yes.

12 Q. And these are notices recording, effectively, mechanical

13 failures on the buses; is that right?

14 A. Correct, yes.

15 Q. And Mr Francis, I think it was, explained last week that

16 what happens when you receive one of these notices

17 is that you have to MOT the vehicle, effectively?

18 A. Effectively, yes.

19 Q. Before it can be put back into service?

20 A. Yes.

21 Q. And again, given what you were saying about the lack of

22 maintenance facilities at the Cardiff depot, that may

23 have something to do with the large number of

24 prohibition notices, mightn't it?

25 A. I don't think it did, in all fairness. The level of

1 check that we were undergoing from the vehicle
2 inspectorate after the sort of main in-fill services
3 took place, got to such a degree through all the depots
4 that it was almost inevitable that the more checks you
5 get, the more prohibitions you will receive. It's very
6 obvious.

7 Q. But if the examiners found faults on your vehicles, it's
8 perhaps understandable that they decided to check your
9 vehicles rather more than other operators, where they
10 hadn't found faults?

11 A. I disagree. I think we were the subject of some sort of
12 campaign by VOSA and the Local Authorities to check our
13 vehicles a lot more than other operators.

14 Q. We can see what the Traffic Commissioner said about this
15 at page 548 of E7. The Traffic Commissioner's decision
16 was made in a number of stages. He made a decision
17 about the prohibition notices on the day of the inquiry,
18 did he not?

19 A. I think he did, yes.

20 Q. This is part of the transcript of the inquiry hearing
21 itself, and the decision about failure to operate
22 registered services was issued separately on a later
23 occasion. Do you recall that?

24 A. I think so, yes.

25 Q. And then the decision on financial standing was issued

1 not until December 2004.

2 A. Yes.

3 Q. We'll see what he says here at page 548, particularly
4 beginning at B:

5 "The prohibitions fell particularly into two
6 categories. One was vandalism."

7 These are your defences, if you like:

8 "Mr Francis mentioned seven items to date
9 ...(reading to the words)... quite a lot of the others
10 were effectively the sort of things you would get on
11 vehicles in an aging fleet."

12 Again, that was a complaint which you had made to
13 Mr Waters and others that the fleet was the oldest
14 in the company; is that right?

15 A. In Cardiff, yes.

16 Q. "If I were looking purely at the arithmetic ...(reading
17 to the words)... increase its business. However, my job
18 goes wider than that. If it was simply to look at
19 numbers, you wouldn't need a Commissioner, you could
20 just have a penalty associated with numbers. My job is
21 to look beyond that at the nature of the prohibitions
22 and what the company are doing about them ...(reading to
23 the words)... systems."

24 Is that something that was reinstated at this stage?

25 A. In terms of an independent body?

1 Q. Yes.

2 A. I don't think so, from my recollection.

3 Q. "Whether it is the FTA or someone else"; what is FTA?

4 A. The Freight Transport Association.

5 Q. "Not a matter for me, but I would have thought

6 ...(reading to the words)... reinstate that."

7 And then at 549 at B he says:

8 "This is certainly not at the worst end of things

9 I hear about ...(reading to the words)... take action

10 against the licence."

11 So he held that he was entitled to take action

12 against you, given a number of prohibitions. Do you

13 remember what the action was?

14 A. I think he curtailed the licence by ten for a period of

15 time.

16 Q. That's right. It is not a memory test, but that's

17 right, that's what he did. At 549C he deals with

18 another issue, which is the failure to display proper

19 destination blinds. And that is a serious issue, is it

20 not? Passengers need to know where the bus is going?

21 A. That's correct, yes.

22 Q. At 549G he says:

23 "I make a finding there that in this regard. The Company

24 failed to make proper arrangements ...(reading to the

25 words)... destinations to be displayed clearly."

1 And he said that entitled him to take action as
2 well. Then over the page at 550, E to H, this concerns
3 your position personally. You were the nominated
4 transport manager in the company, were you not?

5 A. I was at the time yes.

6 Q. And you were the only nominated transport manager?

7 A. That's correct.

8 Q. So you carried the can for these failings in the event?

9 A. Yes, sir.

10 Q. You see what he says:

11 "The final point for today is Mr Fowles as junior
12 transport manager."

13 "You have done nothing wrong in terms of your
14 specific duties in the company ...(reading to the
15 words)... carry that can for so long as a sole transport
16 manager. I know it was the case two and a half years
17 ago and I didn't raise the issue, I don't think, at the
18 time, but as the company has got bigger ...(reading to
19 the words)... spread out within the company. I am going
20 to simply record that your good reputation is tarnished but
21 by the formal position you carry rather than any
22 particular faults on your part, and I would strongly
23 suggest the company do nominate one or more additional
24 transport managers and the time scale on that should be
25 the end of September."

1 Did 2 Travel nominate another transport manager by
2 the end of September?

3 A. I'm sure we did, sir. I can't remember the actual date,
4 but I'm sure at least Mr Price became a nominated
5 transport manager. And I think Mr Fowles senior did as
6 well. But that's from my memory, it's not ...

7 Q. When the in-fill services started, 2 Travel complained
8 to the Traffic Commissioner amongst other people, and it
9 was Mr Cartwright, wasn't it, who complained?

10 A. Yes, it was.

11 Q. And in connection with that complaint, you took a number
12 of videos in Cardiff of buses and 2 Travel buses driving
13 around, or parked up for that matter?

14 A. Yes, sir.

15 Q. And those videos were viewed by Mr Furzeland, the
16 Traffic Commissioner's clerk, at a meeting on
17 22 November. Before we look at that, were you at that
18 meeting?

19 A. No, sir.

20 Q. I think Mr Cartwright said that you were.

21 A. I think he might have been confusing me with Mr Francis.
22 I heard part of Mr Cartwright's evidence. I think he's
23 confusing me with Mr Francis.

24 Q. I won't ask you too much about that if you weren't
25 there, but it does mention the videos that you took.

1 Can we look at E9, 273? Paragraphs 29 to 30 first.
2 You'll see that two particular incidents are referred
3 to:
4 "On the part of the video...(reading to the
5 words)... provocation had occurred."
6 That was you, the cameraman, was it not?
7 A. It was.
8 Q. "Mr Brown also conceded ...(reading to the words)...
9 driver would be spoken to."
10 So the two particular incidents were, if you like,
11 upheld or conceded as showing unacceptable behaviour; is
12 that right?
13 A. That's right.
14 Q. Were you aware of that at the time?
15 A. Of the part of the meeting? I knew the videos were
16 shown.
17 Q. Perhaps I should just show you paragraph 44, where
18 Mr Furzeland says:
19 "The video evidence was only useful in showing
20 incidents of poor driver behaviour, as detailed above."
21 So he didn't uphold the suggestion that, in any
22 event, the videos demonstrated that you were being
23 sandwiched or that Cardiff Bus buses were going round
24 roundabouts in order to drive in front of you; were you
25 aware of that?

1 A. I was told after the meeting, sir, yes.

2 Q. As a result of -- sorry, before we go there, could we
3 perhaps look at paragraph 25 because this again relates
4 to you. Mr Brown made some general comments on the
5 video, claiming that David Fowles had posed as
6 a solicitor and told Cardiff Bus drivers they may go to
7 prison:

8 "He also claimed that the recording was carried out
9 by David Fowles and was surprised by the actions of a
10 company director filming whilst driving."

11 Take the latter point first. Had you been using
12 your camera to film while you were actually driving in
13 the car?

14 A. Not whilst I was driving. I used my car to get around
15 Cardiff to do the filming but not whilst I -- not that
16 I can remember, anyway.

17 Q. And I will just show you one or two other documents on
18 the suggestion of intimidation and posing as
19 a solicitor, if I may. The first is at 309 of this
20 bundle. This doesn't relate to that specific
21 allegation, but what we see here is Mr Brown writing to
22 the drivers at their home addresses to ensure, as the
23 letter says:

24 "All drivers are fully aware of the company's
25 position regarding competition. These are key safety

1 issues ...(reading to the words)... something we cannot
2 and will not condone. Can I therefore take this
3 opportunity to remind all drivers of the memo sent on
4 10 May and of the company's position, which is that
5 drivers must act in a legal, safe and responsible manner
6 at all times, whatever the situation or provocation
7 received."

8 Were you aware that Cardiff Bus had written to its
9 drivers in these terms on November 2004?

10 A. No, sir.

11 Q. That was the letter to the drivers generally, but there
12 was also specific contact with the individual driver who
13 had pushed the video camera away that you were holding.
14 That's in the next bundle, E10, page 138. This is
15 a letter from Mr Brown to Mr Furzeland. It says in the
16 third paragraph:

17 "The driver referred to in your point 29 [that's
18 pushing the camera away] is Mr Harrigan. Trevor Harrigan
19 was interviewed under the company's internal
20 disciplinary procedures and it is clear from the explanation
21 given ...(reading to the words)... prompted the action
22 he took. At his interview, he fully accepted he had
23 acted in an unprofessional manner. Taking into account
24 the mitigating circumstances, he was issued with
25 a formal warning."

1 And Mr Harrigan then wrote, at page 274 of this
2 bundle. He wrote personally and we see that he gives
3 a statement in the indented paragraphs.

4 THE CHAIRMAN: Mr West, I'm slightly concerned about the
5 technique of putting to a witness, documents he's never
6 seen, of which he has no knowledge, with the purpose of
7 making a point. There are other ways of making the
8 point. He's there to be cross-examined about matters he
9 does have some knowledge of.

10 MR WEST: I understand that, but there are allegations in
11 here relating to Mr Fowles.

12 THE CHAIRMAN: You can put the allegations but I can see no
13 purpose putting to a witness, documents of which he has
14 absolutely no knowledge or had no part in.

15 MR WEST: Okay. Well, in that case, I'm happy to ask him
16 first and then contradict him afterwards.

17 What this letter says, Mr Harrigan alleges that you
18 said you were a solicitor and you'd be using the camera
19 footage to take him to court. Had you been making such
20 allegations against 2 Travel's drivers?

21 A. Sorry, I don't understand what --

22 THE CHAIRMAN: Did you represent yourself as a solicitor?

23 A. No, sir. Not that I can recall.

24 MR WEST: Had you threatened him that they would be taken to
25 court personally?

1 A. Again, not that I can remember.

2 Q. You've seen, no doubt, the video because you took it.

3 We haven't seen it yet in this tribunal. At least while

4 the court is sitting. But you will remember that what

5 Mr Harrigan says when he comes towards you is "I hope

6 you are not going to use that in a court of law"?

7 A. I think so, yes.

8 Q. He wouldn't have said something like that unless someone

9 had told him that the purpose of your footage, the

10 footage you were taking, was to sue the drivers in

11 a court of law?

12 A. Again, I don't recall anything being said like that.

13 Q. You said you were at the Traffic Commissioner's public

14 inquiry the previous August.

15 A. Mm-hm.

16 Q. Do you recall at that inquiry that Mr Francis said,

17 whilst the inquiry was in open court, that the directors

18 of Cardiff Bus would be receiving writs in the next few

19 days?

20 A. I think so, sir, yes.

21 Q. So he is recorded as threatening individuals within

22 Cardiff Bus, not just the company, with court

23 proceedings. Does that ring any bells as to whether

24 you'd been doing the same with the drivers?

25 A. Mr Francis is or was a solicitor. I wouldn't make any

1 such allegations or ...

2 THE CHAIRMAN: I think the transcriber is having difficulty

3 hearing you, Mr Fowles.

4 MR BOWSHER: I was going to say that we haven't looked at

5 the video and I wasn't proposing to take the tribunal to

6 it. Maybe a short cut through this is just to look at

7 it.

8 THE CHAIRMAN: It is a matter for counsel. The tribunal is

9 perfectly willing to look at a video if it's relevant.

10 MR WEST: If the tribunal does look at it, could you please

11 note what Mr Harrigan says, which is: I hope you are not

12 going to use that video in a court of law.

13 And I think you remember that?

14 A. I think he said something along those lines, certainly.

15 I can't remember what I said before it but --

16 Q. After you left 2 Travel, you set up another company

17 called Flagship; is that right?

18 A. That's right.

19 Q. And that's a pure coach company rather than a bus

20 company?

21 A. It was, yes.

22 Q. When you say it was, is that no longer in existence?

23 A. It's not, no.

24 Q. So you're now exclusively working at South Wales

25 Transport, Neath, with your father; is that right?

1 A. That's correct.

2 Q. When you set up Flagship, you had to apply to the
3 Traffic Commissioner for an operating licence?

4 A. Yes.

5 Q. And that was the same Traffic Commissioner, Mr Dixon?

6 A. It was.

7 Q. So he was obviously aware of your previous involvement
8 in 2 Travel?

9 A. Yes.

10 Q. And we can see that in response to your application, he
11 held an inquiry. I think it's at page 6 of this bundle.

12 A. E10, sir?

13 Q. E10, yes. The reference may be wrong.

14 THE CHAIRMAN: That's the notification of the inquiry.

15 MR WEST: There's a transcript of it somewhere. If you go
16 on in the bundle, page 84. This was to decide whether
17 you were of good repute because if you were or were not,
18 the company Flagship would be of the same status; is
19 that right?

20 A. Sorry, sir, I was reading this, I didn't hear the
21 question.

22 Q. The reason for having this inquiry was to determine
23 whether you were of good repute; is that right?

24 A. Part of the inquiry, yes.

25 Q. Because if you were of good repute, then the company was

1 of good repute and vice versa?

2 A. Yes, sir.

3 Q. We can see the decision, which is at page 129. I'm not
4 going to read all of this out, but the view he took was
5 that:

6 "Because of your continued association with 2 Travel
7 after the August public inquiry, by December 2004 you
8 had lost your repute."

9 Is that what he held?

10 A. I don't think he mentioned that at the time, sir, in
11 2004.

12 THE CHAIRMAN: This is 2005.

13 A. Sorry, sir, what I meant is he didn't inform me that
14 I had lost my repute in 2004.

15 MR WEST: If you look at the top of page 131:

16 "On the basis of all that ...(reading to the
17 words)... tarnished in August, had been lost
18 by December."

19 You lost your repute; is that right?

20 A. Again, sir, he said that at the public inquiry, but it
21 wasn't made known to me at 2004.

22 Q. No, sorry, in 2005 in this decision, he's saying that
23 by December 2004, you had lost your repute?

24 A. That is what he's saying there, but it wasn't made clear
25 in 2004. That's what I'm saying.

1 Q. No, I wasn't suggesting it was. And at page 132, you'll
2 see that what he decided was that you could have your
3 licence, but not right away.

4 A. That's right.

5 Q. So he wanted you to wait for six months from the date on
6 which you lost your repute, the previous December, and
7 then you could have your licence back. Is that right?

8 A. That was what happened, sir, yes.

9 Q. And there are a number of matters which he took into
10 account in deciding that by remaining with 2 Travel, you
11 had lost your repute. One of them was that the fine
12 imposed by the Traffic Commissioner on 2 Travel of
13 £28,600 for not running registered scheduled services,
14 was never paid. Is that right?

15 A. Yes, sir.

16 Q. We can see that at 86H, if you want to look at
17 a document. He also took into account the fact that you
18 remained as a director of 2 Travel, and indeed transport
19 manager, even though you told him that the company was
20 moving away from what you wanted it to do; is that
21 right?

22 A. Yes, sir.

23 Q. He also took into account that you had been party, as
24 a member of the board, to the decision not to run
25 services which had been registered. Do you remember

1 that?

2 A. Yes, sir. That's what he said.

3 Q. And he took into account the fact that the company had

4 made their announcement to the Stock Exchange that it

5 had 155 licences, which was untrue; is that right?

6 A. I don't recall that, sir, but if it's in the minutes ...

7 Q. And indeed, the very fact that you'd remained on the

8 board of 2 Travel at all. He was of the view that you

9 ought to have jumped ship after the finding that your

10 repute had been tarnished. Is that right?

11 A. He didn't advise the company, sir, for me to resign from

12 the board in 2004. I had indicated to the board that

13 I wished to leave as soon as possible from sort

14 of September/October onwards, and it did take two months

15 for me to get things together to enable me to leave the

16 company.

17 Q. Page 95 of the transcript. At the top of the page we

18 see what you are proposing to do:

19 "My application has nothing to do with any activity

20 2 Travel may undertake ...(reading to the words)... any

21 commercially registered local bus services."

22 What you're doing there is contrasting that position

23 with the position of 2 Travel; is that right?

24 A. Well, yes, but for no other reason than I didn't wish to

25 operate local bus services.

1 Q. But each of these points was a point of contrast,
2 a small family run organisation, as contrasted with
3 2 Travel, which was a plc; is that right?

4 A. It is, yes.

5 Q. Modern vehicles as contrasted with 2 Travel, which had
6 an aging fleet. Is that right?

7 A. Well, yes, there's obviously a contrast, but I don't see
8 the point.

9 Q. Good facilities as contrasted with 2 Travel's poor
10 engineering and other facilities and depot. Is that
11 right? Is that the contrast you were drawing?

12 A. I wasn't drawing any contrast, it was just that's what
13 I intended to do. There was no way I was making any
14 kind of contrast between the two companies. The company
15 was what it was. It was a small company and we were
16 only going to undertake coach work.

17 Q. At page 120, he refers to a meeting he had with
18 Mr Fowles on 10 December 2004, at G. The Traffic
19 Commissioner says:

20 "Are you aware of a meeting in my office on 10
21 December?"

22 You say, "Yes, sir."

23 That was the meeting at which it was proposed to the
24 Traffic Commissioner that there would be a management
25 buyout or MBO of 2 Travel; is that right?

1 A. Apparently, yes.

2 Q. And the idea was that this company, Flagship, would be
3 used as the vehicle to transfer, if you like, 2 Travel's
4 business and contracts out of insolvency and leave
5 behind the debts; is that right?

6 A. It was mentioned, sir, certainly. I don't think that
7 was the only way forward though, from what I can
8 remember.

9 Q. But the MBO proposal didn't get anywhere because the
10 Traffic Commissioner refused to grant an operating
11 licence for the proposed new company; were you aware of
12 that?

13 A. The MBO was discussed before Flagship's licence was
14 granted. I don't see what one has to do with the other.

15 Q. The reason the MBO didn't proceed is that the Traffic
16 Commissioner refused to grant an operating licence to
17 Flagship for the purposes of being used as a vehicle for
18 the MBO?

19 A. My recollection of dates is that the Flagship licence
20 was heard after the decision to -- not to proceed with
21 the MBO.

22 Q. Well, perhaps we can look at H on page 120:

23 "You were not there, but it was attended by your
24 father, an accountant in Backhouse Solicitors. The
25 reason I'm bringing this up is because there was a

1 reference to this company, Flagship. I think it's
2 pertinent. I'm not going to give you a copy of the
3 letter because it relates to another application
4 effectively."

5 Then he says:

6 "This plan but with this company or would you have
7 used another company?"

8 Mr Fowles then says he would have used City of
9 Swansea. That's you, sorry.

10 A. Mm-hm.

11 Q. Then the Traffic Commissioner:

12 "If you were using that now, this particular issue
13 wouldn't arise?"

14 Then you say:

15 "The decision to use Flagship rested with
16 Leisure Time. They preferred that name to City of
17 Swansea, for parochial reasons".

18 "So you're saying the fact that you're applying in
19 the name of Flagship is causing him concern because that
20 was the company which was going to be used for the MBO.
21 Why weren't you using City of Swansea instead?"

22 And you're saying one of your main clients,
23 Leisure Time, didn't like the City of Swansea name
24 because it had an association with a particular area of
25 South Wales; is that fair?

1 A. Yes, but that has nothing to do with the MBO. I don't
2 understand.

3 Q. Except this company, for which you were applying for an
4 operating licence at the time, Flagship, is the company
5 that was going to be used for the MBO?

6 A. It was suggested to the Traffic Commissioner that there
7 was a company available if needed, if we were to grant
8 the licence. It was already set up, which, if it would
9 have helped the MBO and secured jobs for the people that
10 were left behind, I would have gladly given that. But
11 when that was turned down, when the MBO was turned down
12 by the Traffic Commissioner, then there was no reason
13 for me to offer the company as a vehicle for taking the
14 MBO forward.

15 Q. At page 93 -- in fact, I think we need to turn back to
16 87 briefly, to get the date of the letter he's referring
17 to. 87H, he is referring to a letter of 31 December.
18 If you go forward to 93, between D and E, the Traffic
19 Commissioner says:

20 "This letter refers to you still being transport
21 manager for 2 Travel in the middle of the second page."

22 On 31 December, you wrote a letter to the Traffic
23 Commissioner saying you were still the transport manager
24 for 2 Travel; is that right?

25 A. Yes, I can remember that. I think it was a typing

1 error. I did resign on the -- it says there, on
2 13 December.

3 Q. So you resigned on 13 December, but then wrote to the
4 Traffic Commissioner on the 31st, referring to yourself
5 as still being the transport manager for 2 Travel; is
6 that right?

7 A. Yes.

8 Q. And going forward to page 120, that's the material on
9 the MBO. Over the page between C and D:

10 "Going back for a second, Mr Fowles [says the
11 Traffic Commissioner], I was told ...(reading to the
12 words)... In the event I did not and so therefore it did
13 not happen because it relied on my discretion to be
14 exercised in a particular way and it was not the way
15 they wanted me to: that is a summary. However, there
16 was not the slightest suggestion I can recall that you
17 were going to resign from Flagship. Quite the contrary.
18 It was going to be you and your father who were going to
19 be the two directors of it."

20 Is that right, that you, together with your father,
21 were to be the two directors of the MBO company?

22 A. That's not my recollection of what happened, sir, no.

23 I was director of Flagship at the time and I offered to
24 resign if the MBO and the licence was granted.

25 Q. What Mr Bev Fowles said in evidence is that at this

1 meeting, the Traffic Commissioner said that he would
2 consider granting the licence to Flagship if the
3 directors in question resigned their positions at
4 2 Travel and at that stage, the directors, ie him and
5 you, resigned their positions at 2 Travel. Is that what
6 happened?

7 A. I resigned in the middle of December. I don't know the
8 actual dates of the meetings.

9 Q. The MBO was on 10 December and you resigned, you say, on
10 the 13th?

11 A. I'm sure it was the 13th, yes.

12 Q. And was the purpose of that, that the Traffic
13 Commissioner would at least consider granting a licence
14 to the MBO company?

15 A. I think the dates were more of a coincidence than
16 anything else. I'd indicated to the board towards the
17 end of September, I think it was, that I wished to step
18 down as quickly as possible. So I don't think -- it
19 wasn't a snap decision on my part, in the middle
20 of December, to suddenly resign.

21 Q. Might that explain why you were still referring to
22 yourself as the transport manager, because you were
23 effectively still involved in 2 Travel, even at the end
24 of December?

25 A. I don't remember being involved in the company after my

1 resignation, apart from being asked certain things by
2 the board on an ad hoc basis.

3 Q. As we've seen, the Traffic Commissioner's decision in
4 this inquiry was that you had lost your repute for
5 a period of six months because of the problems which
6 2 Travel had and had caused. But at no stage did you
7 say to the Traffic Commissioner anywhere in this lengthy
8 transcript, that all of those problems were as a result
9 of predation by Cardiff Bus and that therefore you ought
10 not to be held responsible for them; is that right?

11 A. Yes, sir, there didn't seem a lot of point. We'd been
12 banging on about the predation to the Traffic
13 Commissioner's office for the best part of 12 months and
14 nothing had been done. There didn't seem any point in
15 dragging it up again.

16 Q. On the contrary, you appear to accept that the problems
17 2 Travel had were self inflicted, as the Traffic
18 Commissioner appeared to believe?

19 A. If you want to take that view, that is down to you.

20 Q. In fact, the defence you were putting forward in
21 connection with your involvement with 2 Travel was that
22 the board made decisions you didn't agree with, but you
23 went along with them out of naivety. Is that what you
24 said?

25 A. Not so much naivety. There was a board of directors.

1 If their decision was to go a certain way, then we would
2 go a certain way by a show of hands or whatever.

3 Q. In your witness statement, Mr Fowles, you say that the
4 problems 2 Travel had during its life and which led to
5 its demise, were all the result of the infringement. My
6 suggestion to you is that that is an attempt to rewrite
7 history.

8 A. Sorry, I don't understand that. Rewrite history in what
9 way?

10 Q. Well, when one looks at the documents created at the
11 time, one sees no suggestion that that was the cause of
12 2 Travel's demise.

13 A. So the 30,000 illegal operations that took place had
14 nothing to do with 2 Travel failing. Is that what
15 you're saying?

16 Q. What I'm saying is when one looks at the documents
17 at the time, one does not see 2 Travel telling the
18 Traffic Commissioner or anyone else that the reasons for
19 the problems it's facing are because of the infringement
20 in Cardiff?

21 A. I think everybody was well aware that the problems that
22 Cardiff Bus had caused us, led to the eventual demise of
23 the company. I don't think there's any doubt about
24 that. Not from our point of view, anyway.

25 Q. Well, it's certainly in dispute in these proceedings,

1 but I don't think I can take it any further with you,
2 Mr Fowles. Thank you very much.

3 THE CHAIRMAN: Mr Bowsher?

4 Re-examination by MR BOWSHER

5 MR BOWSHER: Mr Fowles, I just had a couple of questions
6 that I wanted to ask you. You were asked various
7 questions about Mr Aman Singh of the City Council. Did
8 Mr Singh ever give any indication to you as to whether
9 he had any particular positive or negative views about
10 2 Travel before the in-fill services started?

11 A. Before the in-fill services started, Cardiff Council
12 welcomed us into the Local Authority. There had been
13 very little alternative for the Local Authority up until
14 that point, to be able to give any other services to any
15 other operators, as they just weren't available in
16 Cardiff or there weren't many in Cardiff. We secured
17 a number of big contracts in Cardiff through the Local
18 Authority in terms of park and ride in particular, and
19 things to do with big events in Cardiff. I don't know
20 whether you all remember, Wembley was closed at the
21 time, so a lot of the FA Cup and football events were
22 held in Cardiff. The Wales Rally, we secured the park
23 and ride contract for that. Again, a lot of this is
24 before the in-fill work started. And as I say, Mr Singh
25 would often call us in times of emergency. If something

1 couldn't be covered or there was a need for additional
2 vehicles, he would often call on us. Things changed
3 slightly after the in-fill services started in 2004 and
4 deteriorated after that again, which I can only assume
5 was down to other issues that the Council were having in
6 terms of our problems with Cardiff Bus.

7 Q. Did Mr Singh ever express any of those changes to you,
8 explain to you any of those changes in attitude?

9 A. He never explained them, it was an assumption on my
10 part.

11 Q. Why did you make that assumption? What was the
12 information that you drew that assumption from?

13 A. Simply by the level of complaint that increased after
14 the in-fill services started and, looking back now, some
15 of the issues that we had, some of the evidence that
16 you have seen in the bundle, certainly in this day and
17 age, wouldn't warrant some of the warnings and final
18 warnings that were given for some of the minor
19 indiscretions. I think if it was in today's
20 marketplace, then a lot of those minor indiscretions
21 would be dealt with in a different way.

22 MR BOWSHER: I have no further questions for Mr Fowles.

23 Does the tribunal have any?

24 THE CHAIRMAN: No. Thank you very much indeed, Mr Fowles.

25 Mr Fowles is released.

1 (The witness withdrew)

2 MR BOWSHER: Sir, our next witness is Mr Charles Jones.

3 MR CHARLES HUGH JONES (sworn)

4 Examination-in-chief by MR BOWSHER

5 MR BOWSHER: Good morning, what are your full names?

6 A. Charles Hugh Jones.

7 Q. You'll need files C1 and C2. What is your address?

8 A. [Address given].

9 Q. Thank you. Could you have C1, tab 7. There's

10 a statement running from page 609 to 613. Is that your

11 signature at page 613?

12 A. It is indeed.

13 Q. Have you had a chance to read through this statement

14 again before giving evidence today?

15 A. I have, yes.

16 Q. I'm hoping that your version has the pages in the right

17 order because my file doesn't. I don't know if the

18 tribunal's got them in the wrong order.

19 THE CHAIRMAN: 609A comes after 610. That was sort of

20 obvious.

21 MR BOWSHER: Were there any corrections you wished to make

22 to that statement?

23 A. None whatsoever.

24 Q. Are the contents of that statement true then, to the

25 best of your knowledge and belief?

1 A. They are indeed.

2 Q. There's another statement from you at C2, page 179.

3 Just two pages. On 180, is that your signature?

4 A. It is indeed.

5 Q. Again, are the contents of that statement true to the

6 best of your knowledge and belief?

7 A. They are.

8 MR BOWSHER: Could you wait there, Mr Jones? There will be

9 some questions for you.

10 Cross-examination by MR WEST

11 MR WEST: Before we start, I see you're wearing a Gurkha

12 tie.

13 A. Yes, indeed. A little bit symbolic after the help they

14 gave us during the period concerned.

15 Q. You joined 2 Travel in March 2004; is that right?

16 A. That's correct.

17 Q. As its operations manager, based at the Swansea depot?

18 A. Swansea and Llanelli. Swansea was my, if you like,

19 base, yes.

20 Q. And you attended the Traffic Commissioner inquiry

21 in August 2004; is that right?

22 A. Yes, I did.

23 Q. You would be aware, therefore, that the monitoring

24 exercise by VOSA, which was considered at that inquiry,

25 concluded that 2 Travel had failed to operate a number

1 of its registered services in Llanelli in spring 2004?

2 A. Yes. Though it was prior to my arrival, I was aware of
3 it, yes.

4 Q. And I think the figure was 61 per cent in Llanelli.
5 Does that ring any bells?

6 A. As I say, only from the tribunal -- sorry, from the
7 Traffic Commissioner, yes, it does ring bells from what
8 I had read at the time.

9 Q. But that was before you joined the company, as you said?

10 A. The hearing was afterwards but the event was before.

11 Q. In any event, it's perhaps not a very auspicious
12 starting point for your new job?

13 A. No. I think one of the reasons I was appointed was
14 because of my experience with bus service operation and
15 my task was to improve things in relation to bus service
16 operation in the area.

17 Q. And indeed, one of the other reasons you were brought in
18 was because 2 Travel had won a substantial tender from
19 Carmarthenshire Council; is that right?

20 A. Yes.

21 Q. And someone was needed to run the network, as it were?

22 A. Yes.

23 Q. Can I just show you a document at E12, page 17. We've
24 seen this before, but perhaps you can cast an eye over
25 it briefly. I do not imagine you'll have seen it at the

1 time?

2 A. With it being undated, it's particularly awkward to
3 recall.

4 Q. I agree. I think it was round about December 2003, was
5 it, that Llanelli opened?

6 A. All I can say is it was open when I arrived in March.
7 I'm not sure of the time scales prior to that.

8 Q. We see Mr Waters is setting out a number of concerns
9 about Llanelli, including it was loss making, facilities
10 were not being fully utilised and so on. He says in the
11 second last line:

12 "We have to recognise the experiment has not worked
13 and it may be time to cut our losses."

14 When I asked Mr Bev Fowles about this, he said that
15 things were due to improve in Llanelli, so Mr Waters'
16 concerns were going to be answered because the company
17 had won a number of new contracts. Do you think that
18 could have been a reference to the new Carmarthenshire
19 contracts we were talking about a minute ago?

20 A. It most certainly was because it was a very substantial
21 move forward for the company, in that it purchased brand
22 new vehicles. It was quite an onerous contract.
23 Carmarthenshire County Council are very, very good at
24 their monitoring exercises. They tend to find things
25 other authorities may either not find or just ignore.

1 It was realised from the outset that the new tender that
2 was won to commence in the April was quite fundamental
3 in the success of Llanelli and, as a consequence,
4 contribute towards the success of Swansea. And one of
5 the reasons I was appointed, it was classed as
6 an important move forward. There was a substantial
7 investment, there were additional fitting staff,
8 additional driving staff, additional vehicles all put in
9 place for the inception of the contract.

10 Q. But given how strict the County Council was, you were
11 going to have to make sure that you got things
12 absolutely right, were you not?

13 A. Certainly as best I could, yes.

14 Q. Could we now look at E9, page 484. There should have
15 been some additional documents put in here, 484(a),
16 running up to 484(hh). Have those been added to your
17 bundle?

18 A. I have several pages.

19 Q. I think these are, actually, slightly out of
20 chronological order. The earliest one, I think, is
21 at (d) rather than (a). (a) starts 26 May. (c) in fact,
22 is 25 April. It seems to be the earliest entry there.
23 Was that when the contracts commenced, do you remember?

24 A. It would have been earlier. Well, I'm not quite sure of
25 the date. I would imagine it would have been the

1 beginning of the financial year, the nearest Monday or
2 Sunday.

3 Q. That then proceeds. It has a week 1 marked there,
4 page 1 of 5. If you look at page 5 of 5, (g), 21 May,
5 and then I'm afraid it jumps back to (a), which is
6 26 May. It goes over the page to (b) and then jumps
7 to (h). So I'm sorry about that. Perhaps we could just
8 look at the beginning, (c). We see what it says. It's
9 a list of Carmarthenshire County Council's complaints or
10 observations --

11 A. Yes.

12 Q. -- about 2 Travel services, including the explanation
13 given and the further action which the Council decided
14 to take. We can see already in April, and you say this
15 wasn't the earliest, the type of complaints given, and
16 I'm not going to go through all of this, but operating
17 from, it appears, the wrong place; driver didn't press
18 the button when someone got on; operating early; failure
19 to operate on the right route, it appears. And the
20 same, the next one: departing late, operating late and
21 so on.

22 We'll come back to this document in a minute, but
23 can we just look briefly, before we do that, at E6/678.
24 Leave this open. This is a letter from you
25 to Councillor Peter Lewis of Carmarthenshire County

1 Council, dated 12 May. So a short time after the
2 services commenced, perhaps a month or two months.
3 You'll see what you're saying there:

4 "Thank you for your very comprehensive report on our
5 poor performance."

6 Is that referring to the document we were looking at
7 a moment ago?

8 A. I think it was referring to a more or less direct
9 complaint from [inaudible] the Council.

10 Q. "Please accept my apologies for the delay. What can
11 I say in our defence? Honestly, nothing. We made a lot
12 of mistakes in the first days of operation ...(reading
13 to the words)... most sincere apologies for our far from
14 acceptable performance in the early days. I can only
15 hope you've now noticed a vast improvement."

16 So you were fessing up, as it were, that you hadn't
17 performed to the required standard and you had no
18 excuse? Is that right?

19 A. In the first few days there were problems. It's a new
20 service, it's a completely new operating area. Drivers,
21 despite training and familiarisation, will make
22 mistakes. I think the fact that my view that honesty
23 had been the best policy, had paid off with
24 Councillor Lewis, and I think the very fact that as far
25 as I am aware, there were no further complaints from

1 Councillor Lewis regarding his areas of operation,
2 speaks bounds for the improvement in the service after
3 the very early days.

4 Q. Mr Jones, you give the impression in your statement that
5 it started well and got better --

6 A. Mm-hm.

7 Q. -- when the infringement began. But in fact, as we saw
8 in that document, it started very badly, did it not?

9 A. I think I did say in the early days, yes.

10 Q. If we go back to the list we were looking at a minute
11 ago in E9, you say it then got better. I'm not going to
12 go through all of this, but you'll see that there are
13 complaints practically every day. If one looks, for
14 example, going forward to (h), in May; do you see that?

15 A. Yes.

16 Q. Practically every day.

17 A. Yes.

18 Q. And we can also see the impact on the company. Take,
19 for example, the very first one on page 484(h):

20 "Passenger claimed the service didn't operate from
21 ...(reading to the words)... failure to operate. No
22 response received."

23 Sorry, this is 484(h).

24 MR SMITH: My pagination isn't quite clear in terms of the
25 letters.

1 MR WEST: Sorry about that.

2 MR SMITH: If you could give us the date.

3 THE CHAIRMAN: 21 June.

4 MR WEST: Yes. So failure to operate, no response received
5 and the further action taken: a £50 fine for failure to
6 respond and £50 for failure to operate. So that's £100
7 on one day. That's pretty serious, isn't it, given the
8 kind of margins that 2 Travel were operating on?

9 A. It is serious, yes.

10 Q. And we'll see looking down that column, practically
11 every one of these has a £50 fine.

12 A. There are a high number of fines imposed, but as I said
13 earlier, Carmarthenshire County Council are one of the
14 most vigilant authorities you will come across and some
15 of the fines imposed are for incorrect vehicle
16 allocation, destination board not having been changed,
17 and don't actually reflect on service performance in
18 terms of reliability.

19 Q. Those sorts of complaints, wrong vehicle, destination
20 board not displayed, those cannot be blamed, can they,
21 on the infringement in Cardiff?

22 A. No.

23 MR FREEMAN: Can I ask a question? Mr Jones, you said
24 a number of times that Carmarthen were a very vigilant
25 authority.

1 A. Yes.

2 MR FREEMAN: Do we deduce from that, that they are more
3 vigilant than Cardiff?

4 A. If I put my hand on my heart, yes, I would say
5 Carmarthenshire County Council are the most vigilant
6 Local Authority in terms of using every avenue to reduce
7 their costs on tendered services and they monitor
8 absolutely fastidiously. There are four of the members
9 of the Traffic Commission who live on bus routes in the
10 Carmarthenshire area and your service would be
11 monitored, effectively, for the entire duration of their
12 operation, which is quite unusual, even from the Traffic
13 Commissioner's point of view.

14 MR FREEMAN: As an operator, do you find that stimulating
15 and conducive to good operations or difficult to live
16 with?

17 A. I found that very challenging and it was something I set
18 out with a genuine attempt to improve and eradicate the
19 mistakes.

20 MR FREEMAN: Okay.

21 MR WEST: Again, I'm not going to go through all this, but
22 it appears to run up to the following January, 2005, at
23 484(gg) with, as I say, complaints and consequential
24 fines every day or every other day. Does that accord
25 with your recollection?

1 A. Yes. But my recollection also recalls the latter part
2 of it was brought about almost directly by the predation
3 in Cardiff, requiring more of my management time in
4 covering drivers and vehicles for Cardiff. Other
5 non-standard tasks being put upon me and taking my time
6 away from effectively running my own operation
7 correctly.

8 Q. I can understand how, if you say you were short of
9 a driver, then a failure to operate might be blamed on
10 Cardiff. But operating them on the wrong route, for
11 example, is not as a result of a driver shortage because
12 of the Cardiff infringements, is it?

13 A. No, but without going into every detail, I don't know
14 whether any -- if there were any discrepancies of
15 off-route in the latter stages or whether there were
16 other discrepancies.

17 Q. I'm not going to take you through it, but just as
18 a matter of principal, that wouldn't be a matter we can
19 blame on Cardiff and wrong vehicle likewise?

20 A. No. As I said earlier, that was the -- wrong vehicle,
21 wrong destination, would be a local situation
22 attributable to the driver at the time.

23 Q. Operating early; is that another example?

24 A. It's again a driver indiscretion that is irrelevant --
25 sorry, irrelevant is the wrong word, but is not affected

1 by Cardiff Bus. It's a local effect.

2 Q. What about running out of fuel?

3 A. That should never happen, but it has happened. Vehicles
4 would be changed over without having been fuelled due to
5 engineering requirements, possibly because of
6 a breakdown, and the replacement vehicle has gone out
7 inadvertently with lack of fuel and has ran out.
8 That is an operating error at the local level.

9 Q. And there's a lot of £50 fines in here for failure to
10 respond. Indeed, one sees towards the back end, most of
11 the columns for your responses are simply empty.

12 A. I'm glad you said it was the back-end, which suggests it
13 was after the predation commenced by Cardiff and my time
14 was not available to respond to complaints. Another
15 cost directly caused.

16 Q. We can also look at it going back as early as the first
17 document we looked at, (h), which was in June.

18 A. Yes, there were times that I didn't respond. For what
19 reason, I can't say. It may well be that I didn't pick
20 it up in time to respond because there is a deadline for
21 responding and if you miss the deadline, the response is
22 effectively non-effective. And if I'm being honest,
23 I probably didn't bother.

24 Q. Might it also be the position that you simply had no
25 defence?

1 A. I think from my previous way of answering certain
2 questions with extreme honesty, it's such that if we did
3 something wrong, I would admit it. If we had done
4 something I -- we could correct, I would point out what
5 I was going to correct and I would do my utmost to
6 ensure it didn't repeat itself.

7 Q. What we certainly don't see is you responding to
8 Carmarthenshire County Council saying: we're very sorry
9 about this, but we're the subject of unfair competition,
10 which is playing havoc with our business?

11 A. I think that point was being made elsewhere. There were
12 complaints to the Traffic Commissioner, to the Office of
13 Fair Trading. There were various forums. I believe it
14 appeared in trade press. I'm absolutely positive
15 Carmarthen County Council were aware of the problems
16 we were experiencing in Cardiff. However, that does not
17 excuse them from following their routine in monitoring
18 and controlling their services.

19 Q. These £50 fines, including £50 for every time you failed
20 to respond, were bound, were they not, ultimately, to
21 make these contracts uneconomic?

22 A. They certainly didn't help in terms of the economics of
23 the contract, but the contracts had been priced very
24 early on and were, from an economic point of view,
25 producing, I think, if memory serves me right, more on

1 bus revenue and more on concessionary fares
2 reimbursement than we had originally anticipated. And
3 whilst they didn't go towards additional profit, it
4 certainly went a long way towards offsetting some of the
5 additional costs caused by the fines.

6 Q. Is it the case that 2 Travel won these contracts
7 effectively by undercutting the other operators, but
8 then when it came to running the contracts, 2 Travel
9 were simply not sufficiently prepared for the demands of
10 operating these contracts?

11 A. The contract tendering process was, again, prior to my
12 arrival, so it's difficult for me to answer the question
13 on the undercutting. But, obviously, most bus school
14 tender contracts are won or are awarded to the lowest
15 priced tenderer. There is very -- there are very, very
16 few examples where any other criteria are taken into
17 account because, obviously, Councils have restrained
18 budgets. But certainly then, from the Carmarthenshire
19 point of view, with the investment in four brand new
20 vehicles and additional engineering facilities at
21 Llanelli, I would disagree that [inaudible] on a budget
22 of a shoestring was correct. I think quite
23 a substantial investment and input was made into trying
24 to make these successful.

25 Q. You mentioned new vehicles. Those weren't exactly

1 problem-free either, were they? Could you look at E7,
2 360. This is a memo from Alun Price about MAN bus
3 reliability. Is this the new buses that you were
4 talking about?

5 A. They are indeed.

6 Q. "Further to our many discussions regarding reliability
7 of the five new manned buses ...(reading to the
8 words)... manned bus suspension design failure defects
9 which have not been rectified to my satisfaction,
10 despite assurances from the manufacturers."

11 So the buses were not performing as you had hoped?

12 A. No, and I think this goes back to some of the fines
13 imposed by the Local Authority for the wrong type of bus
14 because the contract specified a bus of a certain age or
15 certain maximum age, and because we had invested in new
16 buses to comply with that, the very fact that these
17 buses proved to be unreliable from new, brand new,
18 delivered from the manufacturer, had an impact on our
19 ability to provide the correct vehicle. And obviously
20 these were fitted with destination blinds, all the bits
21 that went towards it. Some of the buses, we had to send
22 out on replacement were older vehicles, had destination
23 boards put in them, which led to quite a few,
24 a substantial amount, of the complaints received from
25 Carmarthenshire County Council.

1 Q. But that was a matter for you to take up with MAN, the
2 bus supplier, was it not?

3 A. I believe as a separate issue there were -- and I'm not
4 sure how far it went, but I know there was a legal
5 challenge to MAN made through the board, I believe,
6 regarding the suitability and -- or the non-suitability
7 of the vehicles provided and where that went, I don't
8 know.

9 Q. In any case, it's absolutely nothing to do with the
10 infringement in Cardiff, is it?

11 A. I don't think at that particular point it was, no.

12 THE CHAIRMAN: Can I just go back? Forgive me, Mr West.
13 Can we go back to E9/484. Let's take 484(y) for this
14 purpose. That's the Carmarthenshire schedule. What
15 I understand you to be saying, sir, is that much of the
16 difficulties you were caused was as a result of the
17 predation by Cardiff Bus on 2 Travel in Cardiff, and
18 that had knock-on effects on the work you were doing?

19 A. It certainly did in the later stages, yes. If I can
20 just clarify, in all honesty, in the early stages,
21 because of the commitment made to Llanelli depot with
22 new vehicles in the new contract, I did not suffer as
23 badly as other areas in the early stages of predation.
24 My problems came from, I would say, more than likely,
25 June, late June, July of --

1 THE CHAIRMAN: Of 2004?

2 A. 2004, yes.

3 THE CHAIRMAN: Let's just look at 484(y), which is well into
4 the late stages because that's December 2004. I just
5 want to try and get a snapshot of what you're saying.
6 I have chosen this one at random.

7 A. Unfortunately, the majority of my letters are missing.
8 Do you have a date for it, sir? (Handed).
9 Thank you.

10 THE CHAIRMAN: We've got five incidents on that page. Just
11 have a look at the details of the report. Are those the
12 sorts of incidents that were affected in any way by
13 Cardiff Bus predation and, if so, how?

14 A. I would say that the operating five minutes early would
15 not have done because that again was a local driver
16 error, mistake. No passenger notice, no, obviously that
17 again, is either my fault or somebody else's within the
18 local area. Incorrect route from Carmarthen, again in
19 all fairness, no, that is something down to a local
20 aberration. Picking up passengers in Llanelli bus
21 station, again, in all honesty, you cannot say that that
22 would be attributable to the predation.

23 THE CHAIRMAN: And the other one arose from a collision with
24 a car, so that wouldn't have anything to do with --

25 A. No, but it would have been something outside our

1 control, as you can see by no action having been taken
2 by the Council.

3 THE CHAIRMAN: Can you find 484(z). Just take that as the
4 second example. 30 December.

5 A. They're failures to operate.

6 THE CHAIRMAN: These are late night buses?

7 A. One of them certainly is. One of them is an afternoon
8 and the other three are morning to midday. They're all
9 failures to operate, effectively. To be honest, apart
10 from the bottom one with a puncture, I have no
11 explanation. They could be attributable to a driver
12 shortage and we couldn't cover a late shift. I honestly
13 don't know, sir.

14 THE CHAIRMAN: Thank you. That's helpful as a snapshot.

15 MR WEST: You were also responsible, I think you said, for
16 the Swansea depot.

17 A. That's correct, yes.

18 Q. Is it right that -- I think Mr Francis told us that there
19 was a dispute with First Group about the Swansea depot.
20 Is that something you had any involvement in?

21 A. A dispute about the depot?

22 Q. Yes.

23 A. Um ...

24 Q. Sorry, Swansea Quadrant bus station.

25 A. Oh yes, sorry, I would have been aware of that.

1 Q. Perhaps I can just show you what Mr Francis said about
2 it if we have the transcripts. Day 4, which is the
3 15th, pages 11 to 12.

4 MR SMITH: We don't have Day 4, Mr West, in our transcript
5 bundle. (Pause).

6 MR WEST: Perhaps I can read out what it has from my
7 machine. It says:

8 "We knew [this is Mr Francis] that there was
9 a possibility that Cardiff Bus would react in the way
10 that they did and the company had experienced some
11 difficulties in Swansea with the First Group. And
12 albeit that they were small, little points, they had an
13 effect on the business. I would sit there, Mr Fowles
14 would come in, and in the central depot in Swansea,
15 a First Group bus would park in front of a 2 Travel bus
16 and the driver would go off for breakfast but he would
17 park in a way that the 2 Travel bus wouldn't be able to
18 get out. As a consequence of that, the window of
19 opportunity in terms of how early you can be and how
20 late you can be, were missed on a regular basis. There
21 were teething problems there. The cost of being in the
22 Swansea depot and the amount that First Group charged
23 were huge, way beyond what they ought to have been, so
24 we had that experience and were a little apprehensive
25 that might happen in Cardiff Bus."

1 There were two problems he identifies. One, very
2 high prices charged by First Group to access the
3 Quadrant bus station; do you recall that being an issue?
4 A. I recall that, yes.
5 Q. And secondly, blocking in 2 Travel's buses. Do you
6 recall that being an issue?
7 A. They could certainly block them in on the bus parking
8 area by being awkward, but in all fairness, as far as
9 stands were concerned, because you drove in and reversed
10 off, unless somebody parked a vehicle in the middle of
11 the bus manoeuvring area, then that didn't happen. But
12 it could possibly have happened in the bus
13 manoeuvring/parking up layover area and had, on
14 occasions, happened, but I don't recall how many.
15 Q. And Mr Francis told the Traffic Commissioner that
16 2 Travel had a potential injunction case against First
17 Group; is that something you were involved in? Again,
18 about access to the Quadrant station?
19 A. I wasn't involved in the injunction process, but I seem
20 to recall Mr Francis making such a statement
21 at the August hearing.
22 Q. For the note, it's at E8/46, C to D, and the reference
23 to the injunction case is 49C to E. We don't need to
24 look at it. But what Mr Francis also told the Traffic
25 Commissioner is that that injunction case was being

1 handled by Darwin Gray. Were you aware of that or
2 involved in that?

3 A. No. As I say, the only real knowledge I had of it was
4 that a statement had been made at the Traffic
5 Commissioner **Public Inquiry** that various injunctions were
6 imminent or likely.

7 Q. And again, you may not be aware of this, but at E4/486
8 there is a letter from Darwin Gray, saying they hadn't
9 been paid for any of the work they'd done at all and
10 that unless they were paid, they were going to come off
11 the record. Again, that's something you were unaware
12 of?

13 A. Totally unaware of. My job was to run bus operations
14 in the western area. I was not a member of the board
15 and whilst I was aware of some financial requirements,
16 I was not party to, if you like, what were board
17 matters.

18 Q. The problems, if there were any, in the Swansea depot
19 would also have affected 2 Travel's ability to service
20 its contracts in Swansea and Carmarthen; is that right?
21 Particularly Swansea.

22 A. I think that would be fair to say, yes.

23 Q. Could I also ask you to look at E7/343. This is a memo
24 from Carl Waters to various people and you're copied in.
25 Do you see that?

1 A. Yes.

2 Q. 12 July 2004:

3 "Following a meeting with Graham and Charles ..."

4 So the meeting was with you and Mr Cartwright:

5 "... please find below a summary of the current bus

6 position vis-a-vis the business plan prepared

7 in February. To achieve the full levels of service as

8 outlined in the business plan ..."

9 And you set out there what is required. For

10 Swansea, seven staff, 16 vehicles. Can you help us as

11 to what "Schools TF" might be?

12 A. To be honest, no.

13 Q. Or "VOR"?

14 A. Vehicle off road.

15 Q. Cwmbran you weren't responsible for. And Swansea, he's

16 saying there, you are short seven staff and 16 vehicles.

17 That was in July. Is that prior to the MAN vehicles

18 being acquired?

19 A. No. This would have been after because the vehicles

20 were [inaudible].

21 Q. And what about the Gurkhas? Can you recall when they

22 were brought into the company?

23 A. That was an ongoing situation, which I know had started

24 with visa applications, et cetera, prior to my arrival.

25 And I believe they started coming in -- the first

1 gentleman I met would have been very early on,
2 possibly April/May, but I believe in any numbers it
3 would have been towards the end of June, July.

4 Q. And you see from the company as a whole, he says you are
5 short of 18 staff, 26 vehicles.

6 A. Yes.

7 Q. Again, was that something you were aware of, that there
8 was that shortage of drivers and vehicles?

9 A. It's difficult to answer, and I'm not trying to be
10 evasive, in that if you reflect, the company's make-up
11 at that point was effectively coaching and buses.
12 I can't say or recollect that from a bus point of view,
13 we were ever vehicles short in terms of -- now, bear in
14 mind that in amongst that mix there would have been 20
15 or 30, possibly 40, coaches. I can only answer it from
16 a bus operations point of view and we were never
17 16 vehicles short in terms of requirement.

18 Q. I don't think that can be Mr Waters' understanding
19 because he says:

20 "Find below a summary of the current bus position
21 ..."

22 Then it says:

23 "... vis a vis the business plan prepared in
24 February."

25 That was the PwC business plan which was to do with

1 the new bus routes?

2 A. I accept that, but my recollection is we were never
3 short of vehicles. The only other thing -- and I think
4 it's referred to in my witness statement previously --
5 is that I was brought in with the intention of having
6 all of our Swansea and Llanelli services up and running
7 correctly by September 2004. I believe the business
8 plan would refer to that situation. Now, in July, we
9 might not yet have had the vehicles in place for
10 the September commencement. So in relation to the
11 business plan, we might have been short of vehicles. In
12 operational terms, we weren't.

13 Q. What he's saying here is that this is the level of
14 resource which would be required to provide the routes
15 referred to in the February business plan rather than
16 the routes you were actually providing at that time?

17 A. Yes. I thought that's what I had said, that in July,
18 we weren't operating the stuff. I was intending to
19 commence from September. Therefore the vehicles would
20 not have been in our possession, because you don't pay
21 finance charges before you actually need them and that
22 according to the business plan which encompassed
23 the September operation, we may well have been 16 short.
24 But from an operational point of view in July, from
25 recollection, I had adequate vehicles to attempt to

1 maintain our service as it should be.

2 THE CHAIRMAN: Can you just look at the bottom half of 343,
3 the part starting "In addition", which is followed by
4 "Additional Cardiff requirements."

5 A. Yes.

6 THE CHAIRMAN: What does all that mean? Just read it
7 through to yourself, first of all, and then tell the
8 tribunal what you understand that section to mean, down
9 to "This will enable all services outlined in the
10 business plan to be operated". (Pause).

11 A. Again, I think this was a specific referral to what the
12 business plan outlined, as to where we were at that
13 point. I have to be a bit vague, sir, because apart
14 from supplying vehicles and drivers to Cardiff in the
15 latter stages, I wasn't responsible for running
16 operations in Cardiff. But the way I read that is that
17 the business plan said we should be running X --

18 THE CHAIRMAN: So you needed eight more vehicles in Cardiff
19 in the future? That's your understanding?

20 A. That is the way I would read it because it all refers to
21 the business plan rather than the operation at that
22 date.

23 THE CHAIRMAN: Thank you.

24 MR WEST: Did you know that 2 Travel had registered
25 a service number 258, Pentwyn, to begin in April 2004,

1 the commencement of which was delayed until November?

2 A. I became aware of it quite well into the whole process,
3 but again, I can only reiterate in the early stages, my
4 sole responsibility was the Swansea and Llanelli area
5 and that in the very early days, I was aware of Cardiff
6 and that, effectively, was it. The operations were not
7 my responsibility and neither was the planning.

8 Q. Now, you say that you read the flotation document and
9 business plan before you joined 2 Travel.

10 A. Yes, I read part of the flotation document. It's
11 hundreds of pages long but I read certain sections of
12 it.

13 Q. That document was over a year old at this stage in
14 January 2003; is that right?

15 A. Yes. More than likely, yes.

16 Q. And the business plan -- I'm not entirely sure which one
17 you're referring to, but I think that was from around
18 the same time or even beforehand?

19 A. It would have been the plan that encompassed my arrival
20 and going forward, if you like.

21 THE CHAIRMAN: Mr West, choose your moment for
22 a transcription break.

23 MR WEST: I'm very nearly finished with the witness.

24 THE CHAIRMAN: Right, okay.

25 MR WEST: Was that the PwC business plan that you're

1 referring to?

2 A. I was involved in the PwC business plan in the latter
3 part of 2004 because obviously the input, a large part
4 of the input was based on actual figures of the Swansea
5 and Llanelli operation, proving effectively, we would
6 get to where we said we were going.

7 Q. I think you have said you were not on the board so you
8 were not familiar, if you like, with the overall
9 financial position of the business?

10 A. No, that's correct.

11 Q. You also say in your statement that Cardiff was an
12 essential part of the business plan, but the Gurkhas,
13 who were recruited by the company, none of them were
14 ever sent to drive in Cardiff; is that right?

15 A. That's quite correct. A decision was made, as the
16 Gurkhas were coming into the company in strength, that
17 we would, in fact, keep them in Llanelli and Swansea.
18 There are several reasons. One is that they started
19 their training in that area and they fitted in
20 exceptionally well, they got on with the local people,
21 and I think also that there was a genuine underlying
22 concern that had we sent Gurkhas to Cardiff and they had
23 experienced some of the aggressiveness that was
24 expressed towards our existing drivers, Gurkhas might
25 well, bearing in mind their background and training,

1 education and training and getting over to the driving
2 staff the importance of maintaining timetables,
3 reliability, showing the correct destination and showing
4 them the impact that -- any movement away from the
5 correct operating procedure has an impact on the
6 company. Particularly easy to exhibit in
7 Carmarthenshire because of the level of fines being
8 imposed upon the company.

9 Q. And who was responsible for that driver education?

10 A. Ultimately myself, I should imagine. There were various
11 other people that would have been involved with it, more
12 senior drivers going out with drivers, but the ultimate
13 responsibility would have been mine in the Swansea and
14 Llanelli area.

15 Q. Was that education put in place?

16 A. It was ongoing, is the best way to describe it, because
17 we had a turnover of staff, which is usual in the bus
18 industry, and in the latter stages the Gurkha
19 contingency came into it, and in all fairness, they took
20 a little longer to understand some of the intricacies.
21 But once they grasped it, because of their background in
22 receiving training, they tended not to forget and got
23 things right going forward.

24 Q. What was the effect of the education, this sort of
25 driver education you were putting in place?

1 A. In the main I think there was an improvement and it's
2 shown in the relationship we maintained, right almost to
3 the end, with Carmarthenshire County Council, in that
4 they became more understanding -- I can't say they
5 became more lenient because they're not lenient to
6 anybody but we certainly had a very good working
7 relationship. I was on first name terms with all of the
8 transportation department. Councillors were on our
9 side, again, particularly after the introduction of
10 Gurkhas, because everything seemed to improve to
11 a certain extent, going forward. There was more
12 interaction between our customers because there was an
13 interest in the Gurkhas themselves. I think the whole
14 thing had a very positive effect on the operation in the
15 area.

16 Q. And you said that the predation affected your
17 activities.

18 A. In the latter stages, yes.

19 Q. Is there a particular time in the period when you can
20 say when it started to affect you?

21 A. I could imagine again -- it's coincidental to a certain
22 extent, in that it's around about the time of the
23 arrival of the Gurkhas. It created two problems,
24 in that I had staff, whilst they turned out to be
25 ultimately, exceptionally good, were slightly more

1 problematic to train, in that they didn't know the area,
2 they didn't know the terrain. And I was releasing more
3 and more of our local drivers, for want of a better
4 term, to cover the Cardiff situation. I would say
5 June, July in particular, is when I, as an operations
6 manager for Swansea and Llanelli, started to really
7 suffer. And then at the time I was devoted to sorting
8 out matters that weren't mine, for want of a better way
9 of putting it, despite the fact I was involved in the
10 company, and it just got worse in terms of my input,
11 into something outside of my area.

12 Q. Could I ask you to explain what that means in real
13 terms? What is the task that you were taking on
14 day-to-day that was not yours, as it were, to pick up
15 your phrase?

16 A. Right. One of the problems created by the situation in
17 Cardiff was that if you put your hand on your heart, the
18 Cardiff manager didn't really know from day-to-day
19 whether all his staff would turn up because they might
20 have gone home yesterday afternoon and decided not to
21 come in this morning. So one of his jobs was to liaise
22 with everybody else within the company as early as
23 possible in the morning, so he knew on a daily basis
24 where he was with staff requirements in particular. And
25 then we would try and allocate any spare staff or

1 allocate other staff to cover duties in my area, to
2 release experienced staff into the Cardiff operation.
3 And that sometimes resulted in -- quite often resulted
4 in myself driving local bus services in the
5 Carmarthenshire area which, obviously, detracted from my
6 own management time, as is displayed, perhaps, by my
7 lack of response to Carmarthenshire County Council.

8 There was other planning of: how do I cover tomorrow
9 if I have to send driver 1, 2, 3 to Cardiff? So I had
10 to be one step ahead of the game so that I could, if
11 need be, release staff to Cardiff and that, in the main,
12 happened on a daily basis.

13 Q. How long was it taking you to take drivers from Swansea
14 to Cardiff then?

15 A. The physical transfer of drivers from Llanelli to
16 Cardiff is about an hour each direction. But in terms
17 of planning, it could be anything from ten minutes, if
18 it was a really easy day the following day, because
19 I happened to have spare staff, I happened to have less
20 people on holiday, up to an hour and a half, two to
21 three hours a day, to make sure my operation would
22 suffer as little or not at all, if possible.

23 Q. Was anyone else involved in your Llanelli or Swansea
24 depots in the same way?

25 A. I suppose everybody was. Anybody involved in

1 operations. We had depot controllers, our engineering
2 staff were affected because there were other
3 requirements. It just made the whole operation in
4 Swansea and Llanelli far more difficult because we had
5 less people available to do what would be the day-to-day
6 things: change vehicles over for engineers to work on
7 them, meal breaks in Swansea. All the bits that go
8 around the core of running a bus operation, because
9 there's quite a lot goes on behind the scenes that some
10 people don't appreciate. There's checking of revenue,
11 there's trying to keep documentation up-to-date with
12 Councils, et cetera, et cetera. There's financial
13 reporting documents you have to complete, and these are
14 all the things that tend to start to slip when your mind
15 is being taken off your core responsibility.

16 Q. How would engineering be affected by these matters?

17 A. I think it was a general: we are being beaten over the
18 head with a big stick by somebody else. It's just
19 a general -- an almost depressed feeling. The traffic
20 is suffering and, as a consequence, there's a perception
21 that everybody's going to suffer, ultimately, if this
22 problem is not overcome. And as I say, the other
23 problem is that an engineer -- not all engineers can
24 drive buses, not all engineers have PCV licences, so
25 they would rely on traffic staff. If they finished

1 service on a vehicle at 12 o'clock, they have another
2 four hours work, service another vehicle. If we have no
3 staff to fetch a vehicle, they sit around twiddling
4 their thumbs, for want of a better term, and it can be
5 frustrating, particularly if they know that's being
6 caused by something else.

7 Q. You were asked lots of questions about why you hadn't
8 responded to some of these matters.

9 A. Yes.

10 Q. Can you explain, what is involved in making that
11 response? Is it just a question of your sitting down
12 and writing something. What's the process?

13 A. If I wanted to admit, without investigation, that
14 we were at fault, yes, I could have written a letter
15 saying: guilty. But you tend to have to look at ticket
16 machine information that was available to you, look
17 at the drivers' daily work, check to see if he has made
18 any comments on his daily work ticket about problems
19 he'd experienced in the day. Depending on the nature or
20 the severity of the complaint, you'd want to interview
21 the driver, and then you would make up a response from
22 that information that you've dug out before going back
23 to the Council. Because obviously, in some cases there
24 are defences. It's not a case of saying: no we didn't
25 or yes we did, there may be mitigating circumstances,

1 there may not be. And I think you'll see from some of
2 my responses, where there were none, I admitted so;
3 where there were, I put them forward, and in quite a few
4 cases in here, they accepted the circumstances and no
5 penalties were imposed.

6 Q. Whose task was it to prepare that response?

7 A. Ultimately mine. The depot controller made the initial
8 interview with the driver for me, but the information
9 would come back to me and the response was mine.

10 Q. And how did that process fit in with all the other
11 management responsibilities discussed?

12 A. Obviously, as the situation in covering staff and other
13 problems became greater as time went on, and more and
14 more of my time was taken up doing things outside of my
15 normal remit, then this is the sort of thing that
16 suffered, in that whilst there could be a financial
17 penalty involved, the other financial penalties, such as
18 not running services, possibly in other areas, could
19 have been far more substantial. So every effort was
20 made, bearing in mind the financial importance of the
21 Cardiff plan to the overall company situation, that
22 Cardiff would be quite well prioritised.

23 MR BOWSER: Thank you very much indeed, Mr Jones. There
24 may be some questions from the tribunal.

25 THE CHAIRMAN: No. Thank you very much, Mr Jones. You can

1 leave if you wish to.

2 (The witness withdrew)

3 MR BOWSHER: Our next witness is Mr Conway.

4 MR DANIEL SIMON CONWAY (affirmed)

5 Examination-in-chief by MR BOWSHER

6 MR BOWSHER: I think you'll need C2, Mr Conway. What are
7 your full names?

8 A. Daniel Simon Conway.

9 Q. And your address?

10 A. My professional address is [address given].

11 Q. Thank you. There are four statements from you. Maybe
12 I can take this in accelerated fashion. First at
13 tab 15, page 181. That runs through to page 184, where
14 there is a very faint mark. Does that look like your
15 signature?

16 A. Yes.

17 Q. Can I do the same then for tab 16, 202 to 203. Again,
18 is that your signature?

19 A. Yes.

20 Q. 204 to 207. Again, is that your signature on 207?

21 A. Yes.

22 Q. Then finally, 208 to 210. Is that your signature on
23 210?

24 A. Yes.

25 Q. Have you had a chance to review those four statements

1 before giving evidence today?

2 A. I have.

3 Q. Do you have any corrections you want to make to them?

4 A. No.

5 Q. Are they true to the best of your knowledge and belief?

6 A. They are.

7 MR BOWSHER: If you wait there, there will be some
8 questions.

9 Cross-examination by MR WEST

10 MR WEST: Good morning, Mr Conway.

11 A. Good Morning.

12 Q. Now, you work for BDO; is that right?

13 A. Correct.

14 Q. And you assist Mr Malcolm Cohen, who's the liquidator of
15 2 Travel?

16 A. Yes.

17 Q. 2 Travel, you may be aware, has recently amended its
18 claim to claim various creditor sums which are said to
19 have arisen as a result of the insolvency. Are you
20 aware of that?

21 A. I am.

22 Q. If you can look at the exhibit to your first statement,
23 tab 15, page 8 of the exhibit. One sees there the
24 various debts in the insolvency at this stage, divided
25 into three categories. "Ongoing trade creditors, lease

1 creditors, then "Creditors' resulting in insolvency."
2 It's that last category which forms the subject of the
3 recent amendment. Were you aware of that?
4 A. Yes.
5 Q. And the largest entry by far on that category is
6 Chrysalis VCT plc for £691,000. Do you know what that
7 entry is?
8 A. I do.
9 Q. It's the 8 per cent loan stock; is that right?
10 A. Yes.
11 Q. It consists of two elements, as we can see, if you go
12 forward on page 12 of the exhibit. Item 6 on this form:
13 "Loan stock of £600,000. Loan advanced on 21/3.
14 Interest rate 8 per cent. Unpaid interest accumulated
15 since 1/8/03."
16 So there's the £600,000 of, if you like, principal
17 amount, and the £91,000 accrued interest; is that right?
18 A. Correct.
19 Q. And the £91,000 of interest, it appears, has gone unpaid
20 since August 2003; is that right?
21 A. It would appear so.
22 Q. So would you agree with me that that is not a claim?
23 That interest claim for £91,000 which has arisen is
24 a result of the insolvency?
25 A. It's monies that have accrued at the time of the

1 liquidation.

2 Q. But they were monies which 2 Travel owed whether it went
3 into liquidation or not?

4 A. Correct.

5 Q. So far as concerns the £600,000 of loan stock, were you
6 aware that VCT, the loan stock holder, had the right at
7 maturity, to convert the loan into ordinary shares in
8 2 Travel?

9 A. Yes. They have the right.

10 Q. In other words, to convert debts to equity effectively?

11 A. Yes, or for repayment.

12 Q. And it was up to VCT to decide which one it wanted?

13 A. Correct.

14 Q. The maturity date, perhaps we can look at this in E3,
15 page 199. The top of the page, this is talking about
16 the loan stock:

17 "As to redemption, redeemable at the option of the
18 company [that's 2 Travel] at any time, in tranches of
19 £50,000 ..."

20 So 2 Travel can opt to redeem it by repaying the
21 loans:

22 "... subject to the consent of 75 per cent of the
23 holders of the loan stock. Any loan stock not already
24 redeemed by the company must be redeemed on
25 31 January 2008."

1 So it looks like that is the maturity date:

2 "As to interest ...(reading to the words)...
3 conversion, converted with multiples of £1,000 into
4 ordinary shares, on the basis of 25 ordinary shares for
5 each £2 of loan stock, ie a price of 8p a share."

6 So it was up to VCT to decide on, it seems, 31
7 January 2008, whether to have repayment of the £600,000
8 or convert it into shares at 8p per share; is that an
9 accurate summary as far as you are aware?

10 A. It seems so.

11 Q. But VCT might well have decided to opt for repayment of
12 the loan?

13 A. That depends on their investment strategy. I can't
14 speak for VCT, but yes, they've got two options.

15 Q. It depends mainly, doesn't it, on the prevailing share
16 price of 2 Travel at the conversion date? They have the
17 right to, effectively, purchase shares at 8p. If the
18 shares are trading on the ordinary market at less than
19 8p, they're not very likely to exercise that right, are
20 they?

21 A. Correct.

22 Q. Were you aware --

23 THE CHAIRMAN: They are a venture capital trust, so they
24 will be judging shares against debt as part of their
25 normal activity?

1 A. Yes.

2 MR WEST: Were you aware of how 2 Travel's share price
3 performed during the life of the company?

4 A. I'm not.

5 Q. Just for the note, at the date of suspension of
6 2 Travel's shares, the shares were trading at 1.8p, and
7 in August 2004, E7/454, the NOMAD was proposing deeply
8 discounted underwritten rights issue at 2p per share.
9 Were you aware of either of those facts?

10 A. I'm not aware of that, no.

11 Q. But if, in any event, the share price at the redemption
12 date was less than 8p, the likelihood is that the full
13 £600,000 would be repayable on that date; is that
14 correct?

15 A. Correct.

16 Q. In which case, again, this would not be a debt which
17 arose by reason of the infringement, but a debt which
18 arose in the ordinary course?

19 A. If the value was less than 8p, yes.

20 Q. Could we look at tab 20 of your fourth statement.

21 THE CHAIRMAN: Flag 18.

22 MR WEST: Yes. Sorry, it's paragraph 20 of your third
23 statement, flag 17. You say:
24 "Interest is payable on debts in liquidation under
25 the Insolvency Act."

1 So you have claimed as a sum which arises by reason
2 of the liquidation, the 8 per cent interest on all of
3 the debts that we saw a minute ago in the three
4 categories; is that right?

5 A. If all debts are paid in full, then interest is paid at
6 8 per cent on those debts.

7 Q. Now, the loan stock carried interest anyway at
8 8 per cent, did it not? We've just seen that.

9 A. Correct.

10 Q. So as far as that £600,000 is concerned, the 8 per cent
11 interest would have been repayable anyway, whether or
12 not the company was insolvent; is that right?

13 A. You're partly right. From January 2008, interest at
14 8 per cent would have still accrued until whenever
15 a dividend may be paid to creditors. So for 2.5 years,
16 yes, you are correct. For the remaining, let's guess
17 five years, if there is to be a payment to creditors in
18 full, then there will be interest at 8 per cent added to
19 that.

20 Q. In any case, up to the conversion date, that's not an
21 additional loss arising by reason of the liquidation?

22 A. Not up to January 2008, but after that, it will be in
23 the position of.

24 Q. The second category of debts we saw in that first
25 document was to do with hire purchase creditors; is that

1 right?

2 A. Yes.

3 Q. So that's financing on buses and so on?

4 A. Yes. Lease payments.

5 Q. Which would also carry interest in the ordinary course;
6 is that right?

7 A. Some do, some don't.

8 Q. You have not carried out any calculation to demonstrate
9 the extent to which the 8 per cent interest payable
10 in the insolvency exceeds the interest which would have
11 been payable anyway under the hire purchase agreements?

12 A. No, we have not.

13 Q. So far as concerns the principal sums due under the hire
14 purchase agreements, you say that that's a debt arising
15 because of the insolvency, I think, because the
16 insolvency was an event of default which led the future
17 payments to crystallise; is that right?

18 A. That's partly what we've said. Part of -- and
19 we haven't looked at the claims in detail because no
20 liquidator would do so until a dividend is payable,
21 otherwise they're spending time doing something that
22 wouldn't benefit the body of creditors. But there will
23 be elements of those claims that will be the lease
24 payments, the remaining term of the lease. So if
25 a lease has three years left, the lessor would claim for

1 those three years worth of rental payments and the
2 likelihood is they have not mitigated those claims at
3 the present time.

4 Q. And your calculation doesn't show any credits for
5 mitigation amounts; is that right?

6 A. We haven't done the analysis because we haven't
7 advertised for creditors' claims done and those intended
8 dividends. So what we have at the moment are pieces of
9 paper from creditors as proof of debt. Some haven't
10 filed proof of debts so we just have correspondence that
11 we have and we accumulate that and we put together
12 a schedule for the benefit of the tribunal.

13 Q. The ability of the finance companies to mitigate their
14 losses would depend on the condition of the vehicles; is
15 that right, in part at least?

16 A. In part, yes.

17 Q. Have you seen the evidence which was adduced in support
18 of the winding up petition?

19 A. I've seen some of the evidence previously.

20 Q. Does that include the evidence showing that the buses
21 were in poor condition because, so the evidence said,
22 they had been cannibalised for parts?

23 A. I haven't read that recently so I'm not aware of that.

24 Q. Can we look at paragraph 9 of your third statement. You
25 refer in (c) there to the liquidator's fees and expenses

1 as, again, another cost which have said to have arisen
2 on liquidation. And you have given a breakdown,
3 I think, of that as time costs to date -- this is
4 paragraph 16 -- at the date of this statement of
5 £343,000, plus further potential time costs of another
6 £80,000; is that right? Sorry, £50,000 to £70,000. Was
7 that your estimate?

8 A. Yes.

9 Q. Just before I ask a question about it, can we go back to
10 your first statement in tab 15. This statement related
11 to an application made by Cardiff Bus, a statement of
12 affairs, if you like, or debtors and creditors in the
13 liquidation; is that right, do you remember that?

14 A. Yes.

15 Q. What you say at paragraph 8 is:

16 "As made clear in the covering letter, no such
17 summary existed in 2 Travel's own records."

18 So, effectively, you had to put it together
19 specially, in response to the application; is that
20 right?

21 A. That is correct.

22 Q. And at paragraph 10 you say that "certain steps in the
23 liquidation haven't yet been undertaken." No
24 advertisements, no adjudication process and so on. No
25 notice of intended dividend. And as we just saw

1 a minute ago, you hadn't put together a statement of
2 affairs either; is that right?

3 A. It's not the liquidator's duty in a compulsory
4 liquidation to put together a statement of affairs.

5 Q. But there was no statement showing the debit and credit
6 sums in the estate?

7 A. One hasn't been prepared by us. It's not for us to
8 prepare.

9 Q. Rather surprising, isn't it, Mr Conway, that the
10 liquidators have run up £343,000, it appears, doing
11 absolutely nothing?

12 A. The liquidators haven't done absolutely nothing. We can
13 provide time cost analyses of the work that has been
14 done. You'll appreciate, obviously, that when we were
15 first appointed, we had to take control of whatever we
16 could take control of. We deal with creditors,
17 shareholders. There are enquiries that are made. We
18 deal with correspondence. We also had to deal with the
19 OFT inquiry, and we have spent, as you'll imagine, a lot
20 of time dealing with this claim and the strategy around
21 this claim. And it's a lot of strategic planning and
22 liaison with solicitors to understand the best way to
23 approach a claim of this nature.

24 Q. So a lot of this is time which has been spent in
25 connection with the prosecution of this claim rather

1 than with the administration of the estate more
2 generally?

3 A. Some is, some isn't.

4 Q. If you look at paragraph 12 of your fourth statement at
5 tab 18, you say there:

6 "Forensic IT department's notes show ...(reading to
7 the words)... not possible to extract any data from
8 them."

9 There are some documents -- I may have slightly
10 different numbers, but in the exhibit -- I think it's
11 four pages from the last page. Page 227 in mine. It
12 may be slightly different in yours. It says, "Room 5"
13 at the top.

14 A. Right.

15 Q. "No hard disc"?

16 A. Yes.

17 Q. And four further pages back, page 223 in mine, we see
18 again a reference to "No hard disc"?

19 A. Yes.

20 Q. And the previous page, "Room 1, no hard disc". Is it
21 right that these documents date from October 2005 --
22 sorry, do you know when these documents date from?

23 A. I think they date from, from reading the
24 document, October 2005.

25 Q. The first that Cardiff Bus knew about this was your

1 fourth statement of 27 February 2012; is that right?

2 A. The first that Cardiff Bus knew about what?

3 Q. The fact that two of the computers had no hard discs in
4 them?

5 A. I understand that Cardiff Bus had been aware and we'd
6 advised the OFT back in 2006 that three out of the seven
7 computers weren't readable and had no useful
8 information. So -- and that was then as far as
9 I understand, anyway. In 2007 there's a statement of
10 objection that stated that fact. So hopefully,
11 Cardiff Bus would have been aware of that. And I think
12 in our disclosure statements, when we did the E
13 disclosure, from my recollection, it was noted that
14 three of the computers were either corrupt or
15 unreadable.

16 Q. But if you look at paragraph 12 of your fourth
17 statement, tab 18, you say there specifically:
18 "The forensic IT department's notes show the
19 computers did not contain hard drives."
20 That's information which had not specifically been
21 told to Cardiff Bus before.

22 A. Okay.

23 Q. You then give an explanation of what may have happened
24 to them in paragraphs 13 and 14. In 13 you say that --
25 sorry, we had better read this:

1 "I asked my colleague, Bruce Keeble, a data
2 collection specialist, to contact Stephen Baxter
3 ...(reading to the words)... no copies of the extracted
4 computerised documents had been retained. Any other
5 records relating to 2 Travel were destroyed in 2009.
6 The Official Receiver's file could not be located
7 ...(reading to the words)... I understand from
8 Bev Fowles that 2 Travel did not remove the hard
9 drives."

10 The clear implication of what you are saying here
11 is that the Official Receiver had removed and destroyed
12 the hard drives. Would you agree with that?

13 A. I wouldn't agree with that. I'm just stating facts as
14 they came back. You're making an inference from that.
15 It may have been that those hard drives weren't there
16 when they were collected. But no one can say, based on
17 what is put before us, when they were removed.

18 Q. You were not party to the conversation with Mr Baxter;
19 is that right?

20 A. I was not.

21 Q. So you're dependent on what Mr Keeble told you about
22 that; is that correct?

23 A. That's correct.

24 Q. You haven't exhibited any notes of that conversation.
25 Do you know if any exist?

1 A. I don't know.

2 Q. Did BDO make it clear to Mr Baxter that it would be
3 suggested to this tribunal that the hard drives had been
4 removed and destroyed by the Official Receiver?

5 A. Can you repeat that question?

6 Q. Did BDO make it clear to Mr Baxter in this conversation
7 that it was going to be suggested that the Official
8 Receiver had removed and destroyed these hard drives?

9 A. As I said before, I don't think we've suggested that at
10 all. We've said when we inherited and taken control of
11 the computers, there were two hard drives missing. When
12 they would have gone missing, I don't know.

13 Q. You said earlier that the liquidator has £343,000 of
14 time costs on the clock. Is it right that unless
15 2 Travel succeeds in this claim, those fees will go
16 unpaid?

17 A. That is correct.

18 Q. So they're not covered by an ATE policy or anything of
19 that nature?

20 A. No.

21 Q. And the result of that is that BDO, as the liquidators,
22 have a direct interest, don't they, in the outcome of
23 this case?

24 A. The fees of the liquidator will be approved by the
25 creditors that were [inaudible].

1 Q. And unless 2 Travel wins this case, they won't be paid
2 ever?

3 A. That's the same in many liquidations and administrations
4 where you don't have funds in the estate when you take
5 on the job and then you make a decision as to the best
6 way to take that case forward.

7 Q. Mr Baxter has ultimately provided an e-mail in which he
8 refutes the suggestion, if indeed it be such, that the
9 OR has lost the hard drives. I'm not sure there's any
10 point taking you to that in the light of what you said.

11 THE CHAIRMAN: Well, you're not suggesting the OR lost the
12 hard drives, are you?

13 A. I'm not suggesting that, no.

14 THE CHAIRMAN: You just don't know?

15 A. We don't know when they went missing. They weren't in
16 our possession, so I can only give a view
17 from October 2005, that they hadn't gone missing in our
18 possession. From what I understand, the staff of
19 2 Travel would be able to advise better than I can.
20 Obviously, the Official Receiver got appointed on
21 20 May 2005. They would have gone down on site first.
22 Whether they were first when they went on site, I cannot
23 give a view.

24 MR FREEMAN: But you're confident it wasn't you?

25 A. Very confident.

1 MR WEST: I think we saw that in the October 2005 memos,
2 which said there were no hard drives in the computers
3 in October 2005. Part of the reason this came about, as
4 is explained in your second statement at tab 16, was
5 because Mr Fowles said that 2 Travel did have management
6 accounts. Whether they still exist or can be traced is
7 another thing. So that was part of the reason why, as
8 it were, 2 Travel and its advisers went back to look
9 at the computers, to see if they could extract any more
10 documents from those. Is that a fair summary?

11 A. Yes, it's correct to say the tribunal requested at the
12 CMC on 16 December ...

13 THE CHAIRMAN: Your voice is dropping again and I'm feeling
14 sorry for that gentleman.

15 A. Sorry. The tribunal requested on 16 December, or they
16 suggested they were surprised at the limited information
17 that was in 2 Travel's records.

18 MR WEST: You may not have been here, but Mr Fowles
19 confirmed in his evidence that there were no management
20 accounts in 2 Travel from July 2004 onwards. That's
21 day 2, page 95, lines 12 to 15. So in a sense, the
22 reason why we've gone back to -- or you have gone back
23 to look at these computers again to see if you can find
24 the missing management accounts, is a bit of a wild
25 goose chase, isn't it, because Mr Fowles has now

1 confirmed there were no such documents?

2 A. We went back just to ensure fully that we had everything
3 there and that, as the tribunal had asked, we made sure
4 that we did our job properly.

5 MR WEST: I have no further questions.

6 MR BOWSHER: I have no further questions for Mr Conway.
7 Does the tribunal have any questions?

8 THE CHAIRMAN: Thank you very much, Mr Conway.
9 (The witness withdrew)

10 THE CHAIRMAN: Do you want a small pause? You're showing
11 small pause body language.

12 MR BOWSHER: Am I? Sorry. Mr Conway should be released.
13 That's cause for a small pause, and I have to say, if
14 I could ask Mr Conway to be released, I hadn't realised
15 he was on a summons. What I was looking for was just to
16 pick up some documentary matters, in particular,
17 questions raised by the tribunal last week.

18 There was a request, I think from Mr Smith, for
19 a list of internal 2 Travel documents discussing the
20 predation. That list has been prepared over the weekend
21 and what has also been prepared with it, although
22 I haven't had a chance to look through it myself, but it
23 exists, is a file E21, which actually puts the relevant
24 documents into a convenient little file. Those can no
25 doubt be supplied over lunch. The tribunal may already

1 have E21.

2 CLERK OF THE COURT: We don't seem to have E20.

3 MR BOWSHER: E20 is to be the like file providing the board
4 minutes, but as I understand it, due to technical
5 glitches, the production of that file has taken longer
6 than expected.

7 THE CHAIRMAN: I have, for the first time in my hand, E21.

8 MR BOWSHER: Sir, those are the documents discussing
9 predation and the impact upon 2 Travel. E20, when
10 you have it, I hope after lunch, will be the assembled
11 board minutes. You already have the list for E20
12 because I think we supplied that last week, but you'll
13 actually have the file with them in.

14 If I can just take instructions on one point.

15 (Pause).

16 Those then, are our factual witnesses. We obviously
17 have Mr Good, who is an expert witness, but as the
18 timetable was originally structured, we were going to
19 have expert witnesses after all the witnesses of fact.
20 So I'm not closing my case, and there's part of my case
21 yet to come, but on the timetable, I think we now pass
22 to the witnesses of fact of Cardiff Bus.

23 MR FLYNN: In which case, sir, we call Mr David Brown.

24 MR DAVID BROWN (sworn)

25 Examination-in-chief by MR FLYNN

1 MR FLYNN: D1, if Mr Brown could please be handed D1.
2 Mr Brown, could you please give the tribunal your
3 full names?
4 A. David Ivar Brown.
5 Q. And your position?
6 A. Is managing director.
7 Q. Of Cardiff Bus. Now, you have D1 in front of you.
8 You've made three witness statements in these
9 proceedings. We just need to identify them formally.
10 Your first witness statement is in tab 1, and if you
11 turn to page 27 --
12 A. I don't have page numbers in this.
13 Q. You don't have page numbers? That's not very helpful.
14 I can only tell you that it's at page 27.
15 A. At the end of that document, there is a signature from
16 myself, dated 7 December 2011.
17 Q. That's the one, and that's your signature. Very good.
18 If you turn to tab 2, do you see there your second
19 witness statement?
20 A. Yes.
21 Q. I don't know if you have page numbers in that?
22 A. I do on this.
23 Q. On the sixth page --
24 A. That is my signature.
25 Q. And the date of?

1 A. 23 December 2011.

2 Q. And in tab 3 in the same file, is that your third
3 witness statement in these proceedings?

4 A. Yes.

5 Q. And on the third page of that, if you have numbering,
6 do you see your signature?

7 A. I do.

8 Q. And a date?

9 A. 25 January 2012.

10 Q. In your fifth witness statement at paragraph 5, you say
11 you make the statement to correct an error in your first
12 witness statement. Do you see that?

13 A. My third witness statement.

14 Q. Sorry, the fifth paragraph I meant in your third witness
15 statement, paragraph 5. You say:

16 "I make this statement to correct an error in my
17 first witness statement. I confirm that when I made my
18 first witness statement, it was true to the best of my
19 knowledge and belief."

20 A. That is correct.

21 Q. In paragraph 6 you identify the bit that you need to
22 correct.

23 A. Yes.

24 Q. Paragraph 96 of your first witness statement.
25 Do you see that?

1 A. Yes.

2 Q. In the sixth paragraph, you refer to paragraph 96 and
3 you explain what it is that you need to correct.

4 A. Yes, that's correct.

5 Q. In paragraphs 7 to 13 of that witness statement, you
6 explain the documents that you are attaching to that
7 witness statement.

8 A. Yes, I do.

9 Q. And in paragraphs 14 and 15, you explain your
10 recollection of those matters and you state at 15:

11 "There is nothing in the documents attached to my
12 third witness statement that cause me to change my
13 recollection. As set out in my first witness statement,
14 I believe the white services to be fully compliant with
15 competition law at the time of their launch and
16 subsequent operation. There is no way that I would have
17 condoned the launch and operation of the white services
18 if I had thought that they were illegal."

19 A. That is correct, yes.

20 Q. Now, Mr Brown, I've taken you through that for this
21 reason. One normally asks in respect of each witness
22 statement: is it true to the best of your knowledge and
23 belief? What we have here is a correction of your
24 first. So subject to the matters set out in your third
25 witness statement, is all the evidence that you have

1 given, true to the best of your knowledge and belief?

2 A. Yes, it is.

3 Q. And do you have anything that you wish to add to that at
4 this point?

5 A. No.

6 Q. Then Mr Brown, Mr Bowsher will have some questions for
7 you.

8 Cross-examination by MR BOWSHER

9 MR BOWSHER: Mr Brown, could we start with a few formal
10 things. If we can start with file E11, page 399. This
11 is a document -- well, you won't have seen the letter at
12 page 399 before, but you will have seen the document
13 that starts at page 400.

14 A. Yes.

15 Q. This is the decision finding that Cardiff Bus had
16 infringed the Competition Act.

17 A. Yes.

18 Q. And your counsel has, on more than one occasion in this
19 hearing, said that Cardiff Bus accepts the findings of
20 infringement in this decision; is that correct?

21 A. Yes, that's correct.

22 Q. There's quite a lot of material in here. I hope we can
23 do this fairly quickly. If we turn to page 560, we can
24 see paragraph 7.2, although a hole punch has gone
25 straight through the paragraph number. But it's the

1 second paragraph:

2 "The OFT considers that for the reasons set out in
3 this chapter, there is sufficient evidence to
4 demonstrate that Cardiff Bus's conduct was predatory and
5 thus an abuse of its dominant position."

6 That clearly is the infringement, which you accept
7 as Cardiff Bus; is that right?

8 A. Yes.

9 Q. And then if you turn to paragraph 7.13, I won't read it
10 all out, but just taking the -- you may want to ...
11 Page 3564, sorry, paragraph 7.13.

12 A. I just need to make sure I'm on the right ...

13 Q. Sorry, I'm using the file pages, not the pages in the
14 decision. 564.

15 THE CHAIRMAN: Paragraph 7.13.

16 A. Yes.

17 MR BOWSHER: Maybe I should read it, just to be careful:

18 "In that case, the purpose of the conduct complained
19 of was to eliminate the remaining competitor from the
20 market."

21 So you accept, do you, that the purpose of the
22 conduct which is referred to was to eliminate the
23 remaining competitor, that's 2 Travel, from the
24 Cardiff Bus market?

25 MR FLYNN: The reference is to a previous case. That case

1 is a reference to a case referred to in the previous
2 paragraph. May I say, sir, I hope Mr Bowsher is not
3 going to be asking Mr Brown too many legal questions
4 rather than factual questions.

5 MR BOWSHER: I'm asking factual questions.

6 7.13:

7 "In this case, the OFT has found not only that the
8 addition of the white services on the selected routes
9 carried the intent to eliminate a competitor ..."

10 You accept, do you, that the intention of the white
11 services was to eliminate a competitor, in this case
12 2 Travel? Is that right?

13 A. Um ...

14 Q. It's the second sentence. Mr Flynn is quite right.

15 I was jumping ahead:

16 "In this case [that's this very case] the OFT has
17 found that the addition of the white service on the
18 selected routes, carried the intent to eliminate
19 a competitor."

20 A. Yes, from the Cardiff bus market.

21 Q. You accept that was the intention of the white services,
22 do you?

23 A. I accept that's what the OFT found [inaudible], yes.

24 Q. Do you accept that that was the intention?

25 A. Yes.

1 Q. If you then turn to page 568, paragraph 7.29, you'll see
2 it says:

3 "Further to this, the OFT has identified evidence
4 that gives rise to a strong inference that Cardiff Bus
5 launched its white service with exclusionary intent."

6 And the assessment of the evidence is from
7 section E, which is at page 575. That's the section
8 which is referred to in this paragraph, if you then read
9 on. 575 is a long section called "Assessment of
10 evidence", section E.

11 A. Yes.

12 Q. And when it refers to "the section", that's what it's
13 referring to and I wanted to look at the last sentence
14 of this paragraph, 7.29. That section, section E,
15 demonstrates that the white services were planned as a
16 retaliatory reaction to new entry, and then repeats:

17 "With the intention of forcing that new entrant out
18 of the market and thereby restoring the market to its
19 previous state."

20 So do you accept that the white services were
21 a retaliation to new entry?

22 A. Yes, we have accepted the OFT's judgment.

23 Q. Then if we could go on to page 643, this is a paragraph
24 which comes -- again, it's in the general section G,
25 "Effect on competition", which is on page 641.

1 Paragraph 7.235:

2 "On this basis, whilst there may be a question as to
3 2 Travel's long-term viability, the OFT considers that
4 it is likely that Cardiff Bus's predatory conduct was
5 a contributory factor in 2 Travel's exit from the
6 market, potentially accelerating its exit."

7 So do you accept that Cardiff Bus's conduct
8 contributed to 2 Travel's exit from the market?

9 A. Well, that's what the OFT expressed as a view. I don't
10 think it's for me to express a view whether it was or
11 wasn't.

12 Q. Well, it's been said that you accept the decision.
13 That's what I want to explore. Do you accept the
14 finding of fact which has been made by the OFT that the
15 predatory conduct contributed to 2 Travel's exit from
16 the market?

17 A. We accepted that we've acted with exclusionary intent in
18 respect of the Cardiff market. I'm not sure that I can
19 comment at all as to whether this was a contributory
20 factor in 2 Travel's exit from the wider market.

21 THE CHAIRMAN: This statement that you've just put is on the
22 cusp between what is their responsibility and what is
23 our responsibility, isn't it?

24 MR BOWSHER: Indeed. This is a finding by -- the OFT uses
25 the word "considers".

1 THE CHAIRMAN: We can read it for ourselves.

2 MR FREEMAN: Mr Bowsher, what do you think the OFT meant by
3 "exit from the market"?

4 MR BOWSHER: Well, exit from the market will be -- perhaps
5 we can come back and discuss this later. It, at the
6 very least, means exit from the Cardiff market.

7 MR FREEMAN: It's quite an all embracing phrase.

8 MR BOWSHER: Certainly from the context of that section,
9 paragraph 7.231, it includes exit from the Cardiff
10 market.

11 MR FREEMAN: Because that was the market that they found
12 a dominant position in.

13 MR BOWSHER: Exactly.

14 MR FREEMAN: Retreating to Swansea could be an exit from the
15 market.

16 MR BOWSHER: Retreating from Swansea might be an exit from
17 that market, yes.

18 Again, I want just to explore what it is that you do
19 or don't accept about this, because there are a number
20 of observations in this decision about Cardiff Bus and
21 I want to understand what it is you do or don't accept
22 when you say you accept the decision. 7.242 says, and
23 this is against -- we should just again see what it says
24 in the previous paragraph. Under the heading "Effect on
25 potential competition":

1 "The OFT's ...(reading to the words)... Cardiff Bus
2 had a reputation as an aggressive competitor.
3 Reputation has also been cited as a barrier to entry
4 and/or expansion in the bus industry."

5 And there is then reference to other investigations.
6 And at 7.242:

7 "Against this background, Cardiff Bus's predatory
8 conduct immediately prior to the eventual exit of
9 2 Travel from the market, would have enhanced its
10 reputation among potential market entrants as an
11 aggressive incumbent, particularly in relation to the
12 introduction of no frills bus services."

13 So would you accept that the infringing conduct
14 which you've accepted is infringing, would have enhanced
15 Cardiff Bus's reputation as an aggressive incumbent?

16 A. We accepted the exclusionary conduct and the overall
17 views and the findings. Clearly, this is a very long
18 document and there are a number of comments made. We
19 accepted the major finding and didn't seek to comment on
20 other findings. I accept it's a view. It certainly
21 wasn't something that was in our minds at the time.
22 I can understand how one might reach that view.

23 Q. You're still active in the market, still involved in it.
24 Do you think it is likely that it would in fact have had
25 that effect?

1 A. Well, in the case of Cardiff Bus specifically, of course
2 it didn't because we were called after the judgment,
3 fairly shortly after the judgment, to a public inquiry,
4 where we made an absolute commitment to the Traffic
5 Commissioner that before any -- if competition in any
6 form was to arrive in Cardiff in the future, we would
7 take proper legal advice before responding in any way.
8 And in fact, since that time, competition has arrived
9 and we have made no response.

10 Q. So do you not accept, for example, in 7.243 that
11 Cardiff Bus's behaviour is likely to have directly
12 contributed to a further lessening of potential
13 competition in the market, to the detriment of bus
14 consumers in Cardiff? Are you saying that you don't
15 accept that, that Cardiff Bus's behaviour is likely to
16 have had that direct contribution?

17 A. If there had been no investigation, it is possible that
18 that might have happened. Of course, the investigation
19 which took place very shortly after 2 Travel's exit from
20 the market meant that we were very much more aware of
21 the issues around. So if anything, competitors, as
22 indeed Clayton Jones, when he came into the market, you
23 know, he was very aware that because of this case, our
24 hands were completely tied. We'd made commitments.

25 Q. This OFT decision, though, in 2008, although it

1 pre-dates the final investigation by the Traffic
2 Commissioner, it post-dates the actual events by some
3 period. At the time that they wrote this decision
4 in November 2008, do you not accept that Cardiff Bus's
5 action is likely to have had exactly these effects,
6 as -- you might want to look at this more fully
7 specified in their conclusion. 7.244 to 7.246. You
8 might want to read that. (Pause).

9 A. Yes.

10 Q. So they'd had three, more or less three years of
11 competitive experience to look at. It is likely, isn't
12 it, that your predatory conduct has had exactly those
13 effects, which will have reduced consumer choice and
14 been harmful to those consumers, "particularly given the
15 socio-economic characteristics of the targeted
16 consumers", as it says at .246?

17 A. Yes, they use the word "likely to", and that is
18 a possibility. I simply don't know.

19 Q. If you could take G2 -- don't put the decision away just
20 yet. If you look at page 987, at the end of 2004 you
21 were putting in place a plan for the following years,
22 a long-term business plan, weren't you?

23 A. Yes.

24 Q. Here you talk about four years, although I think in
25 fact, when we actually see the finished plan, it becomes

1 a five-year plan. I think that's right, isn't it?

2 A. Yes, it was a five-year plan.

3 Q. And we can see that more fully at page 1033. That's

4 Deloitte, I think, reviewing that five year plan

5 in February 2005; is that correct?

6 A. Yes.

7 Q. So that then, is presumably by then, a formal business

8 plan being signed off in due course by the board;

9 is that correct?

10 A. Yes, it is.

11 Q. On that page, February 2005, the second bullet under

12 "Revenue":

13 "The business plan assumes no competition during the

14 life of the plan."

15 Do you see that?

16 A. Yes.

17 Q. That remained a plank upon which the business plan of

18 Cardiff Bus was based, didn't it?

19 A. Well, just to explain, whenever you put together

20 a business plan, you have to make certain assumptions

21 underpinning it, and one of the key assumptions here was

22 that there wouldn't be competition during the five years

23 of the plan. That doesn't mean that's what will

24 actually happen, it is the assumption on which the

25 business plan was made.

1 Q. Why did you think that was a reasonable assumption then?

2 A. Well, one has to make assumptions in putting together
3 a business plan, and one of the things is to detail out
4 what those assumptions are. There are a number of other
5 assumptions that are there, which may also change during
6 the course of the life of the plan. You put together
7 a plan at the outset, based on those assumptions, and if
8 those assumptions change, then you amend the plan.

9 Q. It was rather more than that, though, wasn't it? You
10 can put, I think, G2 away and go to E12/621. This is
11 the last page of what seems to us must be the finished
12 version of the business development plan that is being
13 prepared. It starts at page 597. You might just want
14 to check the front to check that I'm right, but I think
15 this is the whole of the plan, and it goes up to
16 page 621.

17 A. Yes.

18 Q. "The business plan makes no assumptions about the
19 damaging effects of creaming off competition serving
20 only the main routes during the daytime peak, Monday to
21 Friday. This would seriously undermine the company's
22 ability to continue to offer a comprehensive level of
23 service from early to late, 7 days a week, let alone
24 achieve its business development plan. In particular,
25 the model assumes that there will be a level competitive

1 playing field moving forward, with legal requirements
2 effectively enforced."

3 I'd suggest to you that that suggests that, in fact,
4 Cardiff Bus was learning nothing at this stage, that in
5 fact what you saw as the threat to you was a new entrant
6 creaming off business?

7 A. Well, I think the first sentence just repeats what I've
8 already told the tribunal. It makes no assumptions
9 about the damaging effects of creaming off competition.
10 It makes no assumptions about it. It's a comment on
11 competition, but it says it makes no assumptions about
12 it.

13 Q. Why put it in such a disparaging, negative way if you
14 didn't regard competition as a positive development?

15 A. The last sentence perhaps gives an indication there, the
16 "level competitive playing field", and of course, while
17 we appreciate that there are issues that we've got wrong
18 in this case, and we put our hands up to, we had real
19 concerns about the legality of the competitor, hence the
20 comment about the: competitive level playing field
21 moving forward, legal requirements properly enforced.

22 MR FREEMAN: So "legal requirements" doesn't mean
23 competition law legal requirements, it means other legal
24 requirements; is that your understanding?

25 A. Compliance with contracts, compliance with road fund

1 licences, operator's licences, running to time, the
2 issues that the Traffic Commissioner particularly has
3 jurisdiction over, yes.

4 THE CHAIRMAN: What does the first part of that last
5 sentence mean?

6 A. Is this the one that starts "in particular, the model"?

7 THE CHAIRMAN: Yes.

8 A. This business model, this business plan ...

9 THE CHAIRMAN: It just struck me that that part of the last
10 sentence and the first sentence of the bullet point may
11 contradict one another. I don't know, it's a semantic
12 exercise. It's your business plan.

13 A. I'm not entirely sure I understand the question, sir.

14 THE CHAIRMAN: Well, read the first sentence.

15 A. Mm-hm.

16 THE CHAIRMAN: And then read the last sentence:

17 "In particular, the model assumes that there will be
18 a level competitive playing field, moving forward."

19 Are those sentences consistent with one another and,
20 if so, how?

21 A. The level competitive playing field applies to --
22 I mean, there are other operators operating in Cardiff
23 and there are, in particular, a number of operators
24 operating contracts and tenders in Cardiff. So it's not
25 about -- you know, there is competition there already.

1 I think perhaps the ... No, I think it's trying to read
2 into a document; it's a long document and I'm not sure
3 that the nuances were sort of fully thought through in
4 terms of the wording there.

5 THE CHAIRMAN: It may be just the sort of garbage one sees
6 from time to time in business plans, Mr Brown, but I'm
7 just mindful of a question you were asked by Mr Bowsher
8 earlier about G2 at page 1033, the review in February
9 2005 by Deloitte, which contains the sentence:

10 "The plan assumes no competition during the life of
11 the plan."

12 A. No change or no new competition, I would take that to
13 be. There is already competition in Cardiff.

14 MR FREEMAN: If the model assumes a level competitive
15 playing field, does that allow for damaging effects of
16 creaming off competition serving only the main routes
17 during the daytime, peak Monday to Friday, provided
18 legal requirements are effectively in force? I'm trying
19 to make sense of what the chairman has pointed out is
20 a slightly contradictory set of sentences.

21 A. I think it means that -- as I say, I'm seeing this for
22 the first time. I appreciate I wrote it and was
23 involved in it in 2005. But particularly in relation to
24 the contracts and tenders market, which is a large part
25 of the market, there will be a level competitive playing

1 field in the way in which those contracts are managed,
2 and in particular with the existing competitors, in
3 which way they're reviewed, managed by the Traffic
4 Commissioner and so on.

5 MR FREEMAN: But legally compliant competitors could still
6 cream off traffic Monday to Friday?

7 A. Yes, they could, yes, providing they do it on the level
8 playing field basis.

9 MR FREEMAN: It's a terrible phrase, "level playing field".
10 I never know what it means.

11 A. In this context, I was talking about it in terms of
12 compliance with the Traffic Commissioner's requirements
13 of operating within the window and safely and within
14 registrations, and so on.

15 MR BOWSHER: Well, I may have taken these documents a little
16 bit too fast, and I apologise for taking a moment or two
17 longer with it. At the end of 2004, other than
18 2 Travel, was there anyone else running in-fill
19 services?

20 A. I don't recall. I don't think so. I can't state
21 absolutely.

22 Q. There was competition on what we've loosely called
23 inter-urban routes going up to Merthyr or Aberdare or
24 wherever.

25 A. Yes.

1 Q. And there may have been competition on tenders for
2 school contracts and so forth. But if you turn back to
3 G2 -- and I'm sorry I had you put it away -- if you
4 could look again at 987, which I'm afraid I went past
5 a little bit too quickly, the second paragraph. We are
6 in November 2004, so we're at the late days in the
7 2 Travel business. The second paragraph:

8 "Underlying these projections and multiple
9 assumptions ..."

10 Et cetera, et cetera.

11 "These include ..."

12 And the last:

13 "And the competitive situation, which is assumed to
14 be resolved in the current financial year."

15 The only way of reading that, in the context of the
16 facts at the time, isn't it, surely, that it will be
17 resolved by ensuring that there is no competition other
18 than Cardiff Bus?

19 A. That comment is specifically about the 2 Travel
20 competition. I don't think there's any doubt there.
21 What I'm saying is that the assumption -- and I talked
22 about the assumptions on which the business plan is
23 based -- the assumption is that the competitive
24 situation is assumed to be resolved in the current
25 financial year. At that time, the date 26 November

1 2004, we know the situation that was in Cardiff, that
2 very few buses were actually being operated by 2 Travel
3 at that time.

4 Q. And contrary to what you said to Mr Freeman, when
5 Deloittes repeat the assumptions back to you at
6 page 1033, they are accurately describing the position
7 in that second bullet on page 1033, the situation which
8 you wish to have resolved is that there will be no
9 competition, there will be no competitor to Cardiff Bus.
10 That is what is regarded as a resolution by Cardiff Bus,
11 is it not?

12 A. The Deloittes letter is February 2005, by which time
13 2 Travel had ceased operations in Cardiff. So yes, they
14 had ceased then. I think the implication of my note of
15 26 November 2004 is that at that point all the signs
16 were that 2 Travel were on the decline.

17 Q. And so is it right that this five-year business plan --
18 five-year business plan -- was being prepared on the
19 assumption that there is no danger of there being any
20 competitive entry into Cardiff for the next five years?

21 A. No. I can only repeat. The underlying principle of the
22 business plan is that there would be no competition.
23 That doesn't mean that there wouldn't be competition, it
24 was the basis on which the plan was projected.
25 Of course there could be competition. It makes a whole

1 range of other assumptions as well about inflation and
2 passenger growth rates and so on. Those are all part of
3 the plan. I think from my economics training, it's
4 ceteris paribus. You start off with a position and then
5 you vary it by other factors that come in, one of which
6 would have been competition. So yes, there was the
7 potential for competition to come in within that five
8 years. We didn't model that within the plan.

9 Q. Is there any discussion anywhere within the plan as to
10 how the plan would be changed if there were to be
11 another new in-fill entrant?

12 A. I don't believe there was, no.

13 Q. Is that because it was not regarded as a realistic
14 possibility?

15 A. There were a number of assumptions, any one of which
16 could have significantly affected the plan, perhaps
17 passenger growth being the most significant of the ones.

18 THE CHAIRMAN: Supposing one of your very astute
19 councillors, to whom you're answerable, had asked the
20 question, "Well, what difference will it make if there
21 is competition in the next five years of the kind that
22 2 Travel were offering?" Would your answer have been,
23 "Well, we can't say because we haven't factored it in",
24 or, "There won't be any competition"?

25 A. We hadn't factored it in. If I'd been asked the

1 question, I think I would have said that that is a very
2 complicated question to answer because it depends on the
3 nature of the competition, how it came in, the model of
4 the competitor coming in. That's the difficulty in
5 drawing up a business plan, that you've only got the
6 information you have at that time in front of you.

7 MR BOWSHER: I think we can put G2 and E12 to one side.

8 We'll probably have to return to them. Go back to E11.

9 THE CHAIRMAN: Choose your moment.

10 MR BOWSHER: Maybe now's a good moment then.

11 THE CHAIRMAN: Funny how people always say that, you and
12 Mr Flynn.

13 MR BOWSHER: It's serendipity.

14 THE CHAIRMAN: No, serendipity was Saturday afternoon!

15 Right. We'll adjourn until 1.50.

16 (12.57 pm)

17 (The Short Adjournment)

18 (1.50 pm)

19 MR BOWSHER: Mr Brown, can we go back to E11, the decision,

20 and I'm looking at page 588. What I wanted to ask you

21 about -- again we'll come back to the document itself,

22 but I just want to understand what your position now is

23 regarding the content of the decision. This concerns

24 the competition policy document, which we'll come back

25 to. I need to understand how far I need to come back on

1 this.

2 It is usefully summarised. It's a Cardiff Bus
3 document, and its contents are summarised on page 592
4 through to 594 in the left-hand column. We can see what
5 the OFT was doing here was comparing what the documents
6 said with what happened. Do you recall that? You had
7 some observations about that document to the OFT, and
8 you can see those summarised in paragraph 7.91 and 7.92
9 if you want to remind yourself what you'd said about
10 that document.

11 (Pause)

12 We'll come back to it in more detail, but I wanted
13 you to remind yourself what was being said. Then in
14 7.95 there is a little bit more comment by reference to
15 some Cardiff Bus written representations. Do you see
16 that?

17 A. Yes.

18 Q. The OFT looked at this, and we can see in the next
19 paragraph:

20 "The OFT rejects this argument. The title of the
21 document and, in combination, the actions described in
22 it, make it clear that the intention was to target
23 2 Travel. There is no need for the OFT to demonstrate
24 that every element was implemented but it is, in any
25 case, clear that most were. This evidence taken in the

1 round with the other evidence considered in this
2 decision, is sufficiently convincing for the OFT to
3 conclude that the competition policy document was
4 demonstrative of exclusionary intent."

5 Do you see that remark?

6 A. Yes, I do.

7 Q. I just wanted to understand what, as a matter of fact,
8 is your position now. In accepting this decision,
9 do you accept that that document is demonstrative of
10 exclusionary intent?

11 A. Yes. As I've made clear, I wasn't fully aware of it and
12 wasn't working to it but I accept that my predecessor in
13 implementing it, in writing the document and in the
14 planning, yes, we have accepted that the competition
15 policy document was part of the OFT's decision to find
16 exclusionary intent.

17 Q. This document continued to be implemented long after you
18 took over as managing director, didn't it?

19 A. Some parts of it were implemented. My statement wasn't
20 with reference to the competition policy document,
21 although I accept that some of the things in the
22 competition policy document were indeed followed
23 through, but not at all.

24 Q. Okay. We'll come back to that. Can we go back in
25 history then. We can put the decision away for the

1 moment. Take file E1. We know from your statement that
2 you joined Cardiff Bus in July 1994 as finance and
3 administration director. Was that the title you
4 continued to hold up until you became managing director
5 designate in early 2004?

6 A. Yes.

7 Q. What does the administration bit mean? I can understand
8 finance. What were you in charge of?

9 A. It includes information, communications technology; it
10 includes HR, payroll, cash office, stores.

11 Q. And presumably as finance director, you are, fairly
12 obviously, in charge of the money; would that be fair?

13 A. Yes.

14 Q. And would any significant expenditure have to go by you?

15 A. Well, all significant expenditure's approved in the
16 budget, which is set by the board.

17 Q. Is it likely there will be any significant expenditure
18 that you would be unaware of?

19 A. No, I'd be aware of all significant expenditure.

20 Q. And presumably the board would listen to your views and
21 recommendations about any significant expenditure?

22 A. If I was asked, yes.

23 Q. If there was a significant expenditure that you hadn't
24 been asked about, would you let it go or would you ask
25 questions of your own accord?

1 A. As I said, the expenditure is agreed as part of the
2 budget and provided it's within the framework of the
3 budget, we have delegated authority, so it wouldn't be
4 something that's raised at board. If it was something
5 outside of the scope of the budget, it would be if it
6 was significant.

7 Q. Is there any circumstance in which you would allow any
8 significant expenditure to be made by Cardiff Bus
9 without your commenting appropriately, whether it was to
10 the board or other directors or whatever?

11 A. Each department has its own budget and is expected to
12 work within that budget. I'm not sure what you mean by
13 significant or whatever. It's not my role as finance
14 director to look at every item of expenditure that comes
15 across, no. It depends on what you mean by significant,
16 I suppose.

17 Q. Okay. We may have to come back to that. In general
18 terms, if any expenditure did come to your attention,
19 you would presumably be concerned to ensure that it was
20 not pointless expenditure; would that be right?

21 A. Yes, naturally.

22 Q. You came on board Cardiff Bus, as we said, in July 1994,
23 and you had been in place there for a little while by
24 the time of the events involving Alisters trying to get
25 into the Cardiff market; is that not right?

1 A. Yes, I think that was 1999 and I was in place in 1994.

2 Q. And when you came on board, had you been made aware of
3 the past history regarding the Bluebird entry into
4 Cardiff?

5 A. Cardiff Bluebird were in operation when I joined the
6 company in 1994.

7 Q. Were you aware of the steps taken by Cardiff Bus to meet
8 the competition from Cardiff Bluebird?

9 A. In outline terms, yes.

10 Q. Would that have involved discussions with their
11 managing director?

12 A. Well, at board and with the managing director, yes.

13 Q. So if we turn in E1 to page 393, this is a letter
14 written in 1996, of course before the Competition Act,
15 by the chairman of Cardiff Bus, who was also Deputy Lord
16 Mayor of Cardiff, Max Phillips, writing to the then
17 shadow Secretary of State for Wales, Mr Ron Davies, who
18 later became Secretary of State. If we could then just
19 look at that letter, the fourth paragraph:

20 "In 1989 I promised the then shadow
21 Secretary of State for Transport, John Prescott, that
22 I would do all in my power to ensure that Cardiff Bus
23 remained a powerful, up to date organisation, fit to
24 take a full part in any proposed, policies without
25 needing massive financial support. He fully agreed with

1 this policy ...(reading to the words)... The first of
2 the above reasons is long past. The second is now
3 outdated but the third still offers a real menace to
4 Local Authority owned companies dedicated to running
5 a complete service to all parts of the community
6 ...(reading to the words)... purely a cherry-picking
7 exercise is not provable. However, its failure is due
8 to the strength of Cardiff Bus and its refusal to give
9 ground to that sort of competition. In order to achieve
10 this, we have had to make no investment in new buses
11 this year, damaging future environmental considerations
12 and our entire workforce have had no wage or salary
13 increase for the past two years. Should any further
14 competition step in to replace Cardiff Bluebird, however
15 large or small, the effect would be considerable and
16 could put our ability to serve our customers, including
17 Caerphilly, at risk. So yes, we will do everything in
18 our power ...(reading to the words)... and the Vale."

19 THE CHAIRMAN: Caerphilly was Mr Davies' constituency.

20 MR BOWSER: It was indeed.

21 Was that the prevailing approach within Cardiff Bus
22 at that time, that it was to see off any competition in
23 Cardiff and the Cardiff area?

24 A. I think it's fair to say that Cardiff Bus was very
25 protective of its position, yes. We believed that

1 we were doing a great deal of good in Cardiff and that
2 was the view of the board, I think.

3 Q. When it came to the Alisters entry in 1998, had it
4 remained the board's view that steps should be taken to
5 prevent Alisters' competition from getting any hold in
6 the market?

7 A. Well, they'd certainly agreed a competitive response,
8 yes.

9 Q. The competitive response, you see a reference in the
10 newspaper at page 564. We should look at 565. 564 is
11 a comment on the -- I won't take you to the comment,
12 which is fairly pithy. At 565, there's an article here
13 about the Cardiff Bus response to Alisters, and
14 presumably articles such as this were the consequence of
15 Cardiff Bus getting out and telling the press what it
16 planned to do; would that be right?

17 A. I've no idea. The press may have contacted us.
18 I simply don't know.

19 Q. Okay. Look at the article:

20 "Cardiff Bus launched a cut price service between
21 Ely and the city centre today, sparking a battle of the
22 buses ... Fares are the same ...(reading to the
23 words)... two phase transformation of services.
24 On January 7th, the company introduces new state of the
25 art, low floor buses on the route. It is a route where

1 we have [this is Mr Kreppel, presumably, quoted]
2 competition, but we hope the new low cost service will
3 lead to an increase in bus travel. It's very much the
4 same as happens in other industries such as supermarkets
5 ...(reading to the words)... If the experiment is
6 a success, we will look at extending it to other routes
7 in Cardiff."

8 And we can see then, Alisters coaches had
9 a different view of what you were doing later on in the
10 article. That view expressed by Mr Kreppel, is that the
11 view that was being taken by the board at the time as to
12 what was being attempted, from that quotation?

13 A. It's an awful long time ago.

14 Q. Okay.

15 A. But I think that's a reasonable assumption that that's
16 what the board would have understood, yes.

17 Q. And you were telling the world that this was an
18 experiment; is that right?

19 A. That's what Mr Kreppel's saying in the article.

20 Q. That was the same explanation that was used to the OFT
21 a few years later, wasn't it, for the response to
22 2 Travel?

23 A. Yes, it was.

24 Q. Then at 567, an internal Cardiff Bus memo. Who was Alan
25 Lewis?

1 A. He was a junior administrator in the traffic department
2 at that time, I believe.

3 Q. And he's writing direct to Alan Kreppel about something
4 that's on Alisters' Ely buses:

5 "Don't be conned. Ely Value Bus belongs to
6 Cardiff Bus, not Alister. Cardiff Bus will only give low
7 fares whilst we are running our service. If we go, then
8 your low fares will go with us. We value your support."

9 And then Mr Lewis says:

10 "This looks like a panic measure to me."

11 A. Yes.

12 Q. Is it not right that in fact that notice was prophetic,
13 that the moment Alisters had gone, the low fares
14 disappeared and the low fare service disappeared?

15 A. Yes, the service wasn't successful, as I recall, and
16 following Alisters' withdrawal from the market, then
17 Cardiff Bus withdrew from that market in that time.

18 Q. I see. Is it not in fact the case that what was
19 happening was the response to Alisters was doing exactly
20 what had been promised by Max Phillips to Ron Davies,
21 namely to see off any competition coming into the
22 Cardiff market?

23 A. Well, the company was competing with Alisters and had no
24 reason to think there was anything wrong with that
25 competition and the position at the board was to try and

1 preserve our market, for the reasons that I've talked
2 about and a competitive response was launched.

3 Q. The truth is when we look at this history from this
4 period, is it not, Mr Brown, that the position taken by
5 Cardiff Bus at this stage was not just to maintain its
6 market, but it was to maintain its monopoly. Isn't that
7 right?

8 A. Well, we didn't -- we were dominant. I think monopoly,
9 I'm not -- these are terms which perhaps I'm more
10 familiar with at the moment. There were other companies
11 competing with us at the time but a competitive entrant
12 is, by its very nature, a threat to the company and the
13 company considers its response and it considered its
14 response at that time.

15 Q. Okay. You just mentioned that, about your knowledge and
16 so forth. Can I just ask you about -- just before I do
17 that, you say in your statement that your degree was in
18 industrial economics. Is that right?

19 A. That's correct, yes.

20 Q. So presumably you have some familiarity with some of the
21 economic concepts we're talking about, do you?

22 A. Well, I can apply my economics knowledge to any
23 situation and indeed do now. I'm not quite sure what
24 you mean by your question at that time.

25 Q. We'll pick that up as we go along. Presumably, when you

1 became a director of Cardiff Bus, particularly with your
2 specific responsibilities, you familiarised yourself
3 with the corporate governance of the company; would that
4 be fair?

5 A. Yes.

6 Q. And you will have been aware, presumably, therefore,
7 that the links between Cardiff Bus and Cardiff City
8 Council were, as it were, embedded in the articles of
9 association of Cardiff Bus; is that not right?

10 A. Absolutely. It was one of my first jobs as finance and
11 administration director, to familiarise myself with
12 those issues.

13 Q. We can see that if we take E12 again. Sorry, this is
14 a copy where the page is missing. It's also attached to
15 your statement. I think we need it in D1 because it has
16 all the pages there.

17 THE CHAIRMAN: What are we looking for?

18 MR BOWSHER: The articles of association. I don't know if
19 you have tabs. If you have a little green sheet of
20 paper, it's after the little green sheet of paper.

21 Article 2 to start with. From article 2 --

22 THE CHAIRMAN: Mr Bowsher, the tribunal's read at least
23 enough to know that Cardiff Bus is a creature of
24 Cardiff City Council to a very considerable extent.

25 MR BOWSHER: I don't want to take you to all of the

1 references, just one particular reference, but
2 I absolutely take that on board. We'll move on fairly
3 swiftly. I just wanted to be -- under article 2,
4 Cardiff Bus sees itself as discharging the statutory
5 obligations in the area of transport of the controlling
6 authority, the City Council; isn't that right?

7 A. Sorry, are we talking about the paragraph --

8 Q. Preliminary, yes. (Pause) It's not just a subsidiary,
9 controlled, owned by, it actually has obligations:

10 "... to act in accordance with the provisions of the
11 Transport Act as apply in relation thereto and in such
12 manner as will ensure that the duties and obligations
13 under the Act of the company's controlling authority,
14 insofar as they relate to the company or any of its
15 affairs, are duly discharged."

16 So Cardiff Bus actually has to comply with the
17 transport obligations of the city?

18 A. No, I don't think that's what it's saying at all. It's
19 talking about the Transport Act places very specific
20 responsibilities on the controlling authority in
21 a relatively limited number of areas. One of them is
22 the appointment of directors, one of them is the fact
23 that the company cannot borrow money other than from its
24 shareholder in the normal course of business, and there
25 are one or two other very specific requirements of the

1 Act. And I read this as being that it has to -- the
2 company has to ensure that the duties and obligations
3 under the Act, which I take as being those specific
4 obligations on the controlling authority, are duly
5 discharged by the company.

6 THE CHAIRMAN: I think I'm dropping a hint, Mr Bowsher that
7 browsing the articles of association isn't going to
8 advance the case one way or the other.

9 MR BOWSHER: I'm moving on.

10 The connection though, between Cardiff Bus and
11 Cardiff City Council, is more than just a relationship
12 between a council and a subsidiary company, is it not?
13 There is also some political sensitivity, which
14 Cardiff Bus has to show to what the authority requires
15 in order to meet its political aspirations?

16 A. I think any company is sensitive to the demands and
17 wishes of its shareholder, and Cardiff Bus would be no
18 different in that respect.

19 Q. From the outset -- if we put E12 away and look at E6,
20 we'll come back to this when we come to the chronology,
21 but just in terms of the relationship between
22 Cardiff Bus and the City Council, if we look at E6/118,
23 this is a report by -- I think it must be by your
24 predecessor because it's just before you moved up?

25 A. Yes.

1 Q. But it's a report being made to the board, March 2004.
2 Under the heading "Competition", there is a reference to
3 2 Travel, a description of its intended services under 4
4 and what it intends to do. Picking up from the last two
5 lines from the bottom:

6 "With this competition, our financial position will
7 have an effect on the company's finances and may affect
8 our ability to make a substantial contribution to
9 socially necessary services."

10 Stopping there, presumably that's financial activity
11 that you would have been well aware of as finance
12 director at the time?

13 A. I understand what the comment's referring to, yes.

14 Q. And then turning the page:

15 "It may therefore be necessary, in the middle of the
16 summer, to review some of the little used services.
17 It is proposed to discuss the situation further with the
18 County Council next week. The board needs to be aware
19 that if this competition is successful, there is likely
20 to be a second tranche of registrations, which has
21 already happened in the south-west Wales area."

22 So already at that early stage, albeit that here
23 it's with regard to the County Council, Cardiff Bus is
24 looking at the political consequences, as it were, of
25 its relationship with surrounding councils of any

1 incoming competition; is that not right?

2 A. No, it's the commercial consequences. In our business
3 plan and in our ethos, we look to operate services from
4 early to late, seven days a week, and we take a view on
5 what we call marginal services. These are services that
6 may not cover the overheads, but cover their -- what
7 I now understand to be avoidable costs, ie the drivers'
8 fuel and so on and make a contribution towards
9 engineering costs. And we do that, whereas other
10 operators don't necessarily do it because they have to
11 make financial returns on their capital above that. We
12 have a different view and endeavour to operate these
13 social services, which typically are early morning, late
14 evening and Sunday services and what we're saying is
15 that if the financial position of the company is damaged
16 as a result of the competition, this may impact on our
17 ability to be able to offer those services. I think
18 that's just reporting on the fact that our business plan
19 is saying that we are endeavouring to operate these
20 services. In the event of this competition, it may
21 damage our ability to provide them and that may have an
22 impact for the Council itself.

23 Q. Put E6 away. Perhaps I can take this fairly swiftly.

24 A number of criticisms have been made of 2 Travel
25 witnesses in this case. Presumably, though, Cardiff Bus

1 is also subject to a number of constraints which affects
2 the reliability of some of its services; would that be
3 right?

4 A. Yes, inasmuch as any bus operator is, yes, we're not
5 different.

6 Q. So if there is traffic congestion and the city's
7 gridlocked, you're likely to find that a number of
8 services run late and that there will therefore be
9 infringements of whatever requirement a bus happens to
10 apply to that particular service; would that be fair?

11 A. The position of the Traffic Commissioner is very clear.
12 The one minute early or five minutes late applies to
13 95 per cent of services. The 5 per cent is designed to
14 allow for congestion and abnormal circumstances. Other
15 than very particular circumstances where the Traffic
16 Commissioner would be expected to be advised in advance
17 of it, you have to keep within that, and we have been
18 assessed at the time of the competition and of course
19 subsequently, and we have always worked within that
20 95 per cent rule.

21 Q. But that window doesn't apply to the frequent services,
22 doesn't it?

23 A. Well, the frequent services have to operate in
24 accordance with the frequent registration, which means
25 that there must be a bus -- a minimum of six buses per

1 hour and no more than a 15 minute gap between any two
2 buses. That's what's measured, and you either comply or
3 you don't comply.

4 Q. This is by definition, is it -- well, it's obvious.
5 From early on in your involvement -- well, certainly by
6 2003 -- it is right, is it not, that you were making
7 provision to be able to meet new competitive entry
8 in the Cardiff market?

9 A. Yes. There was some discussion about whether vehicles
10 should be kept back against the possibility of
11 a competitive entry into Cardiff, yes.

12 Q. And that is not just a question of holding back cash, is
13 it? If you take file E3, we find a meeting, and this is
14 the AGM of Cardiff Bus on 21 November 2002. Page 223.
15 222 is the first page. We can see the heading "110.
16 Report and accounts". Going on to 223, there is
17 a narrative with lots of financial figures, which I'm
18 presuming is -- at least if it wasn't you making the
19 report, it's a report you will have been heavily
20 involved in preparing?

21 A. I probably would have written the minutes.

22 Q. The passage at the top of page 223, that looks like
23 a financial director's report; would that be fair?

24 A. It's not a report, it's minutes of a meeting.

25 THE CHAIRMAN: You were the company secretary?

1 A. Yes.

2 MR BOWSHER: It says that "The company confirmed that
3 retained profits were being re-invested", and so forth.
4 That report looks to me that that's a report that
5 contains information that will have come from the
6 finance director. Would that be fair?

7 A. I think it's probably the managing director. It's in
8 response to questions relating to the accounts and my
9 recollection at the time is that the managing director
10 took those questions.

11 Q. Okay.

12 A. It could potentially be me, but I think it's the
13 managing director who made those comments.

14 Q. The last three lines then:
15 "The company required strong cash reserves to
16 position itself against competitor threats, a strategy
17 that had been needed in the past and remained in place."
18 That's the managing director responding, is it?

19 A. Yes, I believe that's the case, yes.

20 Q. And that is the managing director noting that cash needs
21 to be held back to meet any new competitive entry;
22 is that right?

23 A. If I can just read the preceding section. (Pause).

24 THE CHAIRMAN: Which paragraph are we on, Mr Bowsher?

25 MR BOWSHER: The top right paragraph on 223.

1 THE CHAIRMAN: Got it.

2 MR BOWSHER: Last three lines.

3 A. The company's always talked about retaining a strong
4 balance sheet and I think if you just go up three or
5 four lines previously:

6 "The company advised that it routinely monitored
7 cash flow requirements, with the aim of retaining a 1
8 million cash buffer to deal with unforeseen
9 circumstances."

10 And I explained in relation to the articles that one
11 of the difficulties the company has is that it's not
12 allowed to borrow money other than from its shareholder,
13 therefore it keeps a strong balance sheet and strong
14 cash reserves to deal with good times and bad times, and
15 I think what he then goes on to say is:

16 "... require strong cash reserves to position itself
17 against competitive threats."

18 Yes, competition damages profitability and therefore
19 the company had a policy of this £1 million cash buffer
20 to deal with all unforeseen circumstances, whether it be
21 general trading performance or indeed competition, as it
22 states here.

23 Q. We can see, the next paragraph but one after that
24 Councillor Kelloway asks a question about staffing and
25 recruitment and we can see from that paragraph that at

1 that point, recruitment and retention of drivers was
2 a problem for the company; is that right?

3 A. I think you've heard that most companies for extended
4 periods of time, had suffered from driver shortages,
5 yes.

6 Q. When you refer to "preparing the company to meet
7 competitor threats", presumably at this stage you will
8 have had in mind, is this right, the need to comply with
9 the Competition Act, which had now been in force for
10 a couple of years?

11 A. Well, as I say in my statement, I wasn't familiar with
12 the Competition Act, other than being aware that there
13 was a Competition Act. That wasn't something I was
14 aware of. The then managing director may have been,
15 I don't know.

16 Q. So if we turn to page 224, under "Supplementary
17 questions", we see Councillor Rees is asking about lack
18 of services. I think that's Pwllmelin Road, but I'm not
19 very good at that. And then a few lines down:

20 "The legal position arising from the Transport Act
21 and Competition Act was explained, including the
22 requirement for the company to work on a commercial
23 basis and not cross-subsidise its routes ...(reading to
24 the words)... lying with the council."

25 So at that point, when there's a reference to the

1 Competition Act, at that stage you're saying you didn't
2 really understand the detail of what that meant; is that
3 right?

4 A. No, I think the point it was making about
5 cross-subsidisation, I was aware of. From my time at
6 starting with Cardiff Bus, it's the principle of loss
7 making routes are the responsibility of Cardiff Council
8 if they're deemed to be socially necessary, not
9 Cardiff Bus. So whilst we operated services that were
10 marginal in nature, we couldn't operate loss making
11 services, but it was in the context of
12 cross-subsidisation, using the profits from one to
13 support a non-profitable service elsewhere in the
14 network.

15 Q. When the Competition Act came into force, had there
16 been -- plainly, awareness of it has reached the company
17 somehow and at some point. Was there any internal
18 strategy or plan to consider how it would impact on your
19 commercial activities?

20 A. No.

21 Q. But as you've already said, you were at this stage, not
22 only therefore -- we have seen the reference to cash
23 reserves. You were also making sure that there were, as
24 it were, a reserve of vehicles available to meet any new
25 competitive entry; is that right?

1 A. Yes, the cash reserves are partly to do with the fact
2 that competition can be damaging and damage your
3 revenues and your profits. But it's also correct to
4 say, yes, we have vehicles available to make
5 a competitive response.

6 Q. I don't think we need to take you to it, but that's
7 referred to in October 2003. I think you had a number
8 of clipper vehicles which are referred to as being held
9 back for that purpose. Would that be right, at about
10 that time?

11 A. Yes, I recollect that.

12 Q. Then you can put E3 away. While we're on that topic, if
13 we could look at E6, page 595.

14 THE CHAIRMAN: This is a board meeting, isn't it?

15 MR BOWSHER: Yes. This is a board meeting, March 2004, and
16 we'll have to come back to look at various bits of this,
17 but by this point, March 2004, presumably you were
18 aware -- I think you were by now aware that you were
19 going to become managing director, were you?

20 A. Yes.

21 Q. So when Alan Kreppel reports at this meeting that the
22 response would be in accordance with competition
23 legislation, had you taken steps to familiarise yourself
24 with what that meant?

25 A. I was aware that there was a Competition Act. I have to

1 say, I have very little recollection of the detail of
2 what was discussed at that time. So I'm a little bit
3 dependent on what I see now. But we received assurance
4 from the managing director that it was in accordance
5 with the competition legislation.

6 Q. Okay. Such minute as there is, is at the bottom of
7 page 594, the top of page 595, isn't it?

8 A. Yes, I see that.

9 Q. And as you say, all it says is:

10 "The company's response would be in accordance with
11 the Traffic Commissioner's guidelines and legal
12 requirements and in accordance with competition
13 legislation."

14 That's all it says there?

15 A. Yes.

16 Q. Knowing that in a couple of weeks time you were going to
17 become managing director, did you not ask Alan Kreppel:
18 well, what does that mean; what's the basis for your
19 remark?

20 A. ~~I~~I may well have done. I mean, there was a discussion
21 and the managing director offered that reassurance.
22 I can't remember the discussion. As I think I said in
23 my statement, this was one item amongst a two hour
24 meeting with many, many other items. I had to give my
25 own report, which was the finance and administration

1 director's report, so that would be my area of focus.
2 The managing director's report dealt with the
3 competition. It was one item amongst many, at a time
4 when I'd just been appointed managing director. I had
5 many, many things on my mind, and I simply can't
6 remember now whether it struck me particularly or not.
7 I just can't remember.

8 Q. I see. Bear with me just a moment, to progress it
9 a little further forward. You've said in your
10 statement -- and this, I think, is your first statement,
11 paragraph 59. You might want to check it. We'll keep
12 that page open because we'll come back to it. Your
13 first statement, paragraph 59. Paragraph 55 is the
14 meeting we were just at, I think.

15 A. Sorry, 55, you said?

16 Q. Just so you have the right context. That refers to the
17 board meeting we were just at and you are talking about
18 being the recently appointed managing director. And
19 you'll see 59, you say:

20 "The one issue that I did concern myself with was
21 ensuring that the white services were operated
22 professionally ..."

23 A. Yes.

24 Q. "... legally, and above all, safely."

25 A. Mm-hm.

1 Q. The oddity that I just wanted to address is, whatever
2 might have been your normal position five years earlier,
3 given the fact that you were just about to become
4 managing director at this stage, does it not strike you
5 as odd now that you would not have said, "What is the
6 legal basis? What does this mean, competition
7 legislation? What legal advice have we taken?"

8 A. As I say, I can't remember. It was raised at board.
9 We were reassured by the managing director that this was
10 in compliance with all relevant laws, including
11 competition law. I can't remember the detail of the
12 discussion but I was satisfied that what we were doing
13 was legal and correct. I have no reason to doubt that.
14 The board had discussed it and it's there in the
15 minutes.

16 Q. At that point you were faced with a position that in
17 three or four weeks time, you were going to be the
18 person having to give that very same reassurance to
19 people?

20 A. It had already been given to board. The board had
21 discussed it and it had been agreed.

22 Q. Right. So you were therefore happy that it had been
23 agreed and it didn't need to be looked into further?

24 A. I saw no reason to revisit it, given that it had been
25 discussed and confirmation had been given to full board.

1 Q. Right. So just to be clear, if you go to E6/88, we can
2 see this is a note of legal advice being given to
3 Alan Kreppel on 8 March, a few days before that board
4 meeting.

5 A. Yes.

6 Q. When did you first become aware that that advice had
7 been given?

8 A. When it came up in disclosure in December or whenever it
9 was, 2011.

10 THE CHAIRMAN: 2011?

11 A. And in the disclosure exercise. I can't remember
12 whether it was December 2011 or January 2012, but it was
13 that final disclosure exercise.

14 THE CHAIRMAN: Is that the correction?

15 A. Yes. This was the document that prompted the
16 correction. I hadn't seen it before.

17 MR BOWSHER: So throughout the entirety of the 2 Travel
18 entry, the OFT investigation and most of the period of
19 these proceedings, no one has asked "Was there any legal
20 advice backing up what the managing director said in
21 2004 to the board?" Is that right?

22 A. That's my understanding, and the OFT asked the same
23 question and I gave the same answer, that we hadn't
24 taken legal advice over it. That was my understanding.
25 Clearly, I now know that Alan Kreppel did.

1 Q. I think you say in your statement that you may, to be
2 fair, to make sure I've understood it -- you think
3 you may have seen the note of the Mid and West Kent
4 case, which we see at 85 and 86, just before then?

5 A. Yes. The reason I say that is because the top of the
6 letter, which is on page 84, has a circulation list,
7 which includes "DB", which will be myself, at the top of
8 it, and it's struck through, which indicates that
9 I probably did see that, but I've got no recollection of
10 it.

11 Q. Was there any handover process between you and
12 Alan Kreppel? Quite often in these corporate scenarios
13 you have quite a long period of handover, interviews and
14 so forth, and people discuss what their ongoing issues
15 are and so forth; did that occur?

16 A. We were working together for two and a half months so
17 there was a handover in that context. I was keen to
18 establish my own mark on proceedings, so in many ways it
19 was a situation of a new managing director coming in,
20 making his own way, and the existing managing director
21 unwinding himself. So I wasn't merely picking up from
22 him, I was seeking to establish my own way of working
23 and my own impact on the company. So I was using the
24 time, in a way, to try and work on how I wanted to take
25 the company forward.

1 Q. And so again -- it may be that you can't remember, but
2 I think in fairness, I should ask you. When you see
3 this letter, which seems to have been copied to you,
4 would it not have struck you as odd at the time that
5 it's a letter that's written to Alan Kreppel from
6 solicitors, starting "As promised", which rather implies
7 an earlier conversation; does it not strike you as odd
8 that no one's told you about that earlier conversation,
9 page 84?

10 A. I just can't remember the letter, I'm afraid.

11 Q. E6/608. We'll have to come back to these notes, but I'm
12 just interested in the legal advice. This is a note,
13 now by you as managing director, May 2004. The top of
14 the page. It starts on 607. The heading is
15 "Competition". Do you see the fourth paragraph:

16 "We are advised that 2 Travel may have complained
17 both to the Traffic Commissioner and the Office of Fair
18 Trading about Cardiff Bus's commercial response, which
19 has been alleged to be uncompetitive."

20 Presumably you've been advised by 2 Travel?

21 A. I think that's what I'm referring to.

22 Q. Unless you've been advised by lawyers or something that
23 they've heard about this?

24 A. No, no, this -- well, I think this preceded the Darwin
25 Gray letter, which came three days later, so it may have

1 been a precursor [inaudible].

2 Q. "Whilst these matters are, of course, always open to
3 interpretation, our view remains that our response is
4 reasonable, appropriate and legal."

5 Just so I'm clear, when you signed off on that as
6 being your report, you were happy as managing director
7 that your description of the legal position was on the
8 basis of an assurance from the previous managing
9 director, which had not been backed up by any reference
10 to legal advice, nor had you asked to see any such legal
11 advice. Is that right?

12 A. It was entirely dependent on what I'd been told
13 previously. We were doing exactly what had been agreed
14 and the advice that Alan Kreppel had given the board was
15 that what we were doing was entirely legal and that is
16 exactly what I was referring to. I didn't take any
17 further advice myself, no.

18 Q. And as you say, you then, shortly afterwards, receive
19 correspondence from Darwin Gray?

20 A. Yes.

21 Q. Your follow-up to that we see at E6/700. This is your
22 letter to Bond Pearce, enclosing the Darwin Gray letter,
23 which, for the reference, is page 655. Was this ever
24 followed up? Did you get any legal advice?

25 A. Sorry, I'm just trying to ... This is in respect of the

1 second letter. There were two letters from Darwin Gray.
2 The one you referred to on 655 is dated 7 May. There
3 was a subsequent one. So I had taken advice from
4 Peter Woodhouse previously in respect of the first
5 letter, merely to say, very similar to what was here,
6 "We've had this letter, this is our intended response,
7 are you okay with it?" Peter Woodhouse I knew at
8 Bond Pearce because he was our employment solicitor and
9 I was looking at it not from a perspective of
10 competition law or whatever, I was looking at it, "We've
11 had a letter from solicitors, are you comfortable with
12 what I'm sending back in response?" And I can't
13 remember whether he suggested alterations, any
14 alterations to the letter at the time, but the letter
15 went out pretty much the same day. There was then
16 a second letter and clearly I've repeated the exercise
17 and said: this is what we intend to send you, are you
18 okay with this?

19 Q. You're absolutely right and I think I may have jumped
20 a reference. So what you're saying is the letter at 655
21 produces a response from you at page 661?

22 A. That's a substantive response, yes. We put in a holding
23 letter to acknowledge receipt on 7 May because it came
24 in by fax, and then we sent a full response on 10 May.

25 Q. And that substantive letter had been sent to Bond Pearce

1 before it went out?

2 A. I can't say for certain, but that's my recollection of
3 it, yes. We'd sent them the copy of the Darwin Gray
4 letter, saying: look, we've received this letter, this
5 is a legal issue, I think it makes sense to check it
6 with you, and sent a copy of our response and some
7 amendments made, tidying up, and off it went.

8 Q. But you had received no legal advice other than
9 Bond Pearce signing off on the draft; is that right?

10 A. Yes, yes.

11 Q. The same procedure again with the second letter, and
12 we've got the cover fax for this one.

13 A. Yes.

14 Q. Given the fact that you had heard Alan Kreppel, your
15 predecessor, say that the conduct was lawful but that
16 you were not aware of any legal advice to that effect,
17 you'd just relied on his assurance, that's the first
18 point. You were now managing director and you were
19 giving that same assurance, as managing director, to the
20 board?

21 A. Yes.

22 Q. And you now received a letter saying what you're doing
23 is not lawful. Did you not regard it at least
24 appropriate to either find out what was the basis for
25 Mr Kreppel's original view or to get some fresh advice?

1 A. Well, the nature of the complaints in the letter of
2 7 May related to operational issues. I didn't see them
3 as being competition issues. We talked about traffic
4 law and competition law, and the issues were really, if
5 you look at it, preventing our clients getting in and
6 out of bus stops, proceeding slowly as to make our
7 client's vehicles late, et cetera, these were
8 operational issues. I didn't make the connection that
9 this was something to do with competition law per se.
10 It seemed to me to be a traffic law issue.

11 Q. But we know that you had already been advised that the
12 OFT were going to be engaged. We have seen that in the
13 earlier report that you wrote to the board. So you knew
14 that competition law was being referred to?

15 A. Well, we'd had an indication. I think the board report
16 you referred to was 4 May and there may have been
17 mention there that we had understood that they had --
18 might have complained to the OFT. And here we see three
19 days later that they have indeed complained to the OFT.

20 Q. I suggest to you, Mr Brown, that the reason why you
21 didn't seek any legal advice is because, frankly, you
22 were indifferent to what the legal position was. You
23 were concerned to knock 2 Travel out of the Cardiff
24 market, regardless of the legal position?

25 A. The reason I didn't take legal advice is I'd been

1 reassured that what we were doing, and the board had
2 been reassured that what we were doing was fully legal,
3 and I stood by that advice that had been given.

4 Q. Just to be clear, that's the advice from Alan Kreppel on
5 the basis of undisclosed legal advice which you never
6 knew about?

7 A. Yes, we didn't know about that advice.

8 Q. Right. In terms of your preparedness to meet
9 competition, we've seen reference already to the cash
10 reserves. I can't now remember the date for that, but
11 we were looking at it a little earlier.

12 THE CHAIRMAN: 21 November 2002?

13 MR BOWSHER: Thank you very much indeed, sir. If you could
14 go back to E3, we can see a number of references to the
15 preparation for the future of transport in Cardiff, and
16 that's E3, page 596. We see a reference to it there.
17 It's a letter from Alan Kreppel.

18 A. 59?

19 Q. E3/596.

20 A. Yes.

21 Q. We can see this is a letter from Alan Kreppel,
22 managing director. It's not copied to you, although I'm
23 guessing that from the sorts of things it talks about,
24 in particular the potential establishment of
25 a public/private partnership, it'd be fairly incredible

1 if the finance director wasn't involved in this sort of
2 correspondence. Presumably you knew about this?

3 A. I don't know whether I saw the letter or not, but
4 typically, if the public finance initiative or whatever
5 it was -- yes, I was aware of that. Sorry, I am aware
6 of the general context of what we're talking about here,
7 yes.

8 Q. And this is a letter to the County Council at that time.
9 Could you just explain, what was this programme about,
10 what was the County Council looking to achieve?

11 A. Cardiff County Council issued what they described as
12 a white paper, which is a consultation document on the
13 future of transport in Cardiff. It was a consultation
14 exercise where they were seeking views and comments on
15 their plans for Cardiff. If I recollect correctly,
16 there was talk of a massive investment to complete the
17 peripheral distributor road; there was talk about
18 introducing congestion charging and moving towards
19 a more sustainable travel city-type environment.

20 THE CHAIRMAN: Your voice is dropping. I'm concerned about
21 that gentleman.

22 A. My apologies.

23 MR BOWSHER: What was the context of the public/private
24 partnership then?

25 A. The suggestion was there would be a public/private

1 partnership of the sort you see for building bridges or
2 tunnels or whatever it might be. Essentially, this was
3 about building, completing the peripheral distributor
4 road which was a major project, to complete a ring road
5 around Cardiff. And in order to finance that, there
6 needed to be funds within it. There were also all sorts
7 of other implications for transport more generally and
8 the way in which transport in Cardiff would develop.
9 And the suggestion was that there was, as I recollect
10 it, a programme of congestion charging and the
11 congestion charges should go into this project, but also
12 that Cardiff Bus should be put -- effectively the
13 shares, I guess in Cardiff Bus, should be put into this
14 partnership so that the dividend stream from the benefit
15 of those shares could also go into financing these
16 initiatives. That was being proposed.

17 THE CHAIRMAN: I'm struggling with the relevance of this
18 letter, Mr Bowsher. No doubt you will tell us in
19 a moment.

20 MR BOWSHER: The point I wanted to just check then -- the
21 point that Cardiff Bus was making in this letter, one of
22 the points being made, was that you needed to be able to
23 operate a number of the marginal services, page 659;
24 is that right? Paragraph 4, page 659.

25 A. I've got it at 597.

1 THE CHAIRMAN: We're looking at two documents at once. What
2 are we supposed to be looking at?

3 MR BOWSHER: 597. It's the same document. Paragraph 4.
4 Apologies.

5 Am I right in saying that at this stage, therefore,
6 Cardiff Bus was putting forward as a constraint that it
7 operated under, that it needed to be able to retain
8 enough finance to support those marginal services?

9 A. What it was saying, as I think I explained earlier,
10 is that part of our business model is to return a social
11 dividend, which is to look at operating marginal
12 services, which typically are early morning, late
13 evening and Sunday services.

14 THE CHAIRMAN: I thought we'd had this point already.

15 A. All this is saying --

16 THE CHAIRMAN: All right, stop, Mr Brown. Let's move on to
17 the next point. I'm concerned that we're going rather
18 slowly, Mr Bowsheer.

19 MR BOWSHER: If we can then move on to the impact of
20 2 Travel upon Cardiff Bus and start at file E4. This is
21 the report of Mr Kreppel -- sorry, page 379. It's part
22 of the pack for a September board meeting. You can see
23 a reference to the meeting at page 364. This is the
24 managing director's report, 379, for that meeting. 364
25 is the notice of the meeting. 379 is the MD's report.

1 Do you see that?

2 A. Bear with me. Yes, sorry, I was just checking the
3 dates. September 2003, board meeting,
4 managing director's report.

5 Q. Yes. This is the whole board pack. Is this then, just
6 so I've got this clear, the first time that you are now
7 concerned about loss of revenue from 2 Travel? And
8 that's referred to at page 380 under the heading
9 "Competition".

10 A. Can you repeat the question, please?

11 Q. Is this the first time that Cardiff Bus is concerned
12 about potential loss of revenue to 2 Travel?

13 THE CHAIRMAN: I think it's the "you" that might be causing
14 the difficulties. Because Mr Kreppel was the
15 managing director.

16 A. It was the loss of revenue, as well, sir, that I was
17 trying to understand. We've lost some contracts to
18 2 Travel is what it's reporting.

19 MR BOWSHER: It also refers to the major source of revenue
20 disappearing.

21 A. Yes. Sorry, I hadn't seen that. Yes, I understand
22 where you're at.

23 Q. Is that the first occasion on which the company is
24 concerned about the loss of revenue to 2 Travel?

25 A. I can't recall.

1 MR BOWSHER: Sir, I'm conscious that we've been going for
2 an hour and ten minutes.

3 THE CHAIRMAN: We'll have a minimum of ten minutes' break.

4 (3.00 pm)

5 (A short break)

6 (3.10 pm)

7 MR BOWSHER: I think I can jump across a couple of board
8 minutes, which deal with competition, because you have
9 said you weren't -- to be fair, at the end of 2003,
10 I think what you're saying, Mr Kreppel was concerning
11 himself with the competitive response or competitive
12 attack, as he refers to it in one minute. Would that be
13 fair?

14 A. The competitive response, yes.

15 Q. In E6/96, this is the minute of the board meeting which
16 you say in your statement, 9 March -- and you say in
17 paragraph 50, this was the first time that you became
18 aware of the detail of the proposed response at this
19 meeting. Is that right?

20 A. Yes.

21 Q. And it's referred to at page 98 of E6, under the heading
22 "Competition":

23 "The board were advised ...(reading to the words)...
24 it was expected that this competition would
25 significantly damage the company's profitability and the

1 extent of this financial effect was reviewed."

2 Presumably you were involved in the review of that
3 financial effect?

4 A. As I said, I've got very little recollection of that
5 discussion. It certainly wasn't based on any figures
6 that I've prepared or been involved in. I think it was,
7 in general terms, Mr Kreppel talking about the financial
8 effect he expected it to have on the company.

9 Q. Were you asked by the board to go away and do
10 an analysis of what the financial effect would be?

11 A. No.

12 Q. If you turn the page, 99:

13 "The company was preparing to make a commercial
14 response, details of which were given to board members."

15 How are these details given, do you recall? Was
16 this a document or an oral discussion?

17 A. No, before the board meeting, a board pack is put
18 together, and there is a managing director's report.
19 I don't think it helps us a great deal further here. It
20 would have been, effectively, a verbal report that he
21 gave to the board.

22 Q. I don't think there's anything else for this meeting
23 which sets out what the commercial response is.

24 A. No, I think in his report, the managing director makes
25 reference to saying, "And I'll grant(?) full verbal

1 update at the meeting", or similar.

2 Q. And we see again the confirmation that that's going to
3 be in accordance with law. Again, if you go on to --
4 and we've already seen the note for that meeting,
5 E6/118. As time moves on, we can see that at E6/509,
6 the competitive response is now being, as it were,
7 pushed out to other parts of Cardiff Bus. This is at,
8 perhaps, a rather lower level. It's not a document that
9 you're referred to on, page 509. Is this a document you
10 would have come across? It's minutes of recruitment and
11 selection meeting.

12 A. I've seen it in relation to the case now. I wasn't
13 aware of it at the time. I don't believe I saw it
14 at the time, no.

15 Q. Presumably you'd just become managing director at the
16 time this meeting was taking place?

17 A. Yes, this is three weeks after I became
18 managing director. If I can correct that,
19 managing director designate. I didn't become full
20 managing director until the end of May.

21 THE CHAIRMAN: Is that a distinction without a difference?

22 A. I think probably, sir, yes.

23 MR BOWSHER: We can see that you were recruiting, is that
24 right from paragraph 1, in order to meet the 2 Travel
25 situation; is that right?

1 A. Sorry, could you repeat the question?

2 Q. You were recruiting drivers, presumably, to meet the
3 2 Travel competitive entry; is that right?

4 A. I think at this point the competition from 2 Travel was
5 in place and the white bus response -- this is making
6 reference to forthcoming holiday periods where we'll
7 need to strengthen staff, but yes, I understand that
8 with the arrival of 2 Travel, resources are stretched
9 and we're looking to strengthen resources for the
10 forthcoming holidays.

11 Q. The seriousness of the situation is perhaps confirmed if
12 you look at G1 at page 533. It's a letter from you at
13 about the same time.

14 A. The reference again, please?

15 Q. G1, page 533. This is a letter from you to the regional
16 officer of Amicus, which I presume was a union
17 representing some of your workforce?

18 A. The engineering workforce, yes.

19 Q. It refers to various matters regarding pay. If you go
20 on to page 534, we see your assessment of the situation:
21 "We are currently facing a potentially very damaging
22 period of trading for the company, with the introduction
23 of significant competition from April 19. Our initial
24 estimates are that this will cost us some half a million
25 pounds ...(reading to the words)... if anything like

1 this were to be repeated in Cardiff, it would certainly
2 result in very significant job losses and potentially
3 put in jeopardy the current ownership arrangements. All
4 our efforts are therefore targeted at minimising the
5 impact of the competition, with the strategy designed to
6 persuade the competition that there is no profitable
7 future for them in Cardiff."

8 And then it refers to the support of other unions.
9 Does that reflect, then, what was the prevailing view
10 within Cardiff Bus, that you intended to let competitors
11 know that there was no future for them in Cardiff and
12 that you would expect that would cost you a lot of money
13 to do that?

14 A. Before answering the question directly, if I may, just
15 to set the context of this. One of the first jobs I had
16 to do was negotiate a particularly difficult pay round.
17 And therefore, it's laying it on with a trowel, I think
18 is the expression, in terms of trying to get the message
19 across, that there isn't a lot of money around for a pay
20 award. So it needs to be seen in that context. In
21 terms of the figures that are quoted, I can't remember
22 where they came from, and they're just a round sum,
23 I think designed to make a point.

24 In terms of the fact that we were competing and
25 trying to demonstrate that: look, there is no

1 competitive -- sorry, no commercial opportunity for them
2 in Cardiff, yes, we were competing with them to try and
3 win the market, win the market share, yes. I don't know
4 if that answered your question. I kind of got lost with
5 what your question was, I'm afraid.

6 Q. Let's break it down. Firstly, you're expecting that
7 competition is going to cost you about half a million
8 pounds in lost profit in the current financial year.
9 Was that true or not at the time?

10 A. I can't remember where that figure came from. Lost
11 profits come from two things. One is the cost of running
12 the additional buses and the other is loss of revenues
13 because for every passenger that we don't take, it's
14 a loss of revenue that transfers across. So that half
15 a million would have comprised those two things.
16 I can't now recollect whether that was me plucking
17 a figure out of the air for the purposes of this.

18 THE CHAIRMAN: When you wrote that paragraph, did you
19 believe it to be true or not?

20 A. Sorry, now, you are talking?

21 THE CHAIRMAN: No, when you wrote that paragraph, did you
22 believe it to be true or not?

23 A. As I said, I think I was over-egging the pudding.

24 THE CHAIRMAN: Is that a yes or a no? Was it a yes in the
25 sense of no?

1 A. It was yes, but laying it on.

2 THE CHAIRMAN: I think that's yes in the sense of no.

3 MR BOWSHER: In other contexts that would be regarded as

4 equivocal. Maybe I can leave that and move on.

5 The reality is, when we read letters like that,

6 isn't it, that the concerted effort of Cardiff Bus was

7 to ensure that they were pushed out of the Cardiff bus

8 market; is that not right?

9 A. We were competing for the market, yes.

10 Q. Is it not right that you intended, as that letter

11 implies, that you wanted to make clear to any competitor

12 that there was no future for them in coming into the

13 Cardiff market? To persuade the competition that

14 there's no profitable future for them in Cardiff?

15 A. I think I was referring to 2 Travel. I don't think it

16 was referring to --

17 Q. Presumably you meant though, that same signal would be

18 sent to the market generally, that anyone thinking of

19 competing in Cardiff should get that message?

20 A. That's not how I'm reading it now. I don't know, it was

21 written a very long time ago.

22 Q. Okay. In seeking to push 2 Travel out of the Cardiff

23 market, you presumably, as Cardiff Bus, had it in mind

24 that one possible consequence of that is that they would

25 go out of business?

1 A. No.

2 Q. You don't think that anyone in Cardiff Bus would have
3 had that thought?

4 A. Our focus was on the Cardiff market. That was our
5 concern.

6 Q. So E7, page 374 -- do you have that?

7 A. An e-mail from David Cole?

8 Q. An e-mail from David Cole, indeed, to Chris Dexter. Who
9 are these individuals?

10 A. It's copied to Chris Dexter.

11 Q. These are presumably all the controllers for the buses,
12 are they?

13 A. I presume so, yes.

14 Q. Who was David Cole?

15 A. He was assistant operations manager.

16 Q. Who did he report to?

17 A. Chris Dexter.

18 Q. And who was he?

19 A. He was the operations manager.

20 Q. So this is coming from, as it were, the headquarters of
21 Cardiff Bus. Would that be fair, this message?

22 A. It would have -- it came from our Wood Street offices,
23 which is the operational centre. The headquarters, as
24 you call it, is in a different location.

25 Q. Right. Let's read what it says:

1 "Lady and gents, in my opinion [presumably that's
2 2 Travel] are making [this is July, things have moved
3 on] a last ditch attempt to earn some cash ...(reading
4 to the words)... Your co-operation will assist in their
5 demise. Dave Cole."

6 Is that not the message which Cardiff Bus management
7 was sending out to the workforce, that you were seeking
8 to not only push them out of the market, but actually
9 push them out of business?

10 A. No, entirely to do with Cardiff. I mean, it's, as
11 I say, a junior manager who's made the comments. Our
12 concern was with Cardiff.

13 Q. So he's completely wrong, is he, Mr Cole, when he says
14 "Your co-operation will assist in their demise"? That's
15 not what Cardiff Bus intended?

16 A. I would read it: their demise in Cardiff.

17 Q. I see. You knew from early analyses, did you not, that
18 2 Travel were a new company in the business. Would that
19 be right, relatively new?

20 A. Yes. When I think back in late 2003, the name popped
21 up, and I made some initial enquiries as to who they
22 were.

23 Q. And at the beginning of 2004, Cardiff Bus was making
24 some quite extensive enquiries into the financial
25 circumstances of 2 Travel; isn't that right?

1 A. Well, certainly we were making enquiries as to who this
2 company was.

3 Q. Well, more than just that. You were looking to see what
4 their financial performance was, were you not?

5 A. Yes, we did some research into the company and their
6 finances, yes. But no more than is available, I think,
7 in the public domain.

8 Q. Did you continue to monitor the financial performance of
9 2 Travel?

10 A. I think I did.

11 Q. What was the purpose of that?

12 A. Well, to understand the financial performance of the
13 competitor, whether -- perhaps the strategies they were
14 following were profitable or unprofitable, including in
15 Cardiff.

16 Q. If you look again at file E7, and in this case page 20.
17 This is the usual e-mail string. I wanted to start from
18 your e-mail, which is the third e-mail. It's your
19 e-mail to head office, Cardiff Bus, on May 29th and
20 you're circulating the interim results of 2 Travel, and
21 you've done some analysis of those results in some
22 detail.

23 A. Yes.

24 Q. You look at the second page, the second paragraph:
25 "So on the face of it, they're in a complete mess.

1 A situation which will be virtually impossible to trade
2 out of ...(reading to the words)... raise more capital,
3 but on current performance, that would be an uphill
4 struggle. Points to watch out for are their plans for
5 expanded bus operations in Cardiff and Llanelli and
6 their increase in their O licence."

7 Last paragraph:

8 "I remain of the view that they are very vulnerable
9 ...(reading to the words)... Could you also tip off
10 industry colleagues that the results are now available."

11 A. Yes.

12 Q. Now, just break that down. They're clearly in some
13 financial difficulties, but you identify that they may
14 be able to keep going if they can raise more funds;
15 is that right? That's in the second paragraph on
16 page 21. The fear is that they will be seeking to raise
17 more capital. Presumably that's a fear because you
18 think they may be able to keep in business by raising
19 capital?

20 A. To keep going in Cardiff.

21 Q. So they may be able to keep going if they can raise more
22 funds.

23 A. That's what I said at that time, in May 2004.

24 Q. Absolutely. From the previous sentence, we can see that
25 it's clearly your intention that they're not going to

1 get any significant revenue or improved performance in
2 Cardiff; is that right?

3 A. Yes, we were competing with 2 Travel and we were
4 competing for our share, yes.

5 Q. You're now going around telling other people in the
6 trade press and industry colleagues, of their financial
7 position. How does that assist Cardiff Bus's ability to
8 compete with 2 Travel?

9 A. We were hoping, clearly, that they would scale back all
10 their operations in Cardiff or leave their operations,
11 I think, and their financial performance, you know, we
12 didn't think they were doing well in Cardiff and just
13 were commenting, looking at the financial performance as
14 to: it doesn't look as though this is going anywhere,
15 I suppose.

16 Q. Going around making sure that other people know about
17 their financial performance is not going to help your
18 ability to compete against them in Cardiff, is it?

19 A. No. I think it was perhaps ill-advised, but we did it.
20 I wasn't aware that it was wrong to do it.

21 Q. The only reason for doing that is to try and turn market
22 sentiment or the sentiment of potential investors away
23 from 2 Travel, isn't it?

24 A. I don't think we had investors in mind, it was just,
25 perhaps, the transport community in Cardiff.

1 Q. Well, let's be clear about that. You're talking about
2 the possibility of raising capital, of course you're
3 interested in potential investors. Otherwise, why are
4 you talking about raising more capital? I mean, the
5 only reason for the reference of raising more capital is
6 that you are concerned about the possibility of
7 investment into the company, surely?

8 A. I suppose we saw that a weak player might scale back
9 their operations or move out of Cardiff and that's what
10 we were looking at. I think that's the context of this
11 document.

12 Q. Your concern was that they might get funded and get an
13 investment from somewhere and you wanted to make certain
14 that no such investment came their way; isn't that
15 right?

16 A. No, I think that's putting two things together that
17 don't necessarily follow. I'm not sure that that is
18 what was in my mind, but this is a long time ago, I've
19 only seen this document recently in relation to this
20 case. I really can't remember what was in my mind at
21 that time. Certainly I'm saying that there is a fear
22 that they will be seeking to raise more capital, and
23 then I report -- suggest that it's passed to the trade
24 press that they are in a loss. This is information,
25 incidentally, that's entirely in the public domain, just

1 drawing their attention to it. I can't recollect the
2 two being linked. We're going back eight years.

3 I can't remember.

4 Q. You have looked at the e-mail, let me ask just one more
5 time. What is the possible benefit for your legitimate,
6 competitive activities on the streets of Cardiff in
7 going around telling industry colleagues and the trade
8 press about the financial performance of this company?

9 A. There was, at the time, a great deal of discussion about
10 2 Travel and their operations, some of which has been
11 covered during the course of this hearing, and it was
12 a matter of some discussion and gossip within the
13 transport community. I think I just was pointing out,
14 you know: look at these results. They've just published
15 their results, look at them. This is a company that's
16 in a mess.

17 Q. I suggest to you that this really gives the game away,
18 that when Mr Cole said a few weeks later that the
19 purpose was to hasten the demise of 2 Travel, that
20 purpose came from the top, and it came from you and the
21 intention was to push 2 Travel out of business because
22 that's the only possible reason for trying to make an
23 active programme of making sure that there was no
24 further investment in 2 Travel?

25 A. We were seeking for them to leave the Cardiff market and

1 that's ultimately the exclusionary intent that we were
2 found guilty of. We had no interest in what their
3 company did in Swansea, Neath or Llanelli or elsewhere.
4 Our sole interest was in Cardiff.

5 Q. And we can see that you were also interested not just in
6 their performance in Cardiff, you were also concerned
7 that they might, presumably, expand their business in
8 west Wales. Presumably that's the reference in the
9 penultimate paragraph:

10 "Points to watch out for are their plans for
11 expanded bus operations in Cardiff and in Llanelli."

12 A. Sorry, what was the question again?

13 Q. Presumably you were also concerned that they might be
14 able to expand their operations in west Wales. Would
15 that be right?

16 A. No, no concern over west Wales at all. It didn't affect
17 us, we don't operate there.

18 Q. Then why do you mention these points are to watch out
19 for? Why would you be watching out for an expansion of
20 business in Llanelli?

21 A. In terms of the development of the company.

22 Q. The only reason, again, you're interested in what is
23 going on in Llanelli is because that's somewhere they
24 may be able to get revenue from to keep the business
25 going; isn't that right?

1 A. I don't know. It was a general comment about the
2 development of their business.

3 Q. So who's to watch out for it? Why are they watching
4 out?

5 A. Well, I was commenting on what I was watching out for
6 and I was just commenting on the nature of the business,
7 their financial performance and just making observations
8 about how things might pan out.

9 Q. So when we get to E7/219, "Team brief", July 2004. I'm
10 not quite sure -- who wrote these team briefs?

11 A. I think at this stage probably it would have been
12 myself.

13 Q. And where you say then on page 219, sub-4, second
14 paragraph:

15 "There are numerous rumours regarding the
16 competitor's financial standing ...(reading to the
17 words)... if only a few of them have substance, there
18 must be a real question mark over this company's
19 future."

20 That was in a sense, was it not, as it were, your
21 nearly achieving final victory; is that correct?
22 You have put them out of business?

23 A. You're seeking, I think, some sort of cause and effect
24 here. It is just commenting on the fact that they are
25 clearly in considerable financial difficulty. I don't

1 see the link to us putting them out of business.

2 Q. I think we can move on. I should, just in fairness,
3 pick up one point perhaps. E6/497. Is this your
4 handwriting or someone else's handwriting?

5 A. No, it's someone else's.

6 Q. Then I don't need to take it any further. If you still
7 have E7, could you turn to 197. This is an e-mail to
8 you and others from Peter Heath. We can see you're
9 named in the middle of it. I can't see any sort of
10 context before or after this e-mail. It seems it's just
11 there. There's nothing it refers to and nothing refers
12 to it. Were you asking Mr Heath to, on a regular basis,
13 conduct analysis as to how much revenue you were losing
14 on a daily basis from the 2 Travel entry?

15 A. No. We were monitoring passengers on a regular basis
16 and I don't know the context, I can't recall the context
17 of this, even seeing it, and the timing. For some
18 reason or another -- well, I don't know if it's me
19 that's asked the question or Peter Heath has just
20 volunteered the information. What it's saying is the
21 transfer of revenue from our liveried services to
22 2 Travel and to our own buses -- because clearly,
23 assuming no growth in the market, then any passenger
24 that travels on 2 Travel or on our white buses comes off
25 the liveried buses and he's talking about the revenue

1 reduction that came from it.

2 Q. There are a couple of oddities about this. Firstly, it
3 says it's the latest estimate, which suggests it isn't
4 the only one, that there have been other estimates like
5 it. Were there regular estimates being provided to you
6 by Peter Heath?

7 A. I can't recall this document, so I don't know whether
8 there were previous ones or not, I'm sorry.

9 Q. In general terms, we've seen you were monitoring
10 2 Travel's financial performance as a company.

11 A. As a company, yes.

12 Q. Were you receiving reports on a regular basis as to what
13 the actual financial effect of the 2 Travel and white
14 services were upon the Cardiff Bus liveried services?

15 A. No, I don't believe I was. If I was, I've certainly no
16 recollection of it now.

17 Q. Were you aware of anyone else gathering this information
18 or receiving it?

19 A. No.

20 Q. So this is --

21 THE CHAIRMAN: It looks as though the total reduction is
22 £585 per day at that time.

23 A. Yes.

24 THE CHAIRMAN: Does that seem right, to your recollection?

25 A. Yes. Well ... Yes, I've no reason to doubt that figure

1 and what we are talking about is a reduction in five
2 hundred and whatever it was pounds from the liveried
3 services which is then split between the 2 Travel
4 services and the white buses. It sounds about right.

5 THE CHAIRMAN: It's money going from liveried services to
6 alternative services?

7 A. Yes.

8 MR BOWSHER: And you're not aware, you have not become aware
9 since, of any data on which that e-mail might have been
10 based?

11 A. No.

12 Q. It seems a funny set of numbers. It doesn't look as if
13 Mr Heath has just made it up, it looks as if he must
14 have had some data, must have done an analysis and some
15 calculations somewhere. Do you have any idea what
16 he was using?

17 A. He had the passenger data for the number of passengers
18 travelling on 2 Travel and the number travelling on our
19 own white bus services, and it's a fairly simple
20 calculation to look at the average fare for those
21 services for both operators. It's a fairly simple
22 calculation, back of an envelope calculation to come up
23 with those sorts of figures. It's not a difficult
24 figure if you have the underlying number of passengers.

25 Q. If we look then at what was going on, as it were, on the

1 streets. E13 and E14. I'm not sure we've got these
2 documents out before, E13 and E14. These are the logs
3 being kept by Cardiff Bus; is that right?

4 A. Which folder are we going to?

5 Q. E13 is, I think, the radio log kept by Cardiff Bus,
6 presumably by the controllers; is that right? Then E14
7 are individual logs kept by, apparently, people who are
8 collecting data, presumably standing somewhere watching
9 what was happening. Is that right?

10 A. Yes, that's right.

11 Q. I don't want to spend --

12 A. Sorry, I'm ... It's this document, the folder E13. I'm
13 just trying to understand what it is I'm looking at
14 here.

15 Q. Okay. Taking the first page, I'm presuming that
16 if we take E13/1, that there's a scheme at Wood Street.
17 That's presumably the operations centre you were just
18 talking about?

19 A. I'm familiar with it now. They are indeed the radio
20 logs that are kept by our radio controllers.

21 Q. And this is Mr Evans writing down what it is that
22 happens?

23 A. He's recording the time of the call that is received
24 through the radio, the bus number it's relevant to and,
25 where necessary, the route and the pad.

1 Q. And he records each message. Some of them are as
2 exciting as "At 12.40, a passenger drops a pound coin
3 down the side of the vault"?

4 A. Yes.

5 Q. If we go to page 3, you can see from the very bottom
6 that Geoff Cook at Wood Street on 20 April is -- is he
7 gathering -- the very last line. He's gathering
8 2 Travel route information from Mr Wells? Presumably
9 that means Mr Wells is ringing in with some information.
10 Would that be the sort of thing you'd have expected?

11 A. Well, that appears to be what it is, yes.

12 Q. If you then look on the same sheet, we can see there are
13 various breakdowns and so forth, which occur.

14 A. Yes.

15 Q. There's a late running item?

16 A. Yes.

17 Q. Is that late running at 304, where it's "Action taken to
18 monitor":

19 "Advised to carry on competitive route."
20 Is he late running because he's going off to see
21 2 Travel?

22 A. No. The late running is running late against the
23 registration now. And you have an opportunity in such
24 a situation to what's called regulate, which means you
25 can bring the driver in out of service in order to get

1 back on time. What they're saying is they're monitoring
2 the late running and to carry on; this is a competitive
3 route and we don't wish to leave a gap for the
4 competitor, I would think.

5 Q. I see. So if you then take page 15 -- this is on
6 30 April.

7 A. Yes.

8 Q. At 8.44 you're now seeing records of Mr Marsden actually
9 going out early. I'm not quite sure what he's early
10 against if it's not timetable, but he's going out early
11 to combat 2 Travel. Do you see that?

12 A. Yes. It starts off with "RTA", which is road traffic
13 accident, Michaelston Road, and departed two minutes
14 early. Yes, that's what it says.

15 Q. I agree with you, I thought it must be an accident. I
16 don't know quite why it's got an accident and then he
17 departs early.

18 A. I don't know what that was all about.

19 Q. And was this radio log only for the liveried services or
20 were the buses using these radio logs as well?

21 A. No, my understanding is they had a separate radio
22 system.

23 Q. Did they have radio logs as well?

24 A. I don't believe they did.

25 Q. What records then do we have of the white bus services,

1 their activities?

2 A. I don't know what records were kept at the time of those
3 services, I'm sorry. I just don't know.

4 Q. We are only going to see in here, references to liveried
5 services going out to combat 2 Travel; is that right?

6 A. Sorry, say that again.

7 Q. We're only going to see in these logs, references to the
8 liveried services going out to combat 2 Travel?

9 A. No, this is a radio log for our entire operations. It's
10 got nothing to do with 2 Travel. I note you pointed out
11 a couple of entries relating to it. Most of this is
12 about general operational issues.

13 Q. Insofar as people are going out to combat 2 Travel,
14 we'll only see those references if they're liveried
15 services, not if they're white buses?

16 A. You're using the term "combat". In terms of the white
17 bus competitive response, yes, it was done on a separate
18 roster, with separate radio communications.

19 Q. I used the term. It's your word, "Combat". Let's be
20 careful about that. And we can see four lines above at
21 8.34, again, someone's gone out. Mr Wilkinson's gone
22 out with a liveried service. 2 Travel at Heol Trelai.
23 Well, we know that's, I think, Ely. He's running early.
24 Presumably, that must be again, that he's running early
25 to combat 2 Travel. That must be right, isn't it?

1 A. No. I think that this is a radio message from
2 Mr Wilkinson to say that he's seen 2 Travel at Heol
3 Trelai running early, with half a full load. And
4 we were monitoring 2 Travel to make sure that they were
5 running to their registrations and what is being pointed
6 out is they're not.

7 Q. You make the point that these radio logs, without going
8 into too much detail, log not just responses to 2 Travel
9 but also in some detail, the volume of issues which your
10 own service encounters and the difficulties you may have
11 with keeping to time or reliability or whatever. Would
12 that be right?

13 A. Well, it records every radio communication. It has to
14 be logged and detailed. So it's the entire radio
15 communication for the network on that day.

16 Q. But we can get from this a fair assessment, can we, as
17 to the sorts of difficulties with lateness, mechanical
18 failure and so forth, which the liveried services were
19 encountering at the same time; is that right?

20 A. Yes. You need to understand the context.

21 MR FREEMAN: Mr Bowsher, just help me, did the OFT make any
22 finding of infringement in relation to the liveried
23 services?

24 A. Not specifically, no.

25 MR FREEMAN: Like the chairman, is that a no?

1 MR BOWSHER: Well, it didn't say -- it was Cardiff Bus in
2 general, it didn't make -- I can dig out the references.
3 There are references to liveried services, but it is not
4 part of the finding of infringement. There are findings
5 regarding the liveried services and I can dig those out
6 overnight. But it didn't say that the liveried services
7 as such, were a specific part of the infringement.

8 THE CHAIRMAN: There are specific findings in relation to
9 the white service.

10 MR BOWSHER: Exactly so.

11 MR SMITH: Mr Brown, just a slightly different question.

12 When these radio logs are recorded, we have a column
13 saying, "Action taken". Would one of the functions of
14 the radio logger be to pass on problems? For instance,
15 one sees various mechanical problems in the buses.
16 Would that be passed on and dealt with by someone else
17 within Cardiff Bus?

18 A. Yes, in the case of a breakdown, for example, it depends
19 on whether it has passengers on board or not, but there
20 are a number of actions that the radio controller has
21 open to them. We have spare buses and spare drivers to
22 go and take over in that situation. We also have
23 a rapid response van and if that's available, that will
24 be deployed to deal with the situation. They manage the
25 situation so they will talk to the driver, decide what

1 course of action to do in respect of that breakdown and
2 what it is, and then manage the process. So yes, they
3 are controlling the events, they will liaise with
4 engineering, spare buses, spare drivers and so on.

5 MR SMITH: So if one looks at the very first page of this
6 bundle, E13, there's an entry just by the hole punch so
7 you can't see the exact time, but it's bus number 301,
8 where one sees "Brakes pulling on the offside,
9 stranded." Can you help us on what action was taken in
10 this particular example so I can get a feel of how these
11 records work?

12 A. Yes. One has to try and understand the shorthand.
13 Brakes are a serious issue, so the bus wouldn't be
14 allowed to continue, hence "stranded". It refers to "W
15 McConkey", that's Wayne McConkey, he's our road service
16 fitter. He's the chap in the van who will go to deal
17 with the situation, and then he will either repair it
18 at the scene or he will arrange for the bus to be towed
19 back to the garage. It shows the lost mileage, that
20 that bus didn't operate between 10.20 and 11.02.

21 THE CHAIRMAN: "CBS" is Cardiff Bus station?

22 A. Yes. Sorry, where's ...

23 THE CHAIRMAN: It's under "Lost mileage" from St Mellons,
24 10.22.

25 A. Yes. So for that period, that service didn't operate,

1 and I talked about the 95 per cent. This would be one
2 of the 5 per cent of services that was cancelled, and
3 that's recorded because the bus service operators were
4 under a fuel duty rebate as it's known, because you have
5 to log active mileage and dead mileage. What I can't
6 see from this is what arrangements were made for the
7 passengers, he hasn't noted that, but it may well have
8 been to have radioed a bus coming from behind to say
9 "Please can you stop and pick up the passengers on this
10 service." That's the way it would normally --

11 THE CHAIRMAN: It looks as though someone has to initial
12 in the last column when a bus is taken out of service
13 for some reason.

14 A. Yes. That's the lost and additional mileage, and this,
15 as I say, is to do with the fuel duty rebate bus
16 services operator's grant. This is showing they have
17 amended because the fuel duty rebate claim is made from
18 a standard set of what's expected and then you make the
19 deviations from that on a separate software system.

20 MR BOWSHER: Mr Brown, you mentioned the separate radio logs
21 for white buses. Presumably they were kept just as the
22 liveried radio logs were kept; would that be right?

23 A. I'm not sure there were radio logs kept. I think the --
24 because you have a control room, fixed consoles. It
25 would have been with a roving radio, so you have

1 supervisors' radios. So rather than coming through to
2 the control room, it would have gone to the supervisor,
3 who's positioned wherever, but not in the control room.

4 Q. So the only record we would have then, is the
5 competitive logs that we have at E14, if you want to
6 turn to those? For buses.

7 A. I see what we have here. I don't know what records were
8 kept, I'm sorry. In terms of the white bus services,
9 whether the supervisor did record the details of the
10 call and how they recorded it, I'm not familiar.

11 Q. Does it not seem slightly odd that you've clearly gone
12 to some care to record the performance and activities of
13 the liveried services through the radio logs, through
14 these competitive service logs, but not for the white
15 bus services. Is there a reason for that?

16 A. No, I don't know whether we did or didn't, I'm afraid.
17 We have loads of stuff here. I wouldn't have had sight
18 of those. I don't -- I recognise the radio logs because
19 it's something that I'm familiar with from having popped
20 into the control room from time to time but it's not
21 a document that I would see typically on a day-to-day
22 basis.

23 Q. Who would have been in charge of whatever records there
24 were of white bus activities?

25 A. I think sort of two people: Chris Dexter in terms of the

1 operational issues and Peter Heath's team in terms of
2 any lost or additional mileage. As we know, there
3 wouldn't have been additional mileage in this situation.
4 At least as far as I'm aware, that's not the case.
5 There may have been lost mileage, but of course we were
6 trying to run a very full service.

7 Q. And how was the lost mileage monitored?

8 A. I don't know.

9 Q. And presumably, in your preparations for this case,
10 you've taken steps to see whether there were any records
11 remaining from Mr Heath or Mr Dexter or his teams; would
12 that be right?

13 A. In preparation for this case now, we had a comprehensive
14 review of every file in every office in every building
15 of Cardiff Bus, without exclusion. So we weren't
16 looking for anything specifically. What we wanted to do
17 was make sure that any document of any relevance at all
18 anywhere in the organisation, would be made available to
19 2 Travel. And that came from a direction from the
20 tribunal at a CMC last year.

21 Q. We've already seen that the OFT was looking at the
22 competition policy document and whether or not that had
23 been implemented. When you were dealing with the OFT in
24 those proceedings, did you go to look then, some years
25 ago, whether there were white bus documents which might

1 have been available to substantiate some of the
2 observations you were making to the OFT?

3 A. I'm sorry, I don't understand the question.

4 Q. We've seen already that there was a debate in front of
5 the OFT as to whether or not Cardiff Bus had implemented
6 the competition policy document.

7 A. Yes.

8 Q. And one of the observations you made -- it's recorded
9 in the decision -- is you were making a case that you
10 weren't really trying to run the services in a way that
11 involved implementing that document. Do you recall
12 that?

13 A. Yes.

14 Q. In order to make good that case, did you go and look to
15 see whether there were then any of these records about
16 the white bus services anywhere in the business that
17 could have made good that case?

18 A. We had the section 26 disclosure.

19 Q. I see that, but you might have wanted to make a positive
20 case that says, "Look at what we actually did. I can
21 show what you we did. This shows that it isn't true".

22 A. I don't know the answer to that question because
23 I myself did not conduct the section 26 search. That
24 was conducted as a -- a separate statement that I've
25 made that shows very clearly how that section 26 search

1 was carried out. But it was carried out by the PA to
2 the directors, who was coordinating the search in
3 conjunction with the solicitors. A huge amount, box
4 after box after box of documentation was found, which
5 was made available, was then passed over to our
6 solicitors, who then managed the process from there.

7 So there may well have been documents. We were
8 looking for any document that was relevant to make
9 available to the OFT. I didn't then go through those
10 documents to see what they were, they were simply handed
11 over to our solicitors, at which point they were in
12 Burges Salmon's control. So I don't know whether we did
13 or not. I mean, section 26, everything that we thought
14 could possibly be relevant, was made available to our
15 solicitors.

16 Q. I follow that. I will just press that one more time.
17 I follow what you're saying about the section 26
18 process, but you were making a positive case to the OFT
19 about what you had or had not been doing, and if those
20 documents had been available and had supported your
21 case, presumably you would have produced them; is that
22 right?

23 A. Supported them in what way, sorry?

24 Q. Supported what you were wanting to say to the OFT about
25 the way you'd run your business.

1 A. I really don't understand what you're getting at.

2 MR BOWSHER: Sir, is that a convenient point for today?

3 THE CHAIRMAN: Yes.

4 Do you mind returning tomorrow? Sorry, Wednesday.

5 We're not sitting tomorrow. Thank you. Please don't

6 discuss your evidence with anybody else at all. That's

7 very important.

8 A. I understand.

9 THE CHAIRMAN: You can leave, Mr Brown.

10 Shall we have a sitrep as to where we are? Sit at

11 9.45 on Wednesday, 9.30 on Thursday, 9.30 on Friday?

12 MR BOWSHER: Sounds fine to me.

13 THE CHAIRMAN: That gives us a bit of extra time. We'll

14 have slightly shorter lunch breaks.

15 MR BOWSHER: Yes.

16 THE CHAIRMAN: Maybe three-quarters of an hour. How are we

17 doing?

18 MR BOWSHER: I would have thought that I would finish

19 comfortably within Wednesday morning.

20 THE CHAIRMAN: Cross-examining Mr Brown?

21 MR BOWSHER: Yes. Some time at the back-end of Wednesday

22 morning, I'd think. Then we have three expert witnesses

23 to deal with. I imagine that Mr Good will come first.

24 I don't know how long my learned friend expects to be

25 with him. Then we have Mr Niels and Mr Haberman to deal

1 with.

2 THE CHAIRMAN: So we'll finish the evidence this week?

3 MR BOWSHER: My expectation is we will finish the evidence

4 this week. Then the question is where we go from there.

5 THE CHAIRMAN: Can you give us an idea, allowing for cogent,

6 relatively concise written closing submissions, as to

7 how long you really will require for closing submissions

8 on some future date or dates?

9 MR BOWSHER: Written or oral?

10 THE CHAIRMAN: For oral after the written. After we've

11 received the written, which is going to be concise and

12 to the point.

13 MR BOWSHER: I would have thought that my learned friend

14 Mr Flynn's proposal was an excellent one. I think he

15 said a 75 page limit on our written closings and then no

16 more than half a day each for oral, just to deal with

17 questions.

18 THE CHAIRMAN: I think we can live with that.

19 MR BOWSHER: That seemed a sensible proposal to me.

20 MR FREEMAN: 75 sides.

21 THE CHAIRMAN: 37 and a half double-sided sheets. All

22 right. That's helpful. So we shall sit at 9.45 on

23 Wednesday morning?

24 MR FLYNN: Those will be full days, would they? The 9.30

25 days are not --

1 THE CHAIRMAN: No, they're full days, they are not Maxwell
2 days. It's an attempt to get through the evidence.

3 MR FLYNN: Indeed.

4 THE CHAIRMAN: I hope nobody will mind the slightly extended
5 hours. Then we shall adjourn until 9.45 on Wednesday
6 morning.

7 (4.08 pm)

8 (The hearing adjourned until 9.45 am on Wednesday 21 March)

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25