

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

16 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 5)

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

Friday, 16 March 2012

(10.00 am)

THE CHAIRMAN: Before we continue with the evidence, we've got a file now, which contains an application. It raises quite a number of issues, we think, and we feel that it might be best to take this application at 2 o'clock. Quite what effect that will have on the rest of the afternoon, I'm not sure, but perhaps if we have completed a witness and are moving on to a new witness, perhaps you could have someone relatively short here.

MR BOWSHER: We need to try and deal with Mr Sutton and Mr Cartwright today. I know that's our sort of primary goal. Then we have a couple of witnesses thereafter, who we can slot in when we can.

THE CHAIRMAN: Given that it's Friday and I know that a lot of people in this crowded room wish to either return or go to London, I'm minded to rise so that people, if they wish to, can catch the 4.25 train. The station is very near, so that means we could rise round about 4.22! No, I don't mean that. 3.50. We might have to go to 3.50. Obviously we need to get the work done, but it seems reasonable. That gets people back to London for about 7 o'clock.

MR FLYNN: Could I just ask one thing for the application?

THE CHAIRMAN: You'll be going to your estate somewhere,

1 won't you?

2 MR FLYNN: I'd have liked to have stayed in Cardiff, but
3 other people got there first! In connection with the
4 application, it contains a witness statement, which we
5 on this side have not seen. I just ask whether the
6 tribunal will be reading that witness statement.

7 THE CHAIRMAN: We have read it.

8 MR FLYNN: You have read it, thank you.

9 THE CHAIRMAN: Yes, Mr Flynn.

10 MR STEPHEN WILLIAM HARRISON (continued)

11 Cross-examination by MR FLYNN (continued)

12 MR FLYNN: Good morning, Mr Harrison. I know you didn't
13 want to be here.

14 THE CHAIRMAN: Yes, thank you for coming back.

15 A. I didn't realise I had a choice!

16 THE CHAIRMAN: You don't, but it's courteous to thank you.

17 MR FLYNN: It seems your witness statements have been taken
18 away. It's bundle C1/1, the first witness statement.

19 Within that, I just want a quick look at the second PwC
20 report, Mr Harrison, which is page 88. We discussed the
21 nature of this report yesterday.

22 A. Yes.

23 Q. Let's look firstly, touching on a point that I think you
24 did raise yesterday, beyond the first substantive slide,
25 "Summary projected trading results."

1 THE CHAIRMAN: That's the title on 87.

2 MR FLYNN: That's right.

3 THE CHAIRMAN: That's just the title.

4 MR FLYNN: Something has gone awry as between the two. Let
5 me find the page. I'm looking at this in the G file and
6 it is G1, page 673. It would appear that the attachment
7 to your witness statement is incomplete. Just a quick
8 point, really, on this one. You'll see there's a table
9 on the right-hand side and it says it's a summary of the
10 projected trading results for three months
11 to August 2004.

12 A. Mm.

13 Q. "The business is expected to commence generating profits
14 during October 2004 as a consequence."

15 Are you with me?

16 A. Yes.

17 Q. "New routes commencing and price increases of
18 20 per cent on buses, 5 per cent on supported routes."

19 I just wanted to note there, I think you said
20 yesterday that you had not understood why the price
21 should not be essentially the same or shouldn't be
22 higher, and it seems that your view may have prevailed
23 or at least been accepted by management at this point.
24 That may be what you were referring to yesterday when
25 you --

1 A. Yes. I think it was bringing it up to the market price.

2 Q. On page 681 in that bundle, we see a projected cash
3 flow. The bottom line shows the end of period projected
4 cash flow position month by month. The highest figure
5 in that row is under April, 937. That's right, isn't
6 it? So that led to a view at the time from PwC that
7 there was an overdraft requirement for £937,000.

8 A. On the basis of the assumptions, yes.

9 MR FREEMAN: May, not April.

10 MR FLYNN: I think it is April, actually, sir.

11 MR FREEMAN: Okay, sorry.

12 MR FLYNN: It's in the 9s, around about there. The highest
13 seems to be for April.

14 MR FREEMAN: My mistake, you're quite right.

15 MR FLYNN: That figure of 937 turned out to be inaccurate,
16 didn't it, Mr Harrison, because it didn't take account
17 of the fact that the initial 675 of the bank overdraft
18 had already been used up. So that --

19 A. Sorry, I don't follow. I don't understand why you --

20 Q. This forecast, shortly after this report was issued, had
21 to be upped, didn't it, substantially?

22 THE CHAIRMAN: You'd better explain why again, Mr Flynn.

23 A. I really don't understand why.

24 MR FLYNN: It was subsequently increased to 1.6 million and
25 further guarantees were entered into by --

1 A. I think you're mistaken. I think what it is -- and you
2 were referring to the EY report, I think, which I've had
3 a look at. In the EY report it said that, I think, the
4 loans went up to 1.6 million. I think that's what
5 you're referring to, I'm not sure. I'm trying to help.

6 Q. Yes.

7 A. I think it says in there they went up to 1.6.
8 If we look at what is in this bundle, 693, you can
9 see -- let's take August time, which is roughly when
10 this was happening. You can see there, a bank overdraft
11 of 570, which, if I take you ...

12 THE CHAIRMAN: Sorry, which file is that?

13 MR FLYNN: 579, bank overdraft in August 2004. Is that what
14 you're looking at?

15 A. Yes.

16 THE CHAIRMAN: Ah, August 2004, yes.

17 MR FLYNN: There's a line for bank overdraft.

18 A. Going back to the one you just referred to a moment ago,
19 you'll see the projected cash flow for the same
20 period. September, you can see there, 664. So the two
21 tie up, so you can see the projected bank overdraft on
22 693 ties up with what it is on 681.

23 Q. Yes.

24 A. If you also look down, you'll see that we had a bank
25 loan of 669, and if you look down underneath that into

1 what is described as "total risk capital", there was an
2 unsecured loan of 559. Now, when Ernst & Young, in
3 their report, talk about the loan going up from what is
4 in here at 669 up to 1.6, at that particular point also
5 in their report, they note that the overdraft facility
6 at the time was 140. So the difference that is being
7 shown is that I was showing the financing requirement
8 that then was subsequently, obviously, translated into
9 a loan. So there was a movement out of my projected
10 overdraft because the facility was at 140, so I was
11 showing 464, and that was obviously provided in the form
12 of a loan. That's where the differences, I believe, are
13 coming from.

14 Q. Do we see that 140 figure in this --

15 A. No, you see it in the EY report. They refer to the
16 facility, at the time, being an overdraft facility of
17 140.

18 Q. Where did the unsecured loan come from?

19 A. That was just an element of the loan, I believe, that
20 was -- I can't remember particularly why it was ... It
21 was to do, I think, with the amount of the provision of
22 loan by the investors that it had been guaranteed by the
23 investors ...

24 THE CHAIRMAN: Unsecured?

25 A. That's what I believe to be the case, yes. When it was

1 first done it was unsecured, I think. But chairman, I'm
2 doing this eight years ago. So I think what you're
3 seeing is a switch between loan -- what I'm basically
4 saying is what you're seeing is a switch between loans
5 and overdraft, which is giving rise to your question,
6 saying that it was substantially wrong.

7 MR FLYNN: So that the net cash flow position, for some
8 reason, is treated as the same as the necessary bank
9 overdraft?

10 A. Yes.

11 Q. But surely these other things would also go into --

12 A. It wouldn't go into a cash flow. You normally show a
13 cash flow and what's shown in the cash flow is the
14 actual bank movements as opposed to the loan facilities.
15 The loans are shown in the balance sheet.

16 THE CHAIRMAN: Just pause for a minute. (Pause). So
17 a bank overdraft is taken into account in calculating
18 the net assets; yes?

19 A. Yes.

20 THE CHAIRMAN: But an unsecured loan is not taken into
21 account?

22 A. It would be. Yes, it would be.

23 THE CHAIRMAN: That's the reason for my question.

24 A. It would be. All it was trying to show here in this
25 statement was just trying to show how much the

1 shareholders had at risk. That's all this statement was
2 trying to do.

3 THE CHAIRMAN: Right. So this is not a sheet that would
4 appear in the statement of accounts in this form?

5 A. No.

6 THE CHAIRMAN: Year end accounts?

7 A. No, what you'd do is move the unsecured loan into the
8 borrowings lines and therefore the net assets, for
9 example in August, would therefore reduce to about 240.
10 Sorry, I'm doing the mental arithmetic. 240,000 because
11 the loan would appear in the borrowing statement.

12 THE CHAIRMAN: So if you were, for example, calculating the
13 market capitalisation of the company or the EBITDA,
14 however you deal with it, because I know there are
15 alternative ways of valuing a company, you'd obviously
16 have to take into account the unsecured loans?

17 A. Yes.

18 THE CHAIRMAN: And if this had been or was an AIM listed
19 company for at least part of the time we're considering,
20 there would be a market cap figure on the Stock Exchange
21 website, wouldn't there?

22 A. Yes.

23 THE CHAIRMAN: On a day by day basis?

24 A. Yes.

25 THE CHAIRMAN: Which would reflect the share value?

1 A. Yes.

2 THE CHAIRMAN: And that market cap figure would take into
3 account unsecured loans as well as bank overdrafts?

4 A. It would be valuing the shares and therefore the
5 shareholders' funds, excluding unsecured loans.

6 THE CHAIRMAN: Okay, thank you.

7 MR FLYNN: If you look at page 678 in that one, Mr Harrison,
8 we see "Key balance sheet assumptions." The third
9 bullet is:

10 "PAYE includes approximately 800,000 of arrears,
11 projected to be settled at 25,000 a month. No repayment
12 of any arrears is included."

13 So it's right, isn't it, that these projections
14 didn't account for or expect a repayment to the Revenue
15 of 464,000 in a single month?

16 A. No, that's true.

17 Q. It is also right, isn't it, that they didn't project
18 a £300,000 payment which had to be made in November for
19 repayment of the £300,000 bank facility?

20 A. As I understand it, yes.

21 Q. Which we see -- I don't need to take you to the
22 documents because the tribunal has already seen them.
23 We've looked at E9/236 and E9/240 for that event, which
24 came as a shock to Mentor.

25 MR FLYNN: Thank you very much, Mr Harrison, that's all.

1 THE CHAIRMAN: Mr Bowsher?

2 Re-examination by MR BOWSHER

3 MR BOWSHER: Good morning. Could I just ask you to take,
4 briefly, E5 and E9. It may be a lot of effort for not
5 a long question. You were asked a number of questions
6 about E5/428, and I'm just taking you to it for
7 identification purposes so that there's no question of
8 confusion about what I'm talking about. E5, page 428.

9 A. Yes.

10 Q. I don't want to get into the detail of this. In answer
11 to a number of the questions that you were asked, your
12 response was "Well, there was a letter at about this
13 time, which dealt with a number of these points"?

14 A. Yes.

15 Q. Is the letter that you had in mind the letter at E19,
16 page 274?

17 MR BOWSHER: Did I say E9 before? I meant E19.

18 THE CHAIRMAN: This is the letter from Sir Richard Needham,
19 is it?

20 A. That's the letter I was referring to, yes.

21 MR BOWSHER: Okay. Is that a letter, the contents of which
22 you discussed with Sir Richard Needham?

23 A. I can't remember the letter. It was only the fact it
24 was sent to me last week that I knew -- yes? So I can't
25 actually remember the letter in any detail, but given

1 some of the detail in here, he clearly did discuss it
2 with me at the time because some of the detail he would
3 have only got from me.

4 Q. And again, taking account of the distance of time, in
5 re-reading that letter, are the contents of that letter
6 something that you recognise as being --

7 MR FLYNN: Sir, I hate to interpose, but Mr Bowsher is
8 suggesting that this letter is a response to the
9 document at E5/428, which it plainly is not. The e-mail
10 at E5/428 is 19 February; Sir Richard's letter refers to
11 a letter of 1 March, so we're not comparing like with
12 like.

13 MR BOWSHER: We don't seem to have the letter that
14 explicitly refers to this. There's clearly a missing
15 document in the chain. That's exactly what I was just
16 coming on to.

17 The comments -- and we can go through this line by
18 line, but I was hoping to take this briefly -- in the E5
19 e-mail about the PwC report, do you regard the comments
20 made by Sir Richard Needham in the E19 letter as
21 satisfactorily addressing those comments from a PwC
22 perspective?

23 A. Yes. Yes.

24 Q. As my learned friend says, there is a mystery because we
25 don't quite -- there's a mismatch between the documents,

1 but the substance of one seems to refer to the substance
2 of the other, if I can put it that way, although there's
3 a missing letter between the two.

4 A. Yes. In fact, I hadn't realised it was referring to
5 a different e-mail, but yes.

6 Q. Do you remember being given at the time, any document
7 from Mr Rawlinson, making these sorts of comments and
8 being invited to comment on it?

9 A. I can't remember, but given that ...

10 THE CHAIRMAN: You're leading, he can't remember. I'm not
11 sure where this is getting us.

12 MR BOWSHER: I'm not sure we can get very far.

13 THE CHAIRMAN: This may be more a matter for submissions.

14 MR BOWSHER: There's an odd mismatch here, but they seem to
15 refer to each other.

16 You can put E19 and E5 away. You were asked various
17 questions about the preparation of the first PwC report
18 and the information that you got from that, and you
19 commented that you had obtained some information about
20 the business from Mr Bev Fowles and Carl Waters.

21 A. Mm-hm.

22 Q. You referred to a period of tension between those two.
23 What period were you referring to?

24 A. Well, subsequently there was tension, I guess, as
25 the ... Well, I'm not sure I can ... In my opinion, it

1 was the problems in the company and the problems facing
2 the company in the period afterwards created tension and
3 it created tension with the team that were working
4 there.

5 Q. Do you have any idea of dates of that?

6 A. Not at this time. It's all after -- it was mostly after
7 we did that report is when I estimate it was, but
8 I couldn't be precise about timing.

9 Q. In your first letter, the one that starts at C1/12 -- at
10 C1/15 you talk about risk profile and you talk about,
11 under "Risk profile", inherent risks and so forth. And
12 I think you were discussing, in response to my learned
13 friend, various issues about stress testing some of the
14 sensitivities that arose at that point. Did you at this
15 point do any stress tests about the impact of
16 competition law compliance or non-compliance?

17 A. No, no. At that point in time, I knew nothing about it
18 at all as an act, other than the broad principles.

19 Q. It was suggested to you in a number of different ways
20 that the plan that you were being asked to look at over
21 this period, late 2003, early 2004, was optimistic.

22 A. Mm-hm.

23 Q. And I think that was intended as a criticism, but that
24 was the word that was used. I wonder if I can just ask
25 a couple of questions about that. I think the

1 definition I got overnight for "optimistic"
2 is: hopefulness and confidence about the future or
3 success of something. That seemed to be an Oxford
4 Dictionary definition.

5 MR FLYNN: The phrase used was "over-optimistic".

6 MR BOWSHER: Did you regard this plan as depending on hope
7 or confidence about the future of the success of this
8 plan?

9 THE CHAIRMAN: Are we talking about subjective hope or
10 objective?

11 MR BOWSHER: It's the hope of the management.

12 THE CHAIRMAN: Subjective, right.

13 MR BOWSHER: Of the management. Was the basis of this plan
14 that they were confident or hopeful as to the success of
15 this business?

16 A. They were confident and hopeful, yes.

17 Q. You discussed whether or not, in answer to various
18 questions -- the different ways in which this market
19 opportunity developed and questions were asked by the
20 tribunal about the different ways in which the business
21 might have been structured. Was there any other
22 approach or model which you thought was available to
23 2 Travel to enter the Cardiff market? Any other
24 business model they could have applied than the one that
25 they did?

1 A. Um ... They could have acquired a coach operator in the
2 area who already had contracts. That would have been
3 a way of doing it as well. I'm not sure if we discussed
4 that, but that would have been an option that would have
5 been open. In part, that's why they were looking at
6 certain acquisitions all the time, to see if they could
7 get into a market and achieve a business base that was
8 already there, to use that then, to apply this in-fill
9 route. So you could use a coach operator to do in-fill
10 routes. That was the basis of a strategy, so an
11 acquisition could have achieved it as well.

12 Q. Was there any other way of raising the finance for what
13 they planned to do, than that which they actually did
14 adopt though?

15 A. They could have arranged more capital from their
16 shareholders. They could have done that.

17 Q. Did you, at the time, have any cause to tell the
18 2 Travel business that you thought that their proposals
19 were over-optimistic, to take my learned friend's
20 phrase?

21 A. What was happening was the fact that they were having so
22 much difficulty getting to Cardiff and turning Cardiff
23 around, that became the main feature of discussions with
24 me. When this occurred in the time period, I basically
25 said -- it's like complaining about the ref all the

1 time, in rugby parlance. Yes, it may be wrong, and
2 I know Mr Francis was writing to various people, I can't
3 remember exactly who he wrote to, but he was writing to
4 everyone, complaining "foul" all the time. But that
5 wasn't actually achieving anything and all that was
6 happening is it was clearly failing and, in my mind --
7 and again, whether this was in August time, September
8 time, October time -- we were getting to a stage where
9 that company was not going to be able to get into
10 Cardiff for whatever reason and not achieve its strategy
11 of those in-fill routes. And as a result, without those
12 new routes, the company was not going to be able to
13 survive. Now, that's the sort of conversations I would
14 have been having at that point in time with them about
15 what was happening in the business.

16 Q. So that's where, as it were, the Cardiff business ended
17 up. Before the entry into Cardiff was being made, did
18 you have any cause to say to them: hang on, this is
19 over-optimistic?

20 A. My concern at the very outset was the fact that when
21 I looked at the map of how bus operations worked
22 elsewhere, it was clearly geographically based and there
23 was a dominant player in most cities, dominating the
24 market. Now, that looked to me -- whether it was
25 a current or past practice, had suggested that the

1 markets were restricted and there was, you know -- one
2 can speculate as to how people could have done that
3 in the past. My view was that, therefore, they needed
4 to be careful about what actually would be the
5 competitor reaction from someone who was going to
6 potentially see their best routes cherry-picked and
7 taken off them. My view was that there was likely to be
8 a strong reaction, which is why in my first report,
9 I emphasised the Competition Act. I wouldn't have
10 emphasised it if we hadn't had that discussion because
11 that was my big concern from the outset.

12 Q. So were you discussing with Bev Fowles his strategy for
13 selecting routes and getting business?

14 A. Yes, I discussed that with him, understood how he was
15 going about doing that, and as I said, I believed that
16 to be plausible, so I thought that was plausible. The
17 discussions on the Competition Act were mostly with
18 Mr Francis.

19 Q. And at that point, the time of writing the first report,
20 did you ever have cause to say: wait a minute, chaps,
21 this is over-optimistic?

22 A. No. As I said, my concern was the restriction of
23 a competitor into the market. I didn't think
24 Cardiff Bus were likely to give up the marketplace that
25 easily. That was my major concern. That's why they

1 took me through how they were going to go through it in
2 a fair amount of detail and cherry-pick and how there
3 was nothing they could do. It was explained to me that
4 in the 1980s, that sort of action and how it had been
5 prevented, how bus companies prevented it in earlier
6 years, to stop that kind of bus wars --

7 Q. To prevent entry, you mean?

8 A. Entry from a new entrant to a market.

9 MR BOWSHER: Thank you very much indeed. Does the tribunal
10 have any more questions?

11 THE CHAIRMAN: Mr Smith has a question.

12 MR SMITH: Staying on the first PwC report, the February
13 report, Mr Harrison, you said in your evidence yesterday
14 that Mr Ferrand spent a fair amount of time working on
15 this report. Can you help us on how you and he worked
16 together to compile this report? Did he, for instance,
17 do the first draft, which you then reviewed? How did it
18 work?

19 A. Nigel Ferrand, senior manager, he worked in the Cardiff
20 office in what I would describe as due diligence-type
21 assignments, if I can broadly characterise this as a due
22 diligence-type assignment. I had obviously met the
23 individuals before. I would have briefed Nigel --
24 I can't remember precisely, but this is how it would
25 have worked. I'm not sure if it quite worked like this,

1 but this is how it normally worked. I would have
2 briefed Nigel on how and what I knew about the client
3 before we went. I'd have gone and introduced him to
4 various people who had the discussions and he'd have set
5 about doing the work, meeting with Cuan O'Shea,
6 spending time with Carl Waters. As I said before, they
7 were his projections, so understanding the projections
8 and the basis of the projections. As the work had been
9 going on, he'd have discussed various issues with me
10 in the particular case, because it was my style. Some
11 partners would have done it back at the office, perhaps,
12 and actually visited the client as the work was going
13 on. So I was part of the discussions and got a feel for
14 the place as well, when I was there. So I spent
15 a reasonable amount of time talking to Bev Fowles on
16 this one because my concern -- I keep saying -- at the
17 very start, was how they were going to break into
18 a market where there was one dominant player. And you
19 know, I had a problem with that. Therefore I spent
20 a lot of time, I remember, discussing that and what
21 action they could take, because I saw that as the key
22 risk.

23 MR SMITH: When you're saying a lot of time, I appreciate
24 it's a long time ago to remember but can you give us
25 a feel for whether it was hours or days that you spent

1 during the course of --

2 A. On this report, I would have said I probably spent

3 somewhere in the region of about three days.

4 MR SMITH: Three days.

5 A. Yes. Part of it.

6 THE CHAIRMAN: And your colleague?

7 A. About three weeks. Yes, that's about right.

8 MR SMITH: And then my final question. Can you remember --

9 and again I appreciate it's a long time ago -- how much

10 PwC charged for this report?

11 A. I can't. I could guess a number, but I'd be guessing.

12 MR SMITH: I don't think we'll ask you to guess,

13 Mr Harrison.

14 MR FREEMAN: I recalled something I did want to ask

15 Mr Harrison, which just arises out of the significance

16 of the Competition Act, for your various pieces of

17 advice. Did I hear you say that at the time you wrote

18 your first letter, the Competition Act was just an act

19 and you had an idea of general principles?

20 A. That's all, yes.

21 MR FREEMAN: In the first PwC report, which I think is two

22 or three months later, the Competition Act does figure.

23 It figures in the assumptions.

24 A. Yes.

25 MR FREEMAN: Can I ask you two questions. First of all,

1 presumably you had a better idea by February, of what
2 the Act said, you had informed yourself?

3 A. Yes.

4 MR FREEMAN: Secondly, was the assumption that the
5 Competition Act would deal with the concerns you had
6 about whether the reaction of the incumbent operator
7 would prevent the strategy you were recommending,
8 working? Is that the situation?

9 A. Mr Francis went through the Act with me and explained
10 the principles of the Act to me.

11 MR FREEMAN: Mr Francis explained the principles of the Act
12 to you?

13 A. Yes, yes, yes, going back, yes, he took me through them,
14 the principles, and Bev Fowles explained to me how in
15 the past, and actually gave me a compare and contrast,
16 of how an incumbent couldn't use their competitive
17 advantage or competitive position to the detriment of
18 a new entrant, and therefore, how they would be
19 precluded from actually taking action, as they would
20 have done in the past. So the idea of the bus wars --
21 and it was always related back to the bus wars and the
22 type of practices that went on years before, which
23 Bev Fowles was aware of, having gone through that era
24 and how activities occurred then, that they would be
25 precluded from doing that.

1 MR FREEMAN: I won't ask whether that was optimistic or
2 over-optimistic. I'll leave that one.

3 THE CHAIRMAN: Thank you very much. Do you want to ask
4 anything arising from those questions?

5 MR BOWSHER: No, sir. Could Mr Harrison be released?

6 THE CHAIRMAN: Yes. Thank you, Mr Harrison.

7 (The witness withdrew)

8 MR BOWSHER: Our next witness is Mr Sutton.
9 Christopher Sutton.

10 MR CHRISTOPHER JAMES SUTTON (sworn)

11 Examination-in-chief by MR BOWSHER

12 MR BOWSHER: Take file C1, just C1, tab 8. What are your
13 full names?

14 A. Christopher James Sutton.

15 Q. And your address?

16 A. [Address given].

17 Q. At tab 10 we see a statement that bears your name. It
18 starts at page 614. If you turn on to page 620 -- did
19 I say tab 10? I meant tab 8, sorry. Page 620. Is that
20 your signature, Mr Sutton?

21 A. Yes.

22 Q. That bears the date of 23 September. Have you had
23 a chance to look over that statement again?

24 A. Yes.

25 Q. Is there anything you wanted to correct in that, having

1 re-read it?

2 A. No.

3 Q. Are the contents of that statement therefore true to the
4 best of your knowledge and belief?

5 A. Correct.

6 Q. Thank you. Could you wait there. There may be some
7 questions for you.

8 Cross-examination by MR FLYNN

9 MR FLYNN: Good morning, Mr Sutton. I'm going to ask some
10 questions on behalf of Cardiff Bus, as you're probably
11 aware. You tell us in your statement that you had been
12 with King Sturge from 1998 and that has now merged very
13 recently with Jones Lang.

14 A. Yes, last summer.

15 Q. You show us a letter appointing you, from Mr Francis,
16 and that's, I think, exhibited -- it's page 622 in that
17 file -- to advise the company in relation to the
18 redevelopment of the Swansea depot. I think you say
19 that followed a pitch that you had made to Mr Francis
20 earlier in that month of August?

21 A. Yes.

22 Q. August 2003. Is it right to say you essentially took
23 your instructions on this mandate from Mr Francis?

24 A. That was my introduction to the company. The previous
25 year -- I'd had no previous dealings with any of the

1 directors until the previous year -- I sold a property
2 in a different part of Swansea to Mr Francis and another
3 investor, and that was my introduction to him. That
4 transaction went well. The following spring he invited
5 me to pitch for this.

6 Q. And then my question was: having pitched and got the
7 job, as it were, did you effectively take your
8 instructions, discuss this opportunity with Mr Francis?

9 A. Yes. He was the primary contact.

10 Q. You refer at various parts of the witness statement to
11 meetings with him and meetings with you and him, seeing
12 other parties who were connected with the development of
13 the property, and the potential for its development.

14 I think that's right?

15 A. Yes.

16 Q. You say in paragraph 8 of your witness statement:

17 "Our understanding was that 2 Travel wished to
18 develop the Swansea depot to unlock the development
19 profit, the proceeds of which were to be used to clear
20 the indebtedness of the company."

21 And then you refer to the letter that we've just
22 looked at. That letter doesn't say that in terms, does
23 it?

24 A. No.

25 Q. It just talks about redevelopment.

1 A. Yes.

2 Q. How did you reach the understanding that that was the
3 company's intention?

4 A. I think we had a debate about the quality of the
5 building for its existing purpose, and this was a --

6 Q. When you say "we"? With Mr Francis?

7 A. I remember going to site with Mr Francis, meeting
8 Mr Fowles. I think they were the two primary people,
9 two people there. And the buildings were essentially
10 very old, on site. It was an old engine works or it was
11 predominantly brick and stone construction. This was
12 not necessarily fit for purpose for a good business.
13 But having said that, it was -- in its existing form, it
14 had lots of land with it and so it was usable. So
15 I think the aim was to try and find a better property
16 for the business, and I recall that that was -- a better
17 property would probably have been closer to the city
18 centre. But also then, the development -- there was
19 a clear development angle here because of what was
20 happening across the road. Across the road was a new
21 sports stadium being built, the Liberty Stadium now
22 known as, it wasn't in those days, and as was the
23 fashion at that point in time, these sports stadiums
24 required significant subsidy and a retail park was going
25 to come along to give that subsidy.

1 Swansea has a strange history in terms of retail
2 because it had an enterprise zone, it had Wales' only
3 enterprise zone in terms of the Thatcher enterprise
4 zones. And the enterprise zones in Thatcher's terms,
5 not necessarily in Cameron's terms but enterprise zones
6 allowed a much more free planning regime. So Swansea
7 enterprise zone has a very significant amount of retail
8 within it, and so therefore, it was slightly unusual
9 that you would see an additional retail park being
10 granted consent. And let's be honest, it was
11 a political consent from the Council to fund the
12 stadium.

13 I don't think you could say there was a need there.
14 But what this was going to do is create a new focal
15 point at the southern end of the enterprise park, as the
16 zone is now called --

17 Q. I don't mean to interrupt you. Just perhaps you could
18 specify which particular period you're talking about.

19 A. Okay. In 2003, the announcement was made. There had
20 been a period from the late 90s to the early 2000s when
21 the right site for the stadium was being discussed and
22 in 2003 it was narrowed down to the site on the western
23 side of the road of Nantong way. Then a food store was
24 announced, a land sale to Morrisons, a B&Q and then a
25 series of other retailers going there. So from my

1 perspective, in terms of advising on the marketing,
2 I could see that there was a new cluster of development,
3 of potentially high value development, which would allow
4 secondary development to take place around or within it.
5 Now, I have to say, in the very early days I didn't
6 think that residential was an angle, albeit it very
7 quickly came into play that there was an angle on
8 residential. But it was fairly clear that even if there
9 was a restrictive planning process, you could look at
10 the existing use, which was the car sales as a potential
11 certificate for lawful use across to A class, and
12 otherwise, if it was just employment use, you would pick
13 up the frontage uses, car showrooms, builders merchants,
14 trade counter which is a fairly active sector.

15 Q. You don't have to market it all to us.

16 THE CHAIRMAN: I've already bought it!

17 A. I think my point is that this was a site with frontage
18 to a main road opposite a new development, therefore it
19 had clear angles for us to have a go at. Now, there are
20 always going to be difficulties associated with sites.
21 Every site has constraints, and this had its fair share.
22 But at the end of the day, there was a material change
23 with the development of the retail park.

24 MR FLYNN: That may have answered some of the questions that
25 I've already asked you and also some of the ones I was

1 going to. Let's take it in stages, slightly. In
2 paragraph 9 of your witness statement, you said that
3 there were steps -- you say proposed by 2 Travel.
4 Presumably you also mean these were things that you
5 discussed and effectively approved, did you?
6 A. Yes.
7 Q. So the steps that were needed, tell me if you don't
8 agree with that word, but the steps that you saw as well
9 as Mr Francis saw as going to unlock the development
10 value, included these matters that you then summarise in
11 A, B, C and D; is that right?
12 A. Yes. I'll try not to talk so long now, but yes.
13 I think the aim is the more certainty you can give, the
14 more uncertainty you can take out of the equation; the
15 greater potential there is for a better price. I think
16 that's -- so the idea is to remove constraints and
17 address constraints or put costs against them to take
18 out the risk.
19 Q. So the first of those is acquiring four adjoining plots
20 of land from a Mr Hoggan, the Railway Society and two
21 other businesses. I don't think I know what those are.
22 I don't know if you remember what they are. So that's
23 four plots of land and getting an option over land owned
24 by the Council. Council land is quite a big area, isn't
25 it --

1 A. Yes. The Council land --

2 Q. -- relative to the 2 Travel site?

3 A. The Council land was quite large in acreage, but the
4 usable council land -- there was land on the eastern and
5 the western side of the bus depot, which was effectively
6 landscaping and it was difficult to see the Council ever
7 doing anything with that. The land to the north going
8 towards the lake had a clear development angle to it.

9 Q. I wasn't necessarily going to go into any of this in any
10 detail, but we have a visual aid. That's probably
11 familiar to you, Mr Sutton. Maybe it would be helpful
12 if I was to hand that to you. (Handed) I couldn't tell
13 you exactly what time this relates to.

14 THE CHAIRMAN: I am tempted to avoid turning this into
15 a planning inquiry.

16 MR FLYNN: Yes.

17 THE CHAIRMAN: It's the consequences we are really concerned
18 with.

19 MR FLYNN: Whether the tribunal would be assisted by it, so
20 that any of Mr Sutton's answers can be understood.

21 (Handed)

22 I'm certainly not intending to go into this in any
23 detail, but just since it has been mentioned. As
24 I understand it on the plan -- and Mr Sutton will no
25 doubt tell me if I'm wrong -- the orange bit says

1 "Swansea depot", and that's the 2 Travel site. The
2 black bit is the Hoggans land. And "CCS", I think,
3 means City and County of Swansea?

4 A. (Witness nods).

5 Q. So that's the Swansea council-owned land. And obviously
6 an orientation is given and, if we need to, we can
7 identify the roads. When you talk of A of the four
8 adjoining plots of land, are they marked on this plan?
9 Obviously the Hoggans land is.

10 A. Well ...

11 Q. All we need to know really is, is it within that sort of
12 boundary?

13 A. Yes, it's within that boundary. I think the others
14 were, in fact, probably tenants of Swansea Council,
15 maybe for ground leasehold.

16 Q. Just to give the tribunal, really, a visual impression.
17 Point B, back to 9 of your statement, obtained planning
18 permission for higher value uses, with a focus on retail
19 and residential uses, and at some point you may have
20 considered a hotel and a family pub:

21 "Securing offers on the site."

22 That would be partly your job, would it?

23 A. Yes.

24 Q. That's where you come in, as it were. And developing
25 out the site through pre-let or presale agreements.

1 Now, all of that, that's not done in a day, is it?

2 A. No. No, this takes time, and at any point in time you
3 could shorten the process because you could potentially
4 find a purchaser at day one, but it would be at a price.
5 But as you remove more risk and create more certainty,
6 and indeed as the market improves, as it was doing
7 during this period, so the price would increase --

8 Q. There are various trade-offs to be done at any point.
9 Someone can take it off your hands tomorrow, whatever
10 they're prepared to pay for it. If you invest a bit
11 more and consolidate the site and bide your time to see
12 the market go up, you might get a better price.

13 A. And the retail park gets developed.

14 Q. Yes. So all of that is on a timeline, isn't it? And to
15 achieve even the four items you said -- more than four
16 items --

17 THE CHAIRMAN: Can you just pause for a second. Somebody
18 forgot to turn my computer on electrically. I just want
19 to disappear for a moment, if I may. Thank you.

20 MR FLYNN: So all of that, in short, it takes time and some
21 of that will take money as well.

22 A. Yes.

23 Q. So before you realise the value on some of these
24 options, at any rate, you'd have to put some money in.
25 In paragraph 10 of your statement you talk about

1 negotiations with the owner of Hoggans' yard and
2 understanding development constraints on the site,
3 "namely highways, ground conditions and topography."

4 A. Yes.

5 Q. Could you briefly tell us what each of those refers to?

6 A. Okay. Certainly the two primary sort of parties to
7 negotiate with were Hoggans Bus and the Railway Society.
8 I think the other two were seen to be much shorter and
9 more flexible in their tenure. But then the development
10 constraints. Highways, one would have to negotiate an
11 access arrangement with the Council. There was also,
12 interestingly, a stretch of road within the site, with
13 the orange, which was an adopted road, and therefore was
14 a bit of a problem for the Council because it needed
15 a lot of work doing to it. So there was potential to
16 surrender that as part of the package.

17 Q. So they could have surrendered that for 2 Travel or
18 someone else to do the work on the road?

19 A. Yes, 2 Travel could essentially agree with the Council
20 to release the Council's liability, and that was a bit
21 of a way to incentivise the planning, if that makes
22 sense. The ground conditions -- as many people will
23 know, Swansea has a history of copper works and
24 generally the whole of the enterprise zone has got
25 issues with ground conditions. That needs to be

1 understood. And topography.

2 Q. What sort of issues are we talking about with ground
3 conditions in Swansea?

4 A. I think Swansea was known as "Copperopolis" back in the
5 1800s and the enterprise zone is based upon the area of
6 very significant tin plate works, iron works, and
7 whatever. So this is part of that area.

8 THE CHAIRMAN: So it's land contamination?

9 A. Yes.

10 MR FLYNN: Going back some --

11 A. But it is also well understood because it is dealt with
12 across many, many areas. And then topography. To the
13 rear of the building on the eastern side was a slope up
14 towards the road to the rear, which is this area here
15 (indicating), and there was also a slope down from the
16 road, down to Nantong Way here. So it's understanding
17 the levels.

18 Q. Right. So once again, in the case at least, of
19 topography, I suppose that's surveys, is it?

20 A. Yes. These are all -- you would carry out
21 investigations and reports and then within the scope of
22 those reports, you could then come up with a solution.

23 Q. And a solution would be remediation works or
24 decontamination?

25 A. Yes.

1 Q. And these, again, they take time and they take
2 investment, don't they?

3 A. Yes, that's right.

4 Q. They don't grow on trees, as it were. If any of this
5 had come about at the time, if, at whatever stage on
6 that trade-off timeline, a purchaser had come along,
7 2 Travel would have needed a new depot, wouldn't it, in
8 Swansea?

9 A. Yes, it would have done, yes.

10 Q. I think you mention that in your --

11 A. Yes.

12 Q. -- opening statement, as it were. That relocation,
13 finding it, renting it, all of that would have cost
14 money?

15 A. Yes.

16 Q. Taken time?

17 A. And I gave them certain options in this regard. I was
18 acting for the old Ford factory on Fabian Way, which had
19 large amounts of surface car parks that were not
20 particularly valuable, but may be good for them. But at
21 that point in time, it wasn't taken up.

22 Q. You mention a Viking Way at paragraph 19.

23 A. Yes. Viking Way was one potential, and that was partly
24 potential for 2 Travel, but also potential for the
25 relocation of the affected businesses, Hoggans -- well,

1 the Railway Society had to go near a railway, obviously,
2 but Hoggans was a potential for there as well. But
3 there were other opportunities around the place as well
4 to relocate to.

5 Q. Are they straightforward opportunities? We're talking
6 about a bus depot and engineering works, with a lot of
7 traffic.

8 A. With respect, it's a flat piece of ground, that's
9 surfaced. It's got decent drainage and it's got
10 a decent workshop. Swansea has a high critical mass of
11 employment property through the enterprise zone,
12 Fforestfach and not far way is Baglan and actually
13 it would not have been difficult. Swansea
14 employment ... The way to do this would have been to
15 take 2 Travel to the back-end of an industrial estate to
16 a basic industrial building which has no redevelopment
17 value, and that would have been a cheap relocation
18 option for them.

19 THE CHAIRMAN: So you're saying there were plenty of cheap
20 relocation options?

21 A. Yes.

22 MR FLYNN: When you say cheap, could you put a figure on it?
23 Ballpark, and I know we're talking --

24 A. I'd be guessing now, but I think at that point in time
25 you could buy land in Swansea -- well, Amazon on

1 Fabian Way bought land at £60,000 an acre and that's the
2 big new internet performance centre. That was 60, maybe
3 £70,000 an acre. But this is 2 acres, 3 acres. You
4 clearly need a building on there, you'd try and find a
5 building but you're not talking a lot of money.

6 Q. Could we have a look at E5, please, page 536. This is
7 an inspection of the property carried out by a company
8 called Poolman Harlow. I think this is after your
9 appointment. Were you aware of this?

10 A. No, I wasn't aware of this.

11 Q. I shan't speculate. A survey was provided to the
12 company by Poolman Harlow. You know who Poolman Harlow
13 is?

14 A. A good firm, yes, Swansea based.

15 Q. If you turn to page 541, a paragraph that ends above the
16 second hole punch:

17 "If the company decide to sell the property today
18 for development and wish to keep the business trading,
19 then it is essential that they identify alternative
20 premises and cost the ...(reading to the words)... may
21 well exceed £2 million. Consequently, the cost of
22 relocation may rule out taking profit from the
23 development potential of the site unless a very strong
24 overbid were made."

25 A. Okay. In 2002, the year before, I sold 214,000 square

1 feet on 40 acres for £3.2 million. Okay? So I don't
2 see -- I would disagree with the figure of £2 million.
3 But that's coming from a basis of a new build
4 procurement. What I'm saying is that you'd go and take
5 a second-hand building.

6 Q. We are not just talking about a building, are we, we're
7 talking about a bus depot with buses coming in and out
8 and being --

9 A. Yes, you're talking about 2 acres of
10 concrete/tarmac/hard standing, together with a high
11 eaves height building, with maybe a pit inside. It is
12 not a difficult building. Yes, if you look at new
13 construction -- probably at the time, it was maybe £50
14 a square foot, land was £60,000 an acre, probably a bit
15 less in places, so we could work it out. But what
16 I would say is that you could look at the critical mass
17 of existing stock and I suspect you wouldn't have paid
18 more than £20 or £30 a square foot. I would have said
19 less than half that for a new build because you'd find
20 existing buildings out there. As I say, I sold
21 a 200,000 square foot, 15 year old factory for
22 3 million, and this is 2 million for 10 or 20,000 square
23 foot, I guess.

24 Q. At all events, Mr Sutton, whatever the headline values,
25 it does have to be remembered that the company's going

1 to incur a cost for relocation --

2 A. Correct.

3 Q. -- if it sells this one, just as night follows day. And
4 I think again, you've already alluded to this, but it's
5 paragraph 12 of your witness statement. You wouldn't
6 have got residential planning permission, you say, until
7 the middle of 2005. That's what you say there.

8 A. Well, I think the -- we needed what was called the SPG,
9 the supplementary planning guidance, which I think was
10 issued in 2006, but that was issued following our
11 representation and others. And indeed if you look at
12 paragraph 22 of my statement, in January 2005, the Addis
13 Plastics factory, which was on the other side of the
14 road -- so site, retail park, Addis Plastics down here
15 (indicating). So Addis Plastics was a defunct, 100-year
16 old plastics factory and property developers stepped in
17 there and bought that very quickly, a speculative
18 acquisition with a view to change of use to residential,
19 and they secured the residential consent.

20 Q. At a later stage?

21 A. Yes.

22 Q. I'm not disagreeing, this is just simply on your
23 timeline, you can sell it with a hope that you may get
24 residential permission. If you want to sell it with
25 that permission, and I think that's what you're saying

1 in 9B, you wouldn't have actually been able to secure
2 that until July 2005, as I understand it?

3 A. Yes, I would say that's right.

4 Q. At paragraph 16 you refer to meetings that you had with
5 Mr Francis to consider the relocation of the Railway
6 Society. I don't know who the Railway Society are, but
7 they need somewhere where you can see some trains.

8 A. Yes, I think it's fallen by the wayside now, the
9 society. It was a group of retired railway workers.
10 Lots of endeavour but not much commerciality. The idea
11 was to relocate them up -- maybe sort of half a mile or
12 a mile up the track that they were on, or alternatively,
13 there were some tracks on Fabian Way, which is the main
14 road coming in from Baglan. It was -- yes, there were
15 discussions there, but in the end it didn't go anywhere.

16 Q. But what was being considered at the time was apparently
17 a contribution from 2 Travel of £500,000, half
18 a million? Have you read any of the accounting or
19 financial papers that I'm afraid we've spent most of
20 this week discussing in this courtroom?

21 A. No, I haven't.

22 Q. So you wouldn't have any view on whether 2 Travel could
23 have shelled out half a million in that time?

24 A. No.

25 Q. You refer to some expressions of interest or offers that

1 were made, at other points in your witness statement,
2 such as the Redrow offer. The tribunal has already
3 looked at this, so maybe I don't need to --

4 THE CHAIRMAN: They're at the back of the statement.

5 MR FLYNN: Exactly.

6 THE CHAIRMAN: An expression of interest by Netto. We
7 looked in detail at an expression of interest by Redrow.
8 Yes.

9 MR FLYNN: So the Redrow one was 800 per net developable
10 acre for serviced and clean land. That's 800 after some
11 works had been done. And they go on to say that they
12 haven't calculated abnormals, they'll have a look at
13 that and then they will make an offer that is payable
14 and subject to planning only. So 800 is a kind of top
15 line indication that works down to something else later
16 on.

17 A. Yes.

18 Q. There's a Lidl offer, 2.2 million for 1.5 acres,
19 I think.

20 A. Yes.

21 Q. But they required a year under that initial year to get
22 the planning permission, didn't they?

23 A. Yes, but the supplementary planning guidance had
24 indicated that we could have a small scale store. So
25 the planners would not have given a 40, 50,000 square

1 foot food store, but 10, 15,000 square foot net sales
2 area was seen as complementary to the retail park across
3 the road and they were happy to accept that, and we had
4 meetings with them. It was in their Hyder Consulting
5 report on the SPG, and against that background, Lidl
6 came forward. We spoke to Netto, Aldi didn't want to
7 know, and this was probably just before the big
8 superstores like Tesco decided to open up their Tesco
9 Metros and Tesco Express. This was a stage before that.

10 So Lidl, against that background, were fairly
11 confident that, yes, it was subject to planning.

12 Q. Yes. Just to assist -- I'm not suggesting that was
13 impossible, simply they said that's what they would
14 offer but they would have a contract that gave them
15 a year, extendible, to get the planning permission in?

16 A. Yes.

17 Q. I'm not suggesting they were asking for the moon in
18 that, but it takes time. So what you say at
19 paragraph 26 is:

20 "At this point, my advice to Mr Francis and Mr Short
21 ..."

22 So this is the first mention of Mr Short, so you
23 were also talking to him about the property?

24 A. Yes.

25 Q. "... was to accept the Lidl offer at 2.2 million,

1 complete on that deal, and then do the deal on at least
2 the first phase of the residential development."

3 A. Yes.

4 Q. So presumably, then there were further phases of
5 residential development that would have followed if that
6 had been done?

7 A. Yes, okay. So the Lidl offer, I felt, was good value
8 and was against a fairly strong planning background.
9 The Lidl offer at 1.5 million, so that's circa
10 £1.4 million an acre -- and as you've seen, the interest
11 from the residential developers was at that point in
12 time, around £800,000, so to me, it made sense to take
13 off the front 1.5 acres on the nib of the roundabout and
14 capture the higher value that was on offer. And against
15 a use that seemed to be compliant with the planning
16 guidance that was coming to the network.

17 In terms of the residential, then, there were
18 discussions with the Council about potentially extending
19 this land. I think there, we had the opportunity to buy
20 land, if you like, front and back. So we could take in
21 and make this a more complete circle, although there was
22 potential for possessory rights over these areas anyway
23 because that had been -- in our use, if you like, but
24 then there was the potential to take the scheme further
25 backwards, but that clearly required a joint venture or

1 some agreement with Swansea Council. So I think my
2 wording there is:

3 "Capture the higher value for the frontage [and
4 then], try and capture the principle of residential
5 here."

6 Because if you get a small parcel away for
7 residential, then naturally it's going to be easier to
8 go for phases 2 and 3 and maybe get that first one
9 underway.

10 Q. Thank you. Various other things are discussed and
11 I don't think the tribunal is going to be assisted by
12 details of every single offer. At paragraph 36 in your
13 statement, you say:

14 "It was my understanding at the time ...(reading to
15 the words)... 2 Travel had no plans to consent to
16 Mr Francis and Mr Short exercising the option in the
17 medium-term, as would have been required for the option
18 to be exercised ..."

19 Then you talk in 38 about 2 Travel's strategy. Your
20 understanding of 2 Travel's strategy came from
21 Mr Francis and Mr Short, did it?

22 A. No, in terms of 2 Travel, I didn't really know Mr Short
23 until -- well, I think it was 2005 when he stepped in.
24 I hadn't dealt with him, he used an agent, DTZ, in
25 Cardiff. So I may have met him in passing, but I had no

1 relationship with Mr Short pre-2005. My discussions
2 before that were with Huw Francis and Bev Fowles, and
3 I remember having discussions with them in terms
4 of: do you want to get into development or just want to
5 get the deals done? And trying to get these
6 sufficiently far advanced to capture the majority of the
7 value.

8 Q. Are you aware that the grant of the option to Mr Francis
9 and Mr Short was treated as a related party transaction
10 under the Stock Exchange rules?

11 A. I knew -- well, I guess so because I knew that
12 Mr Francis was a director. Is that right?

13 Q. That's correct. The company's dealing with two of its
14 directors, Mr Francis and Mr Short, in relation to the
15 option. So wasn't this something of a -- isn't there at
16 least some risk that the strategy you refer to is really
17 that of you're hearing that from Mr Francis, who's, as
18 it were, got a foot in two camps on this?

19 A. Well, as I say, the strategy was to relocate the bus
20 yard, look around for alternative sites and then build
21 it up. The strategy was the right strategy, whichever,
22 in terms of -- this had to be the right way of dealing
23 with it in terms of trying to secure a planning consent
24 for higher value and trying to remove risk. I didn't
25 take instructions from -- I wasn't aware of the

1 relationship there in terms of -- I dealt with the
2 directors of 2 Travel in setting up this appointment.

3 Q. When you say that 2 Travel had no plans to consent to
4 their exercising the option, that would mean, wouldn't
5 it, that their plan was to trade sufficiently
6 successfully or find other sources of finance that they
7 wouldn't need to consent to the option?

8 A. I wasn't aware of the -- I didn't get involved in the
9 financial side of the business.

10 Q. You're a property man and not a busman, as it were?

11 A. Yes.

12 Q. So you can't really comment on whether 2 Travel was
13 trading successfully or could have traded successfully?

14 A. No.

15 Q. Or obtained other finance from its bankers. A curiosity
16 that I confess I only noticed just as I was about to
17 stand up to ask you these questions, Mr Sutton, is that
18 your statement does not refer to a valuation from
19 King Sturge that we have in our files. Are you aware of
20 that valuation, given in September 2004?

21 A. That was done by my valuation department. I did this
22 from my file. My statement is from my file.

23 Q. The valuation is signed by Lee Lapham?

24 A. He's the director of valuation.

25 Q. Were you aware of the valuation?

1 A. I would have been at the time, yes. But it was done by
2 him as a separate professional exercise.

3 Q. Do you happen to remember what the valuation was
4 in that --

5 A. No.

6 Q. Would you like to have a look at E7, page 610? That's
7 actually the third page of the valuation, but it sets
8 out the figures.

9 A. Right.

10 Q. Do you see that?

11 A. Yes.

12 Q. "Market value, £1 million". Do you see that?

13 A. Yes, I do.

14 Q. Mr Lapham is the head of valuation for your firm?

15 A. Yes.

16 Q. Or at least the Swansea -- I don't know.

17 A. Cardiff. Based in Cardiff.

18 Q. So that's a valuation given as at -- I think it says on
19 the title page, two pages before, as at 31 August 2004.

20 A. Right, yes.

21 Q. The option agreement that Mr Francis and Mr Short had,
22 do you remember the amount of that?

23 A. I don't, no. I wasn't involved.

24 Q. It was £2 million.

25 A. Okay.

1 Q. And that option was exercised. And as I've already
2 mentioned, it was treated as a related party transaction
3 under Stock Exchange rules. It had to be approved as
4 fair and reasonable value by the independent directors,
5 the ones who are not party to the transaction, and
6 approved by the shareholders on that basis, £2 million,
7 and that happened. You weren't aware of that, I think
8 you're saying?

9 A. I wasn't involved -- I wasn't aware of the option figure
10 and how that was derived. I would have known that this
11 valuation took place. Lee is his own man and, you know,
12 deals with this as a valuation matter and reaches his
13 professional judgment.

14 Q. And in addition to the £2 million under the option,
15 Mr Short paid £300,000 to buy 2 Travel out of the
16 overage rights that they had in the option agreement.
17 So they received £2.3 million for this site, basically
18 at the end of 2004. That sounds like a good deal,
19 doesn't it, based on the valuation?

20 A. Yes. You know, Lee, I guess, is looking at this in
21 a very cautious and conservative way, which is what
22 a valuation department would do. They will -- and
23 I don't know how the option figures came about, sorry.

24 Q. Here we have a valuation for £1 million a matter of four
25 or five months later, if that. The company's been paid

1 £2.3 million. It hasn't had to go through all the cost
2 of remediation, planning processes, all these other
3 things that you mention as being needed for unlocking
4 the development potential. So it's saved itself that
5 cost, hasn't it?

6 A. Well, the key issues are, the subject site affords short
7 to medium-term potential for redevelopment, and there is
8 a potential for significant upside in value, yes. So
9 Lee is setting out the case that there is the potential
10 for significant uplift.

11 Q. Indeed.

12 A. But then putting a cautious figure on it, which I think
13 is what a valuation department should do.

14 Q. Indeed, and it may be that that is a cautious figure,
15 but within a couple of months they're getting more than
16 twice that. Someone's, effectively, taken all those
17 problems off their hands. We were talking earlier about
18 the timeline and trade-off, and that's what happened.

19 A. Yes.

20 MR FLYNN: No further questions, thank you.

21 THE CHAIRMAN: Thank you, Mr Flynn.

22 MR BOWSHER: I have no further questions.

23 THE CHAIRMAN: Thank you very much, sir. Thank you for
24 coming. You can leave the court, if you wish.

25 MR BOWSHER: Would that be a convenient point for a break?

1 THE CHAIRMAN: Yes. Who's next?

2 MR BOWSHER: Mr Cartwright. He's tab 6.

3 THE CHAIRMAN: We'll adjourn until somewhere between half
4 past and 25 to.
5 (11.20 am)

6 (A short break)

7 (11.32 am)

8 MR BOWSHER: Mr Cartwright is our next witness.

9 MR GRAHAM DONALD CARTWRIGHT (sworn)

10 Examination-in-chief by MR BOWSHER

11 MR BOWSHER: I wonder if you could take file C1. I'm
12 looking for tab 6. What are your full names?

13 A. Graham Donald Cartwright.

14 Q. And your address?

15 A. [Address given].

16 Q. In front of you, you have a document which says,
17 "Statement of Graham Donald Cartwright". That runs from
18 page 587 to page 593. Is that your signature at the
19 top?

20 A. Yes.

21 Q. At the end, sorry?

22 A. Yes, it is.

23 Q. Have you had a chance to review this statement before
24 giving evidence today?

25 A. Yes, sir.

1 Q. Can I just ask you one question before I do that. In
2 paragraph 3, are you still working at the Vale of
3 Glamorgan as a community transport officer?
4 A. No, I work for a bus company in London now.
5 Q. Which company is that?
6 A. Abellio.
7 Q. And what position do you hold with Abellio?
8 A. Operations manager.
9 THE CHAIRMAN: Sorry, which company?
10 A. Abellio. It's spelt A-B-E-L-L-I-O.
11 Q. Subject to that addition, is there anything in this
12 statement which you feel needs to be corrected?
13 A. No, sir.
14 Q. Are the contents of the statement therefore true to the
15 best of your knowledge of belief?
16 A. Yes, sir.
17 MR BOWSHER: If you could wait there, please.
18 Cross-examination by MR WEST
19 MR WEST: You formerly worked for Cardiff Bus, is that
20 right.
21 A. That's correct.
22 Q. Until about 2002?
23 A. Correct.
24 Q. Is it fair to say that it wasn't an amicable parting of
25 the ways when you left?

1 A. From my point of view it was okay. I received quite
2 a substantial package, a good reference. So as far as
3 I'm concerned, my departure from Cardiff Bus was an
4 accepted part of a restructure, as far as I was
5 concerned, and I felt that I received fair recompense
6 in the finish.

7 Q. And you left under the terms, I think, of
8 a confidentiality agreement; is that right?

9 A. No, it was a contract to compromise, as far as I was
10 concerned.

11 Q. I'm not going to ask you any questions about it. In the
12 meantime you worked for a number of other smaller bus
13 companies, including a company called Eros(?); is that
14 right?

15 A. Eros?

16 Q. Edwards trading as Eros?

17 A. I worked for the company, yes, for a few months.

18 Q. And that's a company associated with Mr Clayton Jones;
19 is that right?

20 A. That's correct.

21 Q. We had the pleasure of hearing from Mr Jones earlier
22 in the week.

23 A. I saw his name on the witness list.

24 Q. And you joined 2 Travel shortly before the Cardiff
25 in-fill services began; is that right?

1 A. That's right.

2 Q. You don't say in your witness statement precisely when.
3 Are you able to be more precise about when you joined
4 2 Travel?

5 A. I can't, sir. I mean, it's such a long time ago.

6 Q. We have a document that might help you at tab E6,
7 page 140. It might, it might not. This is an internal
8 group memo from Mr David Fowles. And you'll see that it
9 refers to the Cardiff depot and lists a number of
10 resources which need to be provided at the Cardiff depot
11 on a number of bullet points.

12 The second last bullet point on the page says:
13 "An additional controller needs to be appointed.
14 I have spoken to one gentleman and he is interested
15 in the post."

16 Does that ring any bells with you? Had you spoken
17 with Mr Fowles at this stage about the possibility of
18 taking up the post?

19 A. I had spoken to him, yes. So I can't argue with that.
20 I haven't seen this memo before.

21 Q. No. Obviously you were not in 2 Travel at this time?

22 A. No.

23 Q. But it appears you may have joined shortly afterwards?

24 A. Possibly.

25 Q. Were you surprised, given that 2 Travel needed a depot

1 manager at Cardiff, that it waited until the eve of the
2 launch of the in-fill services before recruiting one,
3 in the form of you?

4 A. I don't remember that. I personally thought I was there
5 a while before that, but if you have evidence that's
6 contrary to that, I can't dispute it. My memory doesn't
7 go back that far and I don't have records of that
8 nature.

9 Q. A question has arisen in the course of the hearing about
10 the capacity of 2 Travel's buses, the buses used to
11 provide the in-fill services in Cardiff. Given the
12 nature of your role, is that a question you can help
13 with?

14 A. As far as I can remember, there was sufficient buses to
15 cover the service and the in-fill services when
16 I joined.

17 Q. That's not really what I mean. I mean how many
18 passengers could fit on the vehicles themselves?

19 A. How many could sit on the vehicles?

20 Q. How many could fit on the vehicles?

21 A. It depends what type of vehicles they were using. If
22 they were double deckers, it was up to 70. Many buses it
23 was between 25 and 35.

24 Q. You're familiar with the fleet used to provide the
25 in-fill services, are you not?

1 A. Yes. In fact, if I remember rightly, the capacity of
2 those vehicles, because they brought some new vehicles
3 in, I think the vehicles were around 35 seats.

4 Q. I think there were some double deckers, but in the main
5 you think they were 35 seaters?

6 A. Definitely.

7 Q. The white services and indeed 2 Travel's in-fill
8 services began on 19 April 2004. And you immediately
9 wrote, did you not, to the OFT to complain about the
10 white services?

11 A. I don't think I wrote immediately because I carried out
12 observations to confirm some discussions that I'd had
13 with a Cardiff Bus employee at the time.

14 Q. Again, we have a document that might help at E12,
15 page 1.

16 A. That's certainly a document containing the package that
17 I put together.

18 Q. We don't have a date on this. My understanding had been
19 that this was sent on 19 April. I don't know if you can
20 assist? That's the day that the services commenced.

21 A. No, sir, it would not have been sent on 19 April.
22 I haven't dated it, but I can state quite categorically
23 that I would not have sent that letter until there was
24 evidence to confirm my thoughts on that.

25 Q. So you think this was later, do you?

1 A. Yes.

2 Q. Sorry, this is in a different bundle. Can you look at
3 E6/502?

4 THE CHAIRMAN: This is a table?

5 MR WEST: No, it's a letter to Mr Cartwright from the OFT.
6 You may be one or two pages out on the electronic
7 version.

8 Mr Cartwright, this is a letter you wrote, is it?

9 A. Yes, without a doubt.

10 Q. And it's dated 20 April 2004?

11 A. That's correct.

12 Q. So it appears not to be the case that you waited for
13 a period of time before contacting the OFT because this
14 is the very next day?

15 A. I have to say to you that I don't recollect what date
16 those services started, so as far as I'm concerned,
17 that's the date I wrote that letter, definitely.

18 Q. I think it's common ground that it was 19 April 2004.
19 It doesn't matter. What happened next is that the OFT
20 wrote a number of letters to 2 Travel, seeking further
21 information of this complaint; is that right?

22 A. If they did, they didn't write them direct to me. Or if
23 they did, I don't remember them.

24 Q. Well, let me just show you them quickly. Go forward in
25 the bundle to 547. This is a letter from the OFT and

1 it is to Mr Bev Fowles, so you're right, it wasn't to you on
2 this occasion. But it does refer to "our recent
3 telephone conversation and Mr Cartwright's recent
4 letters." And in this letter, you'll see the OFT, over
5 the page, sets out some further information which it
6 requires, in a number of bullet points.

7 A. Mm-hm.

8 Q. Next, bundle E7/104. I think you can put away E6.

9 THE CHAIRMAN: Sorry, what is the date of that letter?

10 MR WEST: The date of this letter is 27 April.

11 THE CHAIRMAN: So plainly Mr Cartwright had written some
12 days before that.

13 MR WEST: We've just seen his letter of 20 April. And the
14 one at E12, I think, was the 19th, although
15 Mr Cartwright disagreed.

16 MR SMITH: Mr Cartwright, I had a question on your letter at
17 E12, page 1. Just reading it, it appears to be
18 referring to what Cardiff Bus intend to do in the
19 future. Because if you look at the third paragraph it
20 says:

21 "Whilst assisting in setting up routes, it has been
22 brought to my attention through various sources,
23 including Cardiff Bus personnel, the methods that
24 Cardiff Bus intend to use to respond."

25 And the four points that you make underneath that

1 are all referring to what you say is planned in the
2 future.

3 A. That's correct, sir. If I remember rightly, on this
4 particular occasion I was walking past Cardiff Bus
5 station and I still had a substantial relationship with
6 the workforce at Cardiff Bus, and quite often they'd
7 stop me in the street, talk to me about things that were
8 going on with Cardiff Bus and anything else. And that
9 individual, who was a driver, who I believe was one of
10 the appointed drivers, had actually conveyed this
11 information to me.

12 MR SMITH: Does that help you in terms of the dating of the
13 letter?

14 A. I have to say, that must have been the -- the
15 conversation that I had with regard to the individual
16 would have been prior to the start of the service.

17 MR SMITH: Thank you.

18 MR WEST: I think we were going to E7/104. This time,
19 Mr Cartwright, 15 June 2004. Mr Brenton of the OFT
20 writes to you; is that right?

21 A. Yes.

22 Q. Requesting the same information in the four bullet
23 points there, which Mr Fowles had been asked to provide
24 on 27 April.

25 A. Mm-hm.

1 Q. But again, this information wasn't provided at the time.
2 Do you remember that?

3 A. Are we making reference to 27 April or 15 June?

4 Q. Both.

5 A. I can't remember. If that letter came to me, then
6 I would have made arrangements for it to have been
7 forwarded, but I can't comment as to whether it was.

8 Q. Again, I may be able to help you, if you go forward to
9 463. This is a letter to Mr Huw Francis on
10 10 August 2004. This is from Alex Hall at the OFT. And
11 over the page, the penultimate paragraph, it says:
12 "I must emphasise that the OFT is not yet in
13 a position to judge whether there are reasonable grounds
14 for suspecting an infringement. In order for the OFT
15 ...(reading to the words)... letter to Mr Cartwright for
16 the purposes of obtaining the necessary evidence to give
17 reasonable grounds for suspecting an infringement."
18 So it appears that those requests hadn't been
19 answered at this stage; is that right?

20 A. As I say, I cannot recollect, so I have to say I'm not
21 in a position to answer on that one.

22 Q. If you go forward then to page 659, there is another
23 letter from the OFT, this time 13 September, from
24 Mr Hall, who wrote the August letter. The letter is to
25 **Mr Francis:**

1 "The OFT ...(reading to the words)... not received
2 this information from 2 Travel. Accordingly, we are now
3 closing our file. We look forward to hearing from you
4 again, should you wish to forward further information."
5 A. I have to say, I would not have been privy to that
6 letter.
7 Q. To be fair, it wasn't sent to you.
8 A. I wouldn't have seen that letter, so I wouldn't have
9 been aware of it.
10 Q. But it does show, does it not, that the information that
11 you had been asked to provide, you amongst others, been
12 asked to provide by the OFT, had not been provided?
13 A. I have to agree with that, if that's the case, sir.
14 Q. Ultimately -- again, you may not know this, but if you
15 look at E8/544, you did provide the necessary
16 information. I'm not going to ask you to read all this,
17 but if you could just note the date, 3 November 2004.
18 So that's when 2 Travel finally provided the information
19 the OFT was looking for. Does that look as if that's
20 the case?
21 A. Yes, sir, I can't argue with that. I have not seen this
22 document, to be quite honest with you, so ...
23 Q. This was prepared by Mr Clive Rix, but you say you
24 weren't involved in this at all; is that right?
25 A. I think I remember speaking to Mr Rix over the telephone

1 about something, but as I say, I never saw this
2 document.

3 Q. That's all I wanted to say about the OFT side of things.
4 But you also complained to the Traffic Commissioner.
5 I think that's right, isn't it?

6 A. Yes.

7 Q. And we can see that, going back to E7/38. That is
8 a letter from the Traffic Commissioner to Cardiff Bus,
9 setting out copies of reports and correspondence in
10 respect of the complaint made by 2 Travel. And if you
11 look on in the bundle, this is the type of material
12 which you were putting together, is it, for submission
13 to the powers that be in support of your complaint;
14 is that right?

15 A. Yes.

16 Q. We can see in this letter, the Traffic Commissioner is
17 asking Cardiff Bus for its response to these
18 allegations:

19 "The Traffic Commissioner has requested you look
20 into these allegations and advise us of your findings."

21 If you go forward in this bundle to 113, we can see
22 the response provided by Cardiff Bus. Is this
23 a document you would have seen at the time?

24 A. No. Sorry, 113?

25 Q. 113. This is Cardiff Bus's response to the complaint

1 that you had made to the Traffic Commissioner. Would
2 this have been provided by the Traffic Commissioner to
3 you?

4 A. No, sir.

5 Q. So you knew what Cardiff Bus had said?

6 A. No, I haven't seen it.

7 Q. One of the complaints that you were making -- I think
8 this is right -- was that the white services were not
9 registered in accordance with traffic law; is that
10 right?

11 A. No. What happened was they were showing service
12 numbers, which weren't recognised, and I contacted the
13 Traffic Commissioner, one of his departments, and
14 I asked him if those services were registered and to
15 whom. And it was on the basis of the information
16 supplied to me by the Traffic Commissioner that I then
17 forwarded a complaint in writing about those services.

18 Q. If you look at page 117 -- again, I'm not suggesting you
19 saw this at the time -- this is a letter to the Welsh
20 traffic area office, Mr Peter Heath, the commercial
21 manager at Cardiff Bus, dated 16 April 2004. You'll see
22 what it says:

23 "Please note from Monday 19 April ..."

24 So that again corroborates the date we were talking
25 about:

1 "... we will start operating ...(reading to the
2 words)... test commercial viability. These will be
3 operated as part of our existing registrations, but to
4 permit the public to differentiate between normal and no
5 frills, we will be adding 100 to the service number.
6 Accordingly, please note that certain journeys on the
7 following registrations will have these slightly
8 renumbered journeys."

9 And then the registrations are listed:

10 "If you have any queries, please do not hesitate to
11 contact me ".

12 So is this right, the position is that Cardiff Bus
13 notified the traffic area office prior to the
14 commencement of the services, of its intention to run
15 the white services with those numbers, under the
16 existing frequent registrations?

17 A. Having a look at the date of the letter, sir, I would
18 suggest that possibly wouldn't have been processed by
19 the Traffic Commissioner before 19 April, when the
20 services started. So I wouldn't have been aware of
21 that. And certainly I hadn't seen this letter, and the
22 Traffic Commissioner themselves, when I contacted them,
23 would probably not have been aware of it because it was
24 being processed.

25 Q. But he would certainly have been aware of it, at the

1 latest, certainly on 17 June, not least because it was
2 re-sent under the cover of this letter?

3 A. I have to say to you again, my letters were sent on the
4 basis of information received from the Traffic
5 Commissioner. I would not have sent a letter to them
6 without checking with them first, to see that the
7 services were registered. And I would have done that
8 personally and if I remember rightly, particularly on
9 this one, I checked online and there was no evidence of
10 it. I then actually phoned the Traffic Commissioner and
11 the individual I spoke to admitted that he had not at
12 that point in time, got any registration documents or
13 any correspondence from Cardiff Bus relating to the
14 services that appear on this letter.

15 Q. Just so we're not at cross-purposes, I'm not suggesting
16 the white services were separately registered. What
17 happened is they were treated or there was a request to
18 treat them as part of Cardiff Bus's existing
19 registrations.

20 A. I can't comment on that.

21 Q. That's fine.

22 A. Because as I say, I have not seen this letter before.

23 Q. And it's fair to say, isn't it, that allegations were
24 also made by Cardiff Bus against 2 Travel at this stage,
25 of operating illegally. Were you aware of that?

1 A. Not at the time because it wouldn't have come to me, no.

2 Q. Could you look at page 123? This again, just to be
3 clear, is all part of the pack provided by Cardiff Bus
4 to the Traffic Commissioner in response to your
5 complaint. We see here a memo from Mr Heath to
6 Mr Brown, making various allegations against 2 Travel,
7 including "Failure to operate certain services, Failure
8 to adhere to registered routes, Irregular timekeeping,
9 Illegal operation." Under "Illegal operation", there
10 are some examples of "Failure to display current road
11 fund licence, Failure to display operator's licence
12 disc." So it looks like allegations of illegality were
13 being made both ways. You say you weren't aware of
14 that?

15 A. I have to say to you, having being a bus professional
16 and worked for Cardiff Bus during courses of previous
17 competition, I am fully aware of the monitoring
18 procedures and I'm not surprised at seeing that.
19 I didn't see the document during the course of my time
20 at 2 Travel and that is the first time I've seen it, but
21 I have to say, it's normal practice.

22 Q. I'm not going to take up a lot of time on this, but if
23 you could go forward to 150, there are some photographs
24 of some of the 2 Travel buses. These are the single
25 deckers. You'll see what they are said to show. I'm

1 afraid page 150 itself, the page number isn't visible,
2 but it's said to show a 2 Travel vehicle operating
3 service 245 without displaying vehicle duty disc and
4 showing incorrect destination. Is that what the
5 photograph shows, as far as you can see?

6 A. I can't read that photograph, I'm afraid. I can see
7 that there's a destination board in the front, which
8 says "245 city centre" on the second page, which would
9 be correct.

10 Q. On the second page, 151, the allegation there is that
11 service 245 is operating without displaying a vehicle
12 duty disc?

13 A. I can't comment on that because what I will say to you
14 is that the destination board is actually covering the
15 licence holders in that photograph.

16 Q. What about 153?

17 A. And the same applies there. You can only see one of the
18 two licence-holders.

19 Q. Can you look at page 153? No operator's licence disc
20 there.

21 A. I have to say to you that these two vehicles here,
22 I don't remember operating these vehicles, to be quite
23 honest with you. I don't remember operating vehicles
24 with actual advertising on, to be quite honest with you.
25 So I can't comment on this one.

1 Q. The Traffic Commissioner, since we're on the subject of
2 the Traffic Commissioner, held an inquiry into 2 Travel
3 in August 2004, which I believe you attended. Is that
4 right?

5 A. It was related to operations before my arrival at
6 2 Travel.

7 Q. You're right about that, but it's true that you
8 attended?

9 A. Yes.

10 Q. And going forward in this bundle to page 629, we see
11 a memo you sent arising out of that.

12 A. A staff notice.

13 Q. So this would have gone to the drivers and the other
14 staff?

15 A. It would have been posted on the noticeboard, yes.

16 Q. And we see there listed the matters that the Traffic
17 Commissioner looked into: maintenance, monitoring
18 finances and repute?

19 A. Mm-hm.

20 Q. You say that:

21 "Whilst finance and monitoring have been delayed to
22 a later date, a decision was made on maintenance and
23 repute. Also included was the display of destination
24 boards. It is evident from summing-up, he took a very
25 serious view in respect of non-displaying destination

1 boards and failing to maintain schedules ...(reading to
2 the words)... therefore the company has decided to
3 introduce the following range of sanctions to any member
4 of staff failing to comply with service of operation or
5 display of destinations. Passengers need to know where
6 the bus is travelling to."

7 And the sanctions are over the page. My question to
8 you is, that it's right, isn't it, that failure to
9 display proper destinations is a serious matter and not
10 a trivial matter?

11 A. In what respect?

12 Q. What you were saying here is that passengers need to
13 know where the bus is travelling to?

14 A. And what I'd say to you is that every bus company in the
15 UK will issue notices relating to destination displays
16 and various other driver responsibilities on a very
17 regular basis, to emphasise the driver's
18 responsibilities while he's out on the road.

19 Q. And I accept that's perfectly proper. You weren't here
20 throughout the trial, but there has been some suggestion
21 that a failure to display a destination board is
22 a rather trivial complaint. But my point to you is it
23 isn't, is it, because if the passenger doesn't know
24 where the bus is going to, that rather defeats the
25 object of the exercise?

1 A. From a customer service point of view, it isn't
2 acceptable because obviously the customer needs to know,
3 and that is why the notice is put up. It's about
4 customer information and keeping the customer informed
5 of where you are going.

6 Q. I think we agree with that. You say that nothing was
7 done by the Traffic Commissioner. This is what you say
8 in your statement at paragraph 27 in response to the
9 complaint which you had made. But in fact, there was
10 some monitoring by VOSA of 2 Travel and the white
11 services in the summer of 2004. Were you aware of that?

12 A. I seem to remember having a conversation with the
13 director and owner of 2 Travel about a monitoring form
14 that'd come in, but I don't remember the content of it.

15 Q. We've dealt with it with other witnesses and if you
16 don't remember it, I shall skip over it.

17 A. What I'm saying is I don't remember the date and the
18 content of it.

19 THE CHAIRMAN: Do you remember VOSA being involved?

20 A. VOSA, the actual gentlemen that are employed to do the
21 monitoring are employed by VOSA. They will stand at
22 a particular strategic point along the route and monitor
23 bus services against the registered timetable. They are
24 actually employed by VOSA.

25 MR WEST: What happened was that in response to your

1 complaint, VOSA carried out some monitoring and there
2 was then a meeting before Mr Furzeland. Were you
3 involved in this? In November 2004, at which your
4 complaint was considered. Mr Furzeland --

5 A. That's correct, there was a meeting: myself,
6 David Fowles and the then operations manager at Swansea
7 went to the meeting, and if I remember rightly, Mr Brown
8 and Mr Heath were there.

9 Q. Is that Mr Charles Jones?

10 A. Charles Jones, yes, and the issues that were raised were
11 discussed. The Traffic Commissioner's representative
12 made his decision and that was the end of it, as far as
13 I was concerned.

14 Q. That's a very useful summary, but if I can take it
15 a little bit in stages. At E9, page 1, we see that
16 there were some written submissions provided to
17 Mr Furzeland. This is the submission from Cardiff Bus.
18 You say that you attended the meeting, and I don't
19 disagree with that. But did you see this document
20 at the time?

21 A. No. This document is new to me. Once again, it's got
22 a bit about my character in there.

23 Q. Feel free to comment on that, but I'm not going to
24 question you about that, Mr Cartwright. If you don't
25 want to say anything, we'll move on.

1 A. I would have not seen any correspondence that went to
2 the Traffic Commissioner from Cardiff Bus at any stage.
3 It was never referred to me. Either if it went to
4 2 Travel or if it came direct from the Traffic
5 Commissioner.

6 Q. One can also see in this bundle the 2 Travel bundle of
7 materials provided to the Traffic Commissioner for
8 Mr Furzeland's meeting, which I think starts at page 71
9 or 72. Sorry, it's actually ... Page 70. There's
10 a letter from the Traffic Commissioner to Mr Brown,
11 enclosing the materials sent by 2 Travel Group. That
12 material then runs on, I think, to page 235. So this
13 again is the sort of material you were putting together
14 in support of your complaint?

15 A. Sorry, is it page 235 you're talking about?

16 Q. Yes. It runs right through to page 235.

17 A. Yes, these were reports received from drivers. There's
18 a written report from myself. There's monitoring forms
19 which were conducted out by various representatives from
20 the company, which again, as I say, is normal practice,
21 particularly in a competition situation.

22 Q. And it's right, is it, that you had been responsible, at
23 least in part, for compiling all of this evidence?

24 A. I would have packaged it together and there were
25 certainly, definitely reports in there from me.

1 Q. There were also videos submitted to the Traffic
2 Commissioner or rather to Mr Furzeland; is that right?
3 A. I wasn't involved in that.
4 Q. And did you see those or some of them at the meeting
5 before Mr Furzeland?
6 A. I cannot remember. But I know that Mr David Fowles
7 conducted that process and I was not at any stage
8 involved in it.
9 Q. Perhaps I should ask him about that. I was just going
10 to ask you to note that at page 265, there appears to be
11 Cardiff Bus's response to the videos. Again, you didn't
12 see that at the time; is that right?
13 A. If it was addressed to Mr Furzeland, no.
14 Q. And Mr Furzeland's decision is then at page 273, or his
15 recommendation, rather, to Mr Dixon, who was the Traffic
16 Commissioner. Is this a document you've seen before?
17 A. No. I was at the meeting, but I didn't actually see
18 this document.
19 Q. Fair enough. Were you aware that his conclusion was,
20 having reviewed the very lengthy evidence from you and
21 Cardiff Bus's lengthy response to it, that Cardiff Bus
22 had no case to answer concerning the allegations which
23 had been made of dangerous driving and so forth,
24 intimidation, harassment and the other allegations that
25 were made?

1 A. I have to say that I made that assumption from the
2 meeting with Mr Furzeland because I'm sure that
3 Mr Furzeland at some stage made a statement to that
4 effect during the meeting.

5 Q. When you say the Traffic Commissioner did nothing in
6 response to your complaint, that isn't true, is it?

7 A. No, no --

8 Q. It was investigated by Mr Furzeland and --

9 A. I think you'll find that I made my comments before the
10 actual meeting with Mr Furzeland. Mr Furzeland
11 eventually did, but my reports -- I sent several reports
12 to the 2 Travel directors, stating that there was
13 concern amongst the workforce that we, as a company,
14 were doing nothing and that the commissioner wasn't.

15 Q. You accept, do you, that in fact Mr Furzeland looked at
16 all of this and --

17 A. There's absolutely no doubt, because I went to a meeting
18 room in VOSA, and as I've previously said, Mr Brown and
19 Mr Heath were there, Mr Fowles and Mr Charles Jones were
20 there.

21 Q. So when you say in your statement at paragraph 27 that
22 you wrote several letters to the Traffic Commissioner to
23 complain but nothing was done by either the OFT or the
24 Traffic Commissioner, you're referring to the initial
25 period, as it were?

1 A. That's correct, that would have been prior to the
2 meeting with Mr Furzeland.

3 Q. I understand. And were you aware that Mr Furzeland had
4 also concluded -- and you can see it if you're still in
5 bundle E9 at page 277. I know you didn't see this
6 at the time. Point 43. He concluded that Cardiff Bus
7 had operated in line with their high frequency
8 registrations. So he also rejected that element of your
9 complaint.

10 A. Again, I think that that was a verbal conclusion that
11 was made at the meeting, because Mr Heath had explained
12 or had put a case to them in respect to their high
13 frequency services and how they justified the operation
14 of the buses in respect to their registration. And I'm
15 pretty certain that during the summing-up, Mr Furzeland
16 made a comment about that. Again, I haven't seen this
17 recommendation so in respect to a formal written
18 statement, I would not have seen it.

19 Q. Well, you say something in your statement about
20 a comment by Mr Furzeland, if I can find it. (Pause)

21 A. To be quite honest with you, I don't remember in my
22 statement, actually making a comment about Mr Furzeland.

23 Q. It may not have been yourself.

24 A. I'm certain I didn't.

25 Q. I don't think you do, so we'll leave that. Now, in your

1 statement, you suggest that the reason 2 Travel suffered
2 from a shortage of drivers was because of intimidation
3 by Cardiff Bus, which meant that 2 Travel drivers left
4 the company?

5 A. That's correct.

6 Q. And when you talk about intimidation by Cardiff Bus,
7 that's the same allegation of intimidation which
8 Mr Furzeland rejected, is it?

9 A. That is correct, yes. But a measure of that is the fact
10 that they had one driver, who I know was a union rep
11 at the time, who was reported by 2 Travel drivers to me
12 about threatening conduct, and I advised them to report
13 it to the police, which they did twice. And I know that
14 Cardiff Bus took a decision to take that man off the
15 service.

16 Q. Well, I'm not disputing that there may have been some
17 individual incidents of unacceptable driver behaviour.
18 But we're talking about something more general, aren't
19 we? You're saying that there was such a level of
20 intimidation that it caused a large number of 2 Travel
21 drivers to leave the company?

22 A. There were allegations of what I would term aggressive
23 driving tactics, bordering on dangerous driving tactics
24 by some of the Cardiff Bus drivers, and I have to say,
25 a couple of the drivers who left the company made it

1 quite clear that they couldn't put up with the
2 aggravation any longer. I actually had a couple of
3 people who were looking to join the company and then
4 they didn't join, so I phoned up to ask them why they
5 hadn't come and they said, "Well, we've been talking to
6 various people and the competition that's going on
7 between yourselves and Cardiff Bus, we don't want the
8 aggravation".

9 Q. Were you aware that 2 Travel had suffered a shortage of
10 drivers from long before you joined the company?

11 A. I have to be honest and say yes.

12 Q. You would be aware of that, wouldn't you, because it was
13 referred to in the Traffic Commissioner proceedings
14 in August 2004, which, as I said, related to the period
15 before you joined the company?

16 A. I'm not in a position to comment on that because
17 I wasn't with the company at the time.

18 Q. Do you recall from those proceedings that 2 Travel
19 explained to the Traffic Commissioner that at one point
20 their turnover of drivers was 64 per cent per annum?

21 A. Well, I don't remember that statement, that's for sure,
22 because the bus industry turnover in some areas is
23 around 20 per cent and 64 per cent would have -- well,
24 it's a figure that you would have fallen over at. So
25 I have to say, I don't remember that statement being

1 made at the commissioner's court.

2 Q. And that memo from Mr David Fowles we looked at right at
3 the beginning, referring to a gentleman who may be
4 interested in the position on 9 March 2004, also
5 referred to there being a shortage of drivers at Cardiff
6 depot?

7 A. There was definitely a shortage of drivers at
8 Cardiff Bus depot because I remember one fractious
9 meeting with the board of directors at Cardiff Bus on
10 a Friday night, whereby I made it quite clear how short
11 Cardiff Bus were and the then managing director at the
12 time didn't believe me.

13 Q. Sorry, when you refer to a shortage of drivers at
14 Cardiff Bus, I'm talking about a shortage of drivers
15 within 2 Travel.

16 A. There was a shortage of bus drivers within the UK and
17 every bus company was suffering from shortages.

18 Q. And 2 Travel was particularly suffering because it did
19 not itself have any programme to train up new bus
20 drivers, did it?

21 A. I can't comment on that because I didn't stay with the
22 company long enough and I wasn't there before, so I'm
23 not sure what their training policy and their
24 recruitment and induction policy was.

25 Q. Given that, as you say, you were not there before,

1 before the in-fill services started, you're not really
2 in a position to say whether the shortage of drivers was
3 the result of the infringement, that's to say the white
4 services, or simply long-standing problems the company
5 had had all along?

6 A. No, sir, my comments about the shortages of drivers
7 related to the current time of operation. When the
8 services had started up at Cardiff depot, they had
9 sufficient drivers to cover the service.

10 Q. You were also not on the 2 Travel board, were you?

11 A. No.

12 Q. So you weren't familiar with the overall financial
13 position of the company?

14 A. That's correct.

15 Q. Again, you're not in a position to say whether the
16 problems it suffered from, including drivers, amongst
17 other things --

18 THE CHAIRMAN: Forgive me, Mr West, I just wanted to ask
19 a question. You're obviously very, very experienced in
20 the bus industry. What is the general pattern in terms
21 of obtaining drivers? Do most companies train drivers
22 or do they have an agency arrangement, as applies to
23 lorry drivers, commonly, or what?

24 A. There's a whole raft of methods of recruitment. Some
25 companies will recruit direct. What I mean by direct is

1 drivers who already hold a PCV vocational licence. Some
2 companies, like Cardiff Bus and some of the higher
3 market bus companies, have their own training
4 departments with qualified trainers and they will train
5 a driver from start to finish.

6 THE CHAIRMAN: So that would be like the company you're
7 working for now?

8 A. That's correct. And at the moment, we've worked with an
9 agency in London because we're short of drivers and with
10 the Olympics coming up, we worked with an agency to
11 recruit Polish drivers. We have our own training
12 department, so we train our drivers. And Cardiff Bus
13 have their own training department where they have
14 qualified instructors who can teach people.

15 THE CHAIRMAN: What about the smaller companies in the
16 business generally?

17 A. The smaller companies are normally reliant on PCV
18 holders, so they will recruit direct.

19 THE CHAIRMAN: Through an agency?

20 A. Depending, obviously, on the financial standing of the
21 company, they will either go to an agency and recruit
22 through an agency or just recruit through the local
23 media and Job Centres and recruit drivers that way.

24 THE CHAIRMAN: Thank you. That's very helpful.

25 A. Okay.

1 THE CHAIRMAN: Thank you, Mr West.

2 MR WEST: I was simply saying that since you were not on the
3 board, you weren't in a position to say whether the
4 problems that 2 Travel suffered when you were there,
5 were as a result of the overall financial position of
6 the company?

7 A. I can't comment on that because I didn't know what the
8 financial situation of the company was. I know that
9 they were on the alternative share market. I didn't
10 know what their financial situation was. I only,
11 obviously, observed the deterioration from when
12 I started to when I left.

13 Q. You talked about using agency drivers, but obviously
14 then you have to pay a commission to the agency; is that
15 right?

16 A. They do, but if I remember rightly, 2 Travel had
17 a relationship with somebody up in Brecon and they
18 started recruiting Gurkhas, particularly for the Swansea
19 and Neath area.

20 Q. Those weren't agency drivers?

21 A. No, they were direct. And people that probably would
22 have been trained up by the Army because they were
23 coming out of the army.

24 Q. But those drivers, the Gurkha drivers you talk about,
25 were never deployed in Cardiff, were they?

1 A. No. What happened there was that they would use the
2 Gurkhas to manage the services in Cardiff and if I put
3 a request across, they would send drivers from Swansea.
4 Q. You said they would use the Gurkhas in Cardiff. My
5 question was: the Gurkhas were never employed in
6 Cardiff, were they?
7 A. No. No, I didn't say that. They would use the Gurkhas
8 in Swansea and Neath.
9 THE CHAIRMAN: You did say it, but it was a mistake.
10 A. What I meant was they would use their Gurkha drivers in
11 Neath and Swansea because they were conversant with the
12 routes there, but they would deploy Swansea-based
13 drivers to come and work in Cardiff.
14 MR WEST: So in fact, despite what has been said about the
15 importance of Cardiff to the overall operation of
16 2 Travel, that particular resource in the form of the
17 Gurkha drivers, was never made use of in Cardiff?
18 A. Well, I can't comment on strategic decision-making
19 because I wasn't at that level.
20 Q. That's fair enough. And you also said a minute ago that
21 2 Travel had sufficient drivers at the beginning of the
22 service -- that's the in-fill service, I presume. But
23 in fact, did you know that 2 Travel had registered to
24 run five routes, including the 258 to Pentwyn, which it
25 never actually operated, due to a lack of resources?

1 A. I was aware of that after a while, yes. It was
2 brought -- well, I think it was a situation that
3 occurred in the discussion with the directors. But as
4 I say, that was a decision that was taken before
5 I arrived, so ...

6 Q. Finally on drivers, could we look at another document,
7 which you produced. Behind your witness statement,
8 tab 6 of C1, probably. It's exhibit GDC6, page 808 of
9 my bundle. This is a memo from yourself to Bev Fowles,
10 30 July. "Personnel analysis". We see there reference
11 to:

12 "Ten staff departures or resignations, one
13 termination, five failed to report. No planned
14 interviews."

15 "Interesting to note that there appears to be
16 a number of current employees researching the job market
17 ...(reading to the words)... Cardiff Bus."

18 Was this a document that you prepared in support of
19 2 Travel's planned complaints to the Traffic
20 Commissioner?

21 A. No, it was basically a request from Bev Fowles. If it
22 was used, I wasn't advised that it was going to be used
23 for that. That was just a straightforward request, as
24 it says there, from Mr Fowles, to supply the memorandum
25 about the staff situation.

1 Q. My last question. Paragraph 37 of your statement, you
2 say that because of the predation, you were continually
3 engaged in firefighting rather than forward planning.
4 There are just two documents I wish to quickly show you
5 about that. E7/394 is the first one. I don't suggest
6 this is a document you ever saw, but it has a list of --
7 a sort of litany of complaints from the finance
8 director, Mr Waters. And if you look at the fifth last
9 complaint on his list, it says:

10 "Continual firefighting, no strategic planning."

11 And before I ask another question, could you look at
12 E12 again? This time, page 3. I should have said that
13 first document is dated July 2004.

14 A. Who was this from?

15 Q. Carl Waters, the finance director.

16 A. Okay.

17 Q. If you look in this document, which is dated in
18 mid-2003, long before you joined the company, the second
19 paragraph beginning:

20 "It is clear now ..."

21 The sixth line down you see what Mr Waters says
22 there:

23 "We fire fight, not plan."

24 My suggestion to you, Mr Cartwright, is that it
25 seems from these documents that the firefighting rather

1 than planning was a constant feature of management at
2 2 Travel. Is that right?

3 A. I have to say that in the six months that I was there --
4 I mean, I can't really comment on what went on before,
5 that -- I've already made the statement in one of my
6 documents, so you know, my responsibility as an
7 operations manager was to report to the directors about
8 the difficulties they were experiencing, in order to
9 manage the operation correctly and that's exactly what
10 I did. That's part of my role and responsibility. As
11 to the condition in the company, previous memos, I am
12 not in a position to comment.

13 Q. I said that was my last question, but just one other.
14 We've heard that Mr Waters from time to time, despite
15 being a finance director, was sent out to drive the
16 buses. Did that also happen to you?

17 A. As an operations manager in a company of the culture of
18 2 Travel, that is part of your job. You're a jack of
19 all trades. You'll go out and wash buses, drive buses,
20 you'll manage the people that are driving them.

21 MR WEST: Thank you, Mr Cartwright.

22 Re-examination by MR BOWSHER

23 MR BOWSHER: Just a couple more questions, if I may, just to
24 clear up a couple of things which you dealt with. You
25 said in response to some questions from Cardiff Bus that

1 you'd seen the deterioration from when you started to
2 when you left. Could you be more precise? What was
3 deteriorating?

4 A. The deterioration was evident in the morale and conduct
5 of the drivers and their attitude towards turning up for
6 work and their continual complaints to me. That was
7 further reflected in that their attitude was that they
8 felt the company wasn't doing anything to combat the
9 conduct of Cardiff Bus. And I think in my statement,
10 I stated that a number of drivers had come complaining
11 about issues that had occurred out on the road, and what
12 I said to them was: put a report in so I can forward it
13 to the directors and the relevant bodies. They just
14 said: why? We are wasting our time.

15 And then obviously there was the drift of staff away
16 from the company because some of them felt intimidated;
17 some of them felt, you know, it wasn't the sort of
18 environment they wanted to continue to work in. They
19 were there to drive buses for the public, yet they were
20 having to put up with aggressive competition.

21 Q. You were asked a number of quite detailed questions
22 about things that happened eight years ago or so.
23 I just wanted to see if I could clarify some of those
24 points, but given the distance of time, I well
25 understand if you say you couldn't possibly remember.

1 Could I just ask you to look again at the document at
2 file E9, starting at page 273.

3 This is the note of that meeting, which you said you
4 were at, but which you hadn't seen.

5 A. That's correct, yes.

6 Q. And you were also saying that Mr Furzeland had said some
7 things at the hearing, which may or may not have been
8 similar to what is being written down here. I wanted to
9 ask you about paragraph 46 on page 277. Do you have
10 that?:

11 "That no action be taken against Cardiff Bus as
12 there is no evidence that they have a case to answer.
13 This may change, should the OFT find against them."

14 Did Mr Furzeland make any reference to the OFT
15 investigation at the hearing that you recall?

16 A. I don't remember any comments about the OFT, to be quite
17 honest with you. What I remember is the case that was
18 put by David Fowles and the occasional incursion into
19 the proceedings by myself and Mr Jones, and obviously,
20 the response from Mr Brown and Mr Heath. I don't
21 remember a statement being made at the meeting with
22 Mr Furzeland about the OFT investigation.

23 Q. You can put E9 away. Could you take E6. You were shown
24 a letter of 20 April. You were shown a letter, the
25 letter which concerns, as it were, your discussions with

1 Cardiff Bus drivers before the services started.

2 A. Yes.

3 Q. You were asked some questions about what you may or may
4 not have sent to the OFT when they were asking you for
5 more information. Did you send any information
6 immediately after 20 April to the OFT?

7 A. No, because at that point in time, within days of
8 operating the service, I don't remember that happening
9 because I think the issue of the OFT arose later.
10 I can't remember the exact time or date when it was
11 agreed that we would refer the matter to the OFT.

12 Q. Okay. You had a number of exchanges with my learned
13 friend about the registrations and so forth. I don't
14 want to get too bogged down in this, but do you now
15 remember when you first spoke to the Traffic
16 Commissioner about whether the routes were first
17 registered, whether they were correctly registered?

18 A. It would have been very early on, very shortly after the
19 operations started, because obviously, my immediate
20 reaction would be: well, 117, having worked for
21 Cardiff Bus and knowing at that time there were no
22 services in the public domain operating under those
23 numbers, as part of the management of the process,
24 I would have contacted the Traffic Commissioner quite
25 early to ask him about the displayed service numbers.

1 Because the numbers that I'm talking about are the
2 actual numbers which are displayed on the bus to let the
3 public know what service it is. As I say, I remember
4 investigating it on the Internet and couldn't find any
5 registrations for service 117. So I then phoned the
6 Traffic Commissioner representative in -- I think it was
7 Birmingham at the time, and he told me quite
8 categorically, he could not find any registrations under
9 that service number.

10 Q. Right. Just to try and date that, if you have E6,
11 page 530, if you look at the beginning of that, we don't
12 need to read it out, but you can see there's a reference
13 from you to, once again -- how many times before
14 27 April then, had you been discussing the registrations
15 with the Traffic Commissioner?

16 A. This would have been the second time. I wouldn't have
17 been continually contacting them. I would have
18 contacted them the first time round and then done it
19 again before this memo went out on the 26th.

20 Q. And did you renew that contact with the Traffic
21 Commissioner to check on the registrations?

22 A. It wouldn't actually be the Traffic Commissioner, it
23 would be one of his representatives, but yes, I would
24 have confirmed on the 26th, as it says in there:

25 "Further to my telephone conversation, once again,

1 you kindly confirmed that there has been no ... (reading
2 to the words)... and 162."

3 So this letter, I would not have submitted this
4 letter without second confirmation from Mr Douglas.

5 Q. Is this a topic you picked up again with the same
6 individuals?

7 A. Um ... I cannot remember. But you know, as I say, as
8 I'd made that enquiry to the commissioners' office, I
9 would have expected them to come back and say: well,
10 yes, we have had a letter in now from Cardiff Bus, but
11 they never came back to me and said that they'd had
12 confirmation from Cardiff Bus about the letter that was
13 talked about by your learned colleague.

14 MR BOWSHER: I have no further questions. Does the tribunal
15 have any questions?

16 THE CHAIRMAN: No. Thank you very much indeed,
17 Mr Cartwright. Thank you for coming.

18 (The witness withdrew)

19 MR BOWSHER: I take it that Mr Cartwright is released then?

20 THE CHAIRMAN: Certainly.

21 MR BOWSHER: Can I just check something on timing?

22 THE CHAIRMAN: Yes.

23 MR BOWSHER: If we could call Mr David Fowles next.

24 MR DAVID RHYS FOWLES (sworn)

25 Examination-in-chief by MR BOWSHER

1 MR BOWSHER: Good morning, Mr Fowles. If you could take
2 file C1 at tab 5. We see there a statement that runs
3 from page 519 to page 526. Is that your signature on
4 page 526?

5 A. Yes, it is.

6 Q. Have you had a chance to check this statement again
7 before giving evidence today?

8 A. I have.

9 Q. Any corrections you would like to make to it?

10 A. No.

11 Q. I forgot to ask you your full names.

12 A. David Rhys Fowles.

13 Q. And your address?

14 A. [Address given]

15 Q. Thank you. Are the contents of this statement true to
16 the best of your knowledge and belief?

17 A. They are.

18 Q. There have been a number of questions about topics
19 raised in your statement in the course of this week, and
20 it may be helpful just to pick up a few of those first.
21 If you take paragraph 15, you say:

22 "The majority of our drivers were employed on
23 a full-time basis. There were a couple of part-timers
24 before the in-fills started ... But the vast majority
25 were full-time."

1 Why was that? Why did you have mostly full-time
2 drivers before the in-fill?

3 A. On the basis that we believed that, obviously, the
4 in-fill work was going to come on board as quickly as we
5 could, and it seemed sensible at the time to take on
6 full-time staff, to give them some sort of incentive in
7 terms of job security, to roll out the in-fill services.

8 Q. Is there any reason to prefer full-time over part-time
9 or part-time over full-time drivers in general?

10 A. Part-time labour in the coach and bus industry does give
11 you some flexibility, but it gives you inflexibility as
12 well. Whereas with full-time, it gives you almost total
13 flexibility to bring in different rotas and rosters.

14 Q. At paragraph 16 you say:

15 "It was part of our business strategy for our
16 drivers to be friendly to the passengers."

17 It may seem self-evident, but what did you expect to
18 gain out of having friendly drivers?

19 A. We'd obviously targeted certain areas of Cardiff, the
20 outlying districts and the estates, whereby people have
21 a choice whether to use your vehicle or not on the main
22 arteries coming into Cardiff and any major city
23 basically, for that matter, or any town. People will
24 often jump on the first bus that comes along. Whereas
25 in the estates and some of the outlying districts where

1 there is competition, if you offer something different,
2 like a friendly driver, a different type of vehicle,
3 then they may choose to get on your bus rather than your
4 competitor's.

5 Q. And in paragraph 17, the last sentence, you say -- maybe
6 I need to back up a little bit. Paragraph 17. You
7 explained --

8 THE CHAIRMAN: This is all really stating the painfully
9 obvious, isn't it? If you get on a nice bus with a nice
10 driver, you like it; if you get on an awful bus with
11 a grumpy driver, you don't. It's a bit like having
12 a cup of tea in a cafe, isn't it? Do we really need to
13 spend a large amount of time on friendly bus drivers?

14 MR BOWSHER: Well, sir, I think it may become a point of
15 importance.

16 THE CHAIRMAN: Well, you've heard what I said.

17 MR BOWSHER: Yes. I can take it as read perhaps, save to go
18 to the last sentence of paragraph 17, where you refer
19 to, "I think that", and what you mean by "that" is,
20 I think, that you wanted to achieve something from
21 having friendly drivers:

22 "I think that was reflected in some of the results
23 that were seen at the start."

24 What were the results that you were seeing and how
25 were they reflected?

1 A. In terms of the in-fill services, they certainly, at the
2 start of the, sort of April time, they certainly came up
3 to the levels that we were expecting in some of the
4 projections that had been made.

5 Q. What do you mean, they came up? What came up to the
6 levels you were projecting?

7 A. The overall revenues.

8 Q. Paragraph 18, you say there:

9 "From day one, our intention was to run 12 buses
10 until a later time when we would bring in more buses on
11 the routes."

12 Did you have in mind a maximum number or a limit on
13 the number of buses you might achieve on these routes?

14 A. I don't think so, to be perfectly honest, no.

15 Q. Was there a number that you hoped to achieve, a sort of
16 target goal?

17 A. An overall target of numbers of vehicles?

18 Q. On these routes?

19 A. Probably not. There was no limit put on it at the
20 start, certainly.

21 Q. At paragraph 43 of your statement -- and this may just
22 be my misunderstanding of the words you have used --
23 it's under the heading "What would have happened had
24 Cardiff Bus had not predated on us":

25 "If Cardiff Bus didn't do what it did and had

1 played fair like First Group had in Swansea, I think as
2 of today, 2 Travel would have been bought out by now.
3 2 Travel would have been such a thorn in the side of
4 some of the other bigger operators that they would have
5 been taken out by possibly somebody like Rotala or some
6 such company who wanted to get a big market share in the
7 area."

8 What did you have in mind by "taken out" there?

9 A. An outright purchase by another bigger operator.

10 Q. Purchase, not some -- "taken out" could mean more than
11 one thing.

12 A. No, outright purchase.

13 MR BOWSHER: Thank you. If you could wait there, Mr Fowles.

14 Cross-examination by MR WEST

15 MR WEST: You were one of the original founders of 2 Travel;
16 is that right?

17 A. Yes.

18 Q. And indeed, you were originally its sole director?

19 A. Yes.

20 Q. When 2 Travel was founded back in around about the year
21 2000, it was primarily a coaching company; is that
22 right?

23 A. It was.

24 Q. In fact it was called 2 Travel Coaches?

25 A. Yes.

1 Q. It began in business by purchasing Capital Coaches?

2 A. Correct, yes.

3 Q. Which brought with it depots in Swansea and Cwmbran?

4 A. Yes.

5 Q. And your background was indeed on the coaching side;

6 is that right?

7 A. Primarily, yes.

8 Q. In January 2003 the company floated on the alternative

9 investment market?

10 A. Yes.

11 Q. And by that stage the board had gone from being just

12 yourself to something like six directors in total, but

13 still including you; is that right?

14 A. Correct.

15 Q. And you by this time, your role was operations director?

16 A. Yes.

17 Q. And at that stage it had been decided to move away from

18 the coaching side and focus more on the bus side of the

19 business; is that right?

20 A. I wouldn't say move away. I think that the coaching arm

21 had probably, in business terms, gone as far as it could

22 from its current premises in Cwmbran. We were looking

23 to open up other markets certainly in Bristol, but

24 I think --

25 THE CHAIRMAN: Can you turn a little bit? We decide the

1 case, you see.

2 A. I think the focus of the business, it was decided for
3 the AIM market in particular, that it was probably
4 better to move more into bus but keep the coaching arm
5 as it was.

6 MR WEST: So if you like, move the focus of the business
7 into the bus side?

8 A. Yes.

9 Q. Presumably as someone with a coaching background, that
10 was something that you weren't particularly happy about;
11 isn't that fair to say?

12 A. I can't say I wasn't happy or unhappy that the business
13 was moving in another direction. I was happy at what we
14 had achieved so far, certainly on the coaching side of
15 things, in the three years that we'd been going.
16 Sometimes nothing short of remarkable with what we had,
17 and I think it was probably time to explore other
18 markets.

19 Q. 2 Travel obtained its first school bus contract in
20 Cardiff in around September 2002; is that right?

21 A. I think so. I wouldn't swear to it.

22 Q. And around the same time, it opened a depot in Cardiff;
23 is that right?

24 A. That's right.

25 Q. And whilst the Swansea depot ultimately -- the freehold

1 of that belonged to 2 Travel, the Cardiff depot was
2 always leased; is that right?

3 A. It was, yes.

4 Q. You have already mentioned the depot in Cwmbran that
5 came with Capital Coaches. Just to complete the
6 picture, there was another depot in Llanelli; is that
7 right?

8 A. Yes.

9 Q. There were four in total?

10 A. Yes, four.

11 Q. You worked from Cwmbran and Cardiff; is that right?

12 A. Primarily Cwmbran, but yes, certainly my area was more
13 east based than west.

14 Q. In addition to the school contracts that we've
15 mentioned, there were also a number of tendered routes
16 operated out of the Cardiff depot, is that right?

17 A. Yes.

18 Q. That included number 88 and 89 services?

19 A. Yes.

20 Q. Which 2 Travel operated on a subcontracted basis for
21 Cardiff Bus in 2003?

22 A. Yes.

23 Q. Do you recall the Vale of Glamorgan council was not
24 terribly happy with 2 Travel's performance of that
25 service?

1 A. I can't remember anything specific. I can remember --
2 I think we had some correspondence from Cardiff Bus
3 saying they were happy with what we had done, but
4 I can't remember anything specific from the Vale.

5 Q. We did go through this with another witness, but could
6 we look at E3/559. This is a memo from you, I think
7 that's right, on 558, attaching the document at 559?

8 A. Mm-hm.

9 Q. 559 is a letter to Mr Alan Kreppel, who was at that
10 time, the managing director of Cardiff Bus, from an
11 Andrew Eccleshare, heading "Planning and
12 Transportation", I assume at Vale of Glamorgan Council;
13 is that right?

14 A. Yes, possibly.

15 Q. He says, Mr Eccleshare, that he's corresponding with
16 Mr Kreppel, of course, because Cardiff Bus had the head
17 contract and you had the sub contract. He says in the
18 second paragraph:

19 "We are still receiving numerous complaints about
20 non-operation of various journeys, which is leaving
21 passengers stranded. In fact, I was informed this
22 morning that one blind passenger, who had been persuaded
23 by his social worker to use public transport, was
24 stranded ...(reading to the words)... success of these
25 services depends on reliable operation."

1 And he asks you to treat this letter as a final
2 warning. Do you see that?

3 A. Mm-hm.

4 Q. You then send a copy of that to Bev Fowles, Mr Waters
5 and Mr Huw Francis.

6 A. Yes.

7 Q. "Please find attached a copy of the letter ...(reading
8 to the words)... our company as a whole. However, the
9 Cardiff depot in particular has no maintenance facility,
10 no spare parts stock facility, the oldest vehicle age
11 profile of any depot in our company, no spare vehicle
12 capacity. When you consider the depot turns over
13 approximately 1.8 million ...(reading to the words)...
14 to improve the situation. We are all agreed the major
15 growth area in the company is Cardiff, but we are unable
16 to achieve our goals. We have already lost one school
17 contract in Cardiff through poor operating procedures,
18 through mechanical failure and not having a spare
19 vehicle ...(reading to the words)... lose work
20 accordingly."

21 So your view at the time was that the infrastructure
22 of the Cardiff depot was insufficient to support the
23 company's operations; is that right?

24 A. We were, at the time, heavily dependent on the Cwmbran
25 depot for numerous things: maintenance facility, spare

1 vehicle, stockholding, that kind of thing. So yes, as
2 a depot, it was, rightly or wrongly, possibly seen as
3 more than an out station, but more of an out station or
4 a satellite depot from Cwmbran. In the same way as
5 perhaps Llanelli was, at the start, seen as a satellite
6 depot to Swansea.

7 Q. We see similar concerns reflected in another document at
8 page 560 of this bundle, so just over the page. There's
9 an engineering management meeting at Cwmbran. We can
10 see that you were present. If you look under "Other
11 matters", the fifth bullet point:

12 "GM [which seems to be a Mr Martin] said that he and
13 PC [Mr Coles, I believe] ...(reading to the words)...
14 preventative maintenance."

15 So is that right, that actually the vehicles were
16 being worked so hard that there wasn't time to carry out
17 a proper maintenance on them?

18 A. No, I think if you ask any bus or coach company in the
19 UK, engineering staff will always complain that they
20 don't have enough time to work on vehicles. It's one of
21 their little foibles, I'm afraid, that they would rather
22 keep them parked up in a yard rather than [inaudible].

23 [The stenographer asked the witness to speak up].

24 Q. It wasn't just that, though, was it? If we go to
25 page 567, it's another memo, this time from Alun Price

1 to various people, but copied to you. Do you see that?

2 A. Yes.

3 Q. You see what he says:

4 "I would remind you that the vehicles under your
5 control [this is to Mr Jones and Gibbons] ...(reading to
6 the words)... engineering staff used for driving duties.
7 This must stop immediately. Staff for driving duties is
8 your responsibility, not that of engineering ...(reading
9 to the words)... cover these you're not economical to
10 cover. £12.75 an hour."

11 THE CHAIRMAN: Mr Price being the?

12 A. He was the engineering director.

13 MR WEST: So it's not just the usual engineer's whinge that
14 they don't have enough time, the poor engineers are
15 being sent out to drive the buses, are they not?

16 A. If this is referring to just Cwmbran, it looks like it.
17 It's written to the traffic people in Cwmbran. I can't
18 honestly remember engineering staff, on a regular
19 occurrence, driving. There may have been odd occasions,
20 especially at that time of the year. June/July is very
21 busy for a coach operation, and there may have been odd
22 occasions that they were or they had to undertake
23 driving duties, possibly in the afternoon of a peak,
24 where a coach had gone out in the morning and had then
25 gone to Oakwood Park or whatever and wouldn't be back

1 for afternoon schools. They may have to undertake
2 driving duties in the afternoon, but I can't honestly
3 remember it happening a lot.

4 Q. I showed you a minute ago the memo at 558 that you had
5 sent about the Cardiff depot and we have Mr Waters'
6 reply to that in bundle E12. Mr Waters had a terrible
7 habit of not putting a date on anything, which means
8 they end up in E12. Page 13. We can see that it says
9 a response to your memo, as he says on it, with
10 reference to your memo. This is to you.

11 A. Page 13, sorry?

12 Q. 13:

13 "The decision to set up Cardiff was taken over
14 a year ago. The full implications should have been
15 considered then. Even at that time, a schools base of
16 14 vehicles was planned and the maintenance needs of the
17 operation should have been considered and costed into
18 tenders."

19 So is it right; he's saying there that the costs
20 which had provided the basis of the tenders submitted
21 for the school buses had not taken account of the
22 maintenance needs of the operation?

23 A. If that was Carl's opinion, then, you know, it's in
24 writing, so ...

25 Q. Well, it was sent to you. Did you have a view of it

1 at the time?

2 A. Yes, I didn't -- I don't agree with that statement.

3 I can't remember seeing this but --

4 Q. It was sent to you, wasn't it?

5 A. It was, yes.

6 Q. Then at number 2, he says:

7 "The current site was found and although totally

8 inadequate, a lease was entered into ...(reading to the

9 words)... explain to the plc board why we are doing this

10 ...(reading to the words)... cheaper alternatives."

11 The site at that time was the Wentloog Road site;

12 is that right?

13 A. Yes.

14 Q. And that was the only site 2 Travel ever had for a depot

15 in Cardiff?

16 A. No, there was another site further up in Wentloog, which

17 had a maintenance facility.

18 Q. Do you know when that site began to be used?

19 A. I would say some time late 2003, early 2004. It was

20 about half a mile from the depot, towards Cardiff.

21 Q. He then says:

22 "Until an alternative premises can be found, there

23 is no solution to the no parts, no maintenance facility

24 problem. With regard to the age profile of the fleet

25 ...(reading to the words)... could have been

1 influenced."

2 So they're saying it's your own fault; is that what
3 he's saying?

4 A. I just made a statement in the previous statement to say
5 that it was a statement of fact that it is the oldest
6 age profile of the four depots. I didn't see anything
7 wrong in that, just a point in a memo.

8 Q. Another of the scheduled routes or supported services
9 provided by 2 Travel in Cardiff at the time was the
10 number 98 and 99; is that right?

11 A. Yes.

12 Q. I think this is right, that was called the "Heath
13 Hospital Circular"?

14 A. Yes, it served the hospital in Cardiff.

15 Q. That was for Cardiff Council; is that right?

16 A. Yes, it was.

17 Q. And they were not happy with 2 Travel's performance on
18 that route either, were they?

19 A. Not that I can -- I can't remember anything specific.

20 Q. Can I perhaps refresh your memory, page 697 of E3. It's
21 to you, Mr Fowles:

22 " ... Confirm the complaint regarding the
23 ...(reading to the words)... trying to join the service
24 on its way to the hospital. I am therefore confident that the bus
25 failed to operate or operated late. The formal warning

1 stands and any further failure in the operation of the
2 service will result in the termination of the contract."

3 So you were on a final warning on the 88 and 89.
4 Now you're on a final warning on the 98 and 99; is that
5 right?

6 A. That's what the letter says, yes.

7 Q. And the position wasn't much better, was it, on the
8 school buses? Could we look at E4/358. Again, to you.
9 Two of the services failed to operate and one operated
10 25 minutes late:

11 "Extremely disappointing for the first day of
12 school. Extremely difficult to contact your staff to find
13 out why buses failed to operate. No payment will be
14 made."

15 And another formal letter of warning. So you were
16 having some problems with the school contracts
17 in September 2003; is that right?

18 A. My immediate recollection of this was -- I do remember
19 this letter, as it happens. I think we'd been given
20 information by either the Local Authority or the schools
21 to say they were on training days. Either they were
22 wrong or the Council were wrong, which is why two of
23 those didn't operate. We were told the schools weren't
24 to operate that day.

25 Q. If you could go forward to 666 in this bundle, it's

1 a memo from Mr Waters, this time to various people,
2 including you. The tribunal's seen this before.
3 Perhaps you could just read it to yourself. (Pause).
4 THE CHAIRMAN: Do I interpret the first paragraph as
5 Mr Waters having gone to Cardiff and done some bus
6 driving himself?
7 A. It appears so, sir.
8 THE CHAIRMAN: That's what it means. So he tried the route
9 out as a driver?
10 A. Yes, I would have thought so, yes. (Pause).
11 MR WEST: So what he says is that you're short of drivers;
12 is that right?
13 A. Yes.
14 Q. Were you short of drivers at that time?
15 A. My honest recollection of that time, I think we had
16 enough drivers. I wouldn't say there was an abundance
17 of them, but I think we had enough drivers.
18 Q. What he says is because of a shortage of drivers,
19 instead of providing the scheduled services, the drivers
20 and vehicles which were available were being used on
21 schools instead. Is that what was happening?
22 A. That may well be his opinion, but it doesn't -- I don't
23 recollect it being like that.
24 Q. That's pretty serious, isn't it, for services? Both the
25 88, 89 and the 98, 99 were hospital services, were they

1 not? One on the Llando Hospital and the other one to
2 the Heath Hospital?

3 A. They were to both hospitals, yes.

4 MR WEST: That may be a convenient moment.

5 THE CHAIRMAN: Yes. Don't talk to anyone about your
6 evidence during the lunch adjournment, please,
7 Mr Fowles. You can leave the room if you want.

8 Can we just take stock on timing? How much longer
9 do you expect to be with this witness?

10 MR WEST: An hour.

11 THE CHAIRMAN: Right.

12 MR BOWSHER: And ten minutes.

13 THE CHAIRMAN: That answers my question. I said earlier
14 that we'd take the application at 2 o'clock, and I still
15 think we should.

16 MR FLYNN: So do I, sir, if I may.

17 THE CHAIRMAN: Okay, we'll take the application at
18 2 o'clock.

19 (1.00 pm)

20 (The Short Adjournment)

21 (2.00 pm)

22 [Hearing held in camera - separated from transcript]

23 (2.45 pm)

24 (A short break)

25 (3.20 pm)

1 RULING

2 THE CHAIRMAN: We are going to give an ex tempore ruling,
3 which will have to be checked for its grammar and
4 syntax, if anyone wishes to take this aspect of the case
5 further, please.

6 An application is made by the claimant to call
7 a witness, an individual, to give evidence. The
8 claimant wishes to anonymise that witness. The effect
9 would be that the witness's identity, it is proposed,
10 would be known to counsel and certain solicitors, but
11 would not be known to the defendants themselves, that is
12 to say the lay clients for whom Mr Flynn, Mr West and
13 their instructing solicitors appear.

14 The individual has made a witness statement, which
15 the tribunal has seen but which the defendants have not
16 seen. It has introduced an element of artificiality
17 into the argument. We are grateful to counsel on both
18 sides for facilitating that argument to the best extent
19 possible.

20 We start with what we trust is the incontrovertible
21 proposition that the Competition Appeal Tribunal, like
22 almost all courts, is generally a public and open court.
23 Such a court, of course, is subject to certain
24 exceptions, which have been established on a piecemeal
25 basis, much of the jurisprudence being in the work of

1 the Special Immigration Appeals Commission. However, it
2 has applied in other courts.

3 We should probably start with rule 50 of the
4 Competition Appeal Tribunal rules 2003, statutory
5 instrument 1372 of 2003. Rule 50 provides that the
6 hearing of any appeal, review or claim for damages shall
7 be in public, except as to any part where the tribunal
8 is satisfied that it will be considering information,
9 which is, in its opinion, information of the kind
10 referred to in paragraph 1.2 of schedule 4 to the 2002
11 Act.

12 Schedule 4, part 1, paragraph 1, refers to decisions
13 of the tribunal and, actually, that part of the schedule
14 relates to the form of the document through which the
15 tribunal provides its decisions. But it is instructive
16 and relevant. It provides, sub-paragraph 2:

17 "In preparing that document [the decision] the
18 tribunal shall have regard to the need for excluding, so
19 far as possible, as practicable ... (c) information
20 relating to the private affairs of an individual, the
21 disclosure of which would or might, in its opinion,
22 significantly harm his interests."

23 Our view is that that procedural provision relating
24 to the form of our decisions is a reflection of the
25 general rule set out in CPR part 39.2, paragraph 4,

1 which reads as follows:

2 "The court may order that the identity of any party
3 or witness must not be disclosed if it considers
4 non-disclosure necessary in order to protect the
5 interests of that party or witness."

6 Those provisions are to be considered as part of the
7 balancing exercise which the court has to carry out.
8 What is that balancing exercise? The balancing exercise
9 is to enable the Competition Appeal Tribunal to achieve
10 the overriding objective, which is set out in the
11 tribunal's rules and, of course, in CPR part 1.

12 The application for anonymity is therefore an
13 application for an exception from the ordinary rule of
14 public and open justice to which I referred earlier.
15 This tribunal is very accustomed to applications for
16 evidence to be subject to a ring of confidentiality.
17 Generally speaking, it applies to economic
18 confidentiality, for example, concealing costs or
19 profits from another party who is or may be
20 a competitor. Other courts are more familiar with,
21 perhaps, more conventional reasons for anonymity.
22 Criminal courts and sometimes civil courts are subject
23 to applications for the protection of the physical
24 safety or well-being, indeed occasionally the life, of
25 an individual, irrespective of any economic interests.

1 We consider this application in the context of the
2 overriding objective and bearing in mind that it is
3 different from the usual reasons for an application for
4 anonymity, which I have described. That it is different
5 does not mean, if you will forgive the double negative,
6 that it is not right; it could be in certain
7 circumstances.

8 We have considered the individual's statement in
9 detail. Dealing with paragraph 5 onwards, but leaving
10 out paragraphs 10 and 11, we accept that the individual
11 has subjective concerns as described. However, in our
12 judgment, those concerns are not objectively sufficient
13 to justify treating the individual's potential evidence
14 in a way different from the ordinary treatment of
15 evidence, especially when one weighs the subjective
16 concerns against the objective considerations of open
17 justice.

18 So far as paragraphs 10 and 11 are concerned, we
19 consider that what the individual says there is entirely
20 subjective and far too vague to take the application any
21 further.

22 Furthermore, in order to achieve the overriding
23 objective of a fair disposal of the case in justice to
24 both sides, we have had to consider whether the evidence
25 could be tested if the individual was called in

1 circumstances of anonymity as requested. What would be
2 the situation in the event of the defendant being
3 deprived of the full opportunity to cross-examine? In
4 this case the result would be that certain documents
5 could not be used because the defendants might not know
6 that they were available or relevant. In addition, and
7 this is important on the facts of this case, there might
8 be conflicting factual accounts of events relating to
9 the individual and the individual's relevant experience
10 and activities, which could not be challenged because
11 the defendant would not be able to obtain the material
12 with which to make the challenge.

13 It is therefore our conclusion that even were we to
14 be minded to grant anonymity on objective grounds
15 relating to the individual, him or herself, the
16 defendant would be deprived of the opportunity of a fair
17 trial. We therefore reject the application. Of course,
18 it is a matter for the claimant, whether the claimant
19 wishes to call the witness. In certain circumstances
20 the claimant would be able to obtain a witness summons
21 to compel the attendance of the witness.

22 MR FLYNN: Sir, I apply for costs of the application in any
23 event.

24 MR BOWSHER: May I just take instructions on a couple of
25 points?

1 THE CHAIRMAN: Gosh, you were quick off the mark, Mr Flynn.

2 I wasn't quite expecting that yet. (Pause).

3 MR BOWSHER: I'm much obliged for that accommodation. Sir,

4 I don't think there's very much more to be said, save

5 that I would ask you to reject that application for

6 costs. At the very most, the costs of that application

7 should be reserved because it is not yet clear where

8 this matter goes and as the hearing evolves, it may be

9 that the significance of this material becomes clearer

10 or otherwise. I'm being a bit vague because I don't

11 know how this is going to develop. But the subject

12 matter of that witness statement may come back in and it

13 may become clear that a different approach might have

14 been appropriate, and it would be appropriate to

15 consider the costs of this application in the light of

16 how that subject matter develops.

17 MR FLYNN: Sir, two applications have so far been made,

18 neither has been in proper form or accepted by the

19 court. If a third is made that is in proper form, then

20 it can be made at the time, but I maintain that these

21 applications should be the subject of an immediate costs

22 order. I think there are other housekeeping matters,

23 which perhaps I would just flag, which is how are we

24 going to treat the transcript and the judgment? My

25 immediate suggestion would be that the transcript is

1 a session that was heard on particular terms. That is
2 between counsel and solicitors. I wouldn't say
3 necessarily only the solicitors in the room because
4 I think it's appropriate that the partners at
5 Burges Salmon should also be able to consider what was
6 said.

7 THE CHAIRMAN: I was attempting to deliver an ex tempore
8 judgment that could be disclosed to anyone.

9 MR FLYNN: That was my next point. It seems to me that the
10 judgment should and in form certainly could be a public
11 judgment, and that's what it should be.

12 MR BOWSHER: I think that must be right. The hearing itself
13 has to be available to those who we had contemplated
14 might be covered in any event by the confidentiality.

15 THE CHAIRMAN: I didn't disclose this to my colleagues,
16 because it was only a thought that passed through my
17 mind, but I did consider whether we should have an open
18 judgment and a closed judgment in this matter, but
19 I thought it would be inappropriate, and so we produced
20 a judgment that I think can be public.

21 MR BOWSHER: Could I ask this, that while not dissenting
22 from the principle that we could just review the
23 transcript over the weekend, lest there be some issue
24 that we would like to come back to, some specific point
25 in the text -- I don't think it's a problem, from having

1 listened to it. Nothing struck me. But it would be
2 appropriate to listen.

3 THE CHAIRMAN: It wouldn't do any harm leaving it over the
4 weekend because the transcript won't go on the
5 tribunal's website, over the weekend, so I'm told. The
6 tribunal has a fantastically lively website, as you
7 know. I know, Mr West, that you appear often, so
8 you will know it well. And indeed, Ms Blackwood as
9 well. (Pause)

10 We will consider the costs of this application
11 separately in due course and we're mindful of the
12 application that has been made, but we'll reserve costs
13 until we give our final judgment in this matter.

14 MR FLYNN: Thank you, sir. There's one other housekeeping
15 matter, which is having rejected the application, I am
16 really not sure what the procedure is. Do you send the
17 material back or do you simply put it out of your mind?
18 How do we proceed? I raise that really as a question
19 rather than anything else.

20 THE CHAIRMAN: This is a slightly unusual tribunal, even for
21 the CAT. I think probably we can all manage to put
22 these matters out of our minds.

23 MR FLYNN: Unusual was your word. It is certainly unusual
24 to be facing three QCs in this sort of case.

25 THE CHAIRMAN: This is not in any way to imply any criticism

1 of our non-legally qualified colleagues.

2 MR FREEMAN: And one of them is honorary, Mr Flynn.

3 MR FLYNN: No less valid for that, sir.

4 THE CHAIRMAN: But we feel that it would be appropriate,
5 I think, to return the material to the solicitors for
6 the claimant. Perhaps the tribunal should retain one
7 copy in the registry.

8 MR BOWSHER: I think that would make eminent sense.

9 THE CHAIRMAN: Do we have a registry? I know we have
10 a theoretical registry.

11 MR BOWSHER: No doubt liaison can be made to make sure we
12 know who has the right thing. I, for my part, am going
13 to hand mine back.

14 MR FREEMAN: Don't leave it on the bus, Mr Bowsher!

15 THE CHAIRMAN: Even on a 117.

16 MR BOWSHER: As the chairman will know, every month the Bar
17 Council hears another horror story along those lines.

18 THE CHAIRMAN: Yes, I'm a member of the Bar Council.

19 MR BOWSHER: I'm conscious of the time. We can resume
20 Mr Fowles, who has been waiting patiently outside.

21 THE CHAIRMAN: Mr Flynn's looking plaintive.

22 MR FLYNN: Not at all, sir.

23 THE CHAIRMAN: Let's do another ten minutes or so.

24 MR DAVID FOWLES (continued)

25 Cross-examination by MR WEST (continued)

1 MR WEST: I believe we were in file E4, page 666. You see
2 at the very top of the memo, Mr Waters expresses the
3 view that he's struggling enormously to run the depot.

4 Was that also your view at the time?

5 A. No, no, it wasn't.

6 Q. Can we look at the next bundle, E5, page 166. This is
7 another complaint from Cardiff Council about service
8 646. The complaint now is about persistent late
9 running. You see the writer says:

10 "I have received a number of complaints regarding
11 the punctuality ...(reading to the words)... already
12 long journey."

13 So is it right that 2 Travel was having difficulties
14 providing this service punctually at the time?

15 A. From what I remember, and I think it was this one in all
16 fairness, but my memory may not be quite right. I think
17 there was an issue with traffic on the school bus, from
18 what I can remember. Nothing to do with the operation
19 itself, just volume of traffic in the afternoon.

20 Q. Can we look then at the next bundle, E6, page 201. This
21 is another three months later, 22 March 2004, again from
22 Cardiff Council, this is a different school, Ysgol Bro
23 Eirwg:

24 "... occasions when the above service has failed to
25 arrive on time. Please see attached."

1 And they say these are considered as major failures.
2 That was on 22 March. And over the page, you'll see
3 another letter on 22 March. So you received quite a lot
4 of post that day, this time concerning the number 99 and
5 they say they've undertaken a survey, which reported
6 that the 15.20 failed to operate as the vehicle was
7 required as a school bus. The 18.20 failed to operate
8 the full-length of the route and these are also
9 considered major failures. So of these two letters on
10 the same day, one was about the school buses and one was
11 about the number 99, so it seems that 2 Travel were
12 still struggling to provide the services it had
13 contracted to provide in March 2004; is that right?

14 A. If it's in writing, then yes, those journeys may not
15 have operated. Bearing in mind they were operating
16 other journeys during the day satisfactorily, if one
17 journey failed to operate, as any bus operator will tell
18 you, things do happen, things go wrong. I don't know
19 the circumstances of what happened on that day. But one
20 failure to operate wouldn't seem to be a huge problem
21 at the time.

22 Q. I'm not going to go through every one of the similar
23 letters we have in this bundle, but these are not just
24 isolated failures, are they? It's a pattern of repeated
25 failures to comply with the contracts which you had

1 signed?

2 A. I disagree.

3 Q. The in-fill services were due to commence on 19 April,
4 Mr Fowles; do you remember that?

5 A. Yes.

6 Q. If you could go back in this bundle to page 140, we have
7 a memo which is from you. The tribunal has seen it
8 before. Could I just ask you to read that to yourself
9 briefly. (Pause).

10 So your position was that on 9 March, six weeks
11 before the launch of the in-fill services, a lot of the
12 resources you were going to need weren't in place;
13 is that right?

14 A. Yes, that's right, yes.

15 Q. And could you then go forward to page 205 in the bundle.
16 This is another two weeks later.

17 A. Mm-hm.

18 Q. Again, the tribunal's seen this before, but perhaps you
19 could simply read it over. (Pause)

20 A. Okay.

21 Q. So now you have 18 days left before the in-fill services
22 commence, and you are still awaiting the ticket
23 machines, destination blinds, vehicles and you haven't
24 yet installed mains water and electricity. You have
25 bought a Portakabin?

1 A. Yes.

2 Q. In any event, you're not satisfied with the resources
3 that have been provided at this stage; is that right?

4 A. At that time, yes.

5 Q. And these problems were not, in the event, resolved
6 prior to the launch of the service, were they?

7 A. I had every assurance I needed about the time we started
8 operations.

9 Q. Well, could I ask you to look at page 672.

10 A. Same bundle?

11 Q. In the same bundle, yes. So you say here you're going
12 to inform them of the problems faced:

13 "I think we will all agree what has been achieved
14 ...(reading to the words)... main problem is lack of
15 resource, both drivers and engineering."

16 I should have pointed out at the start, this is
17 11 May, so shortly after the in-fill services have
18 commenced; is that right?

19 A. Yes.

20 Q. You were originally promised that Gurkhas would be made
21 available:

22 "This now looks increasingly unlikely."

23 And it is right that no Gurkhas were ever made
24 available in Cardiff, isn't it?

25 A. Not in Cardiff, correct.

1 Q. "Lack of drivers is a major barrier to increasing
2 revenue."

3 So you were still short of drivers at this stage?

4 A. Mm-hm.

5 Q. You don't have a coherent plan for going forwards:

6 "No nearer getting a firm depot sorted out and until
7 ...(reading to the words)cannot move forward."

8 So is it right that the second depot in Wentloog Road
9 that you refer to, is still not operational at this
10 stage?

11 A. I can't remember the actual date, I've got to say. But
12 it must have been there or thereabouts. I'm sure it was
13 around about the May or June time that the second depot
14 was up and running.

15 Q. You still didn't have mains water at the depot?

16 A. Not in the area that we parked the vehicles in and it
17 was on hold because -- it must have been because of the
18 second depot coming on line.

19 Q. And this is leading to increased vehicle breakdowns and
20 that's because you couldn't provide maintenance without
21 mains water and electricity; is that right?

22 A. I wouldn't say it was to do with mains water or
23 electricity.

24 Q. You had previously complained, as we've seen in other
25 memos, about the lack of a maintenance facility at the

1 Cardiff depot.

2 A. Mm-hm.

3 Q. That problem was still in existence, was it?

4 A. Until we got the second depot up and running, yes.

5 Q. And you say that:

6 "Firm and decisive action needs to be taken. We are
7 not all pulling in the same direction."

8 Was the fact that the Gurkhas went to Swansea and
9 not Cardiff, an indication of not pulling in the same
10 direction between the different depots?

11 A. No, that was a decision made by the directors on the
12 basis of the predation we were suffering at the time.

13 Q. Can you explain what that means? Surely the predation
14 would lead to the opposite conclusion, wouldn't it?

15 A. I wouldn't have thought it was wise to put trained
16 Gurkhas on the streets of Cardiff, for some of the
17 actions that were being undertaken by Cardiff Bus at the
18 time.

19 THE CHAIRMAN: Not even tomorrow afternoon?

20 A. With exceptions, I suppose, yes. But it was taken at
21 board level that we wouldn't put the Gurkhas into
22 Cardiff for those reasons and add to the problems.

23 MR WEST: Mr Cartwright gave a rather different explanation
24 this morning, I don't know if you were here. He said it
25 was because they were familiar with the routes in

1 Swansea.

2 A. They'd been trained on routes in Swansea prior -- well,
3 when they started employment, with a view that they
4 would go to Cardiff originally, when we set up the
5 Gurkha training scheme. But when the predation started
6 and the level of predation, some of the actions of the
7 drivers of Cardiff Bus, it was felt after that, that we
8 didn't want to add to any possible bloodshed on the
9 routes, effectively.

10 Q. In any event, what we see here is that contrary to what
11 you said a minute ago, you were not provided in Cardiff
12 with the resource that you needed at the outset of the
13 in-fill services, were you?

14 A. Resource in what way?

15 Q. Drivers, electricity, water, maintenance facilities,
16 vehicles?

17 A. We had enough vehicles, we had enough resource in terms
18 of equipment. Drivers were an issue. But apart from
19 that, then, no, I think we had everything we needed.

20 Q. Now, around the time the in-fill services started, you
21 received a telephone call, didn't you, from David Brown,
22 the managing director of Cardiff Bus?

23 A. Yes.

24 Q. And your statement at paragraph 19, you say that what
25 Mr Brown said to you was: you do realise that we've got

1 to react? Is that what he said?

2 A. That's my recollection of the conversation, yes.

3 Q. And Mr Brown made it clear in that call, didn't he, that

4 so far as he was concerned, the competition was going to

5 be legal and safe?

6 A. My recollection was it was along the lines of: whichever

7 means he saw fit, rather than fair and legal.

8 Q. But there was no threat by Mr Brown to compete in an

9 illegal way, was there?

10 A. Those words weren't mentioned, no.

11 Q. Mr Brown gave you his mobile phone number on that phone

12 call?

13 A. I don't recollect that, no.

14 Q. But in any case, no one from 2 Travel ever contacted

15 Mr Brown personally with the concerns that they had

16 about the white services, did they?

17 A. Not that I'm aware of, directly to Mr Brown, no.

18 Q. Could you go back to page 68 of the same bundle, E6.

19 Sorry, that's not the right reference. Perhaps if you

20 go to 215.

21 THE CHAIRMAN: Mr West, I think you may need the weekend to

22 find the right reference.

23 MR WEST: That's very helpful.

24 THE CHAIRMAN: For those who are going to be in Cardiff over

25 the weekend, I'm sure it'll be a good one. For those

