



**STANDING COMMITTEE
OF
TYNWALD COURT
OFFICIAL REPORT**

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**PROCEEDINGS
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**ENVIRONMENT AND INFRASTRUCTURE
POLICY REVIEW COMMITTEE**

**Bus Vannin demand-responsive services;
Road Traffic Licensing Committee**

HANSARD

Douglas, Friday, 19th March 2021

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Members Present:

Chairman: Mrs C L Barber MHK
Mr C R Robertshaw MHK
Mr R J Mercer MLC

Clerk:

Miss F Gale

Assistant Clerk:

Mr K Skehan

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Standing Committee of Tynwald on Environment and Infrastructure

Bus Vannin demand-responsive services; Road Traffic Licensing Committee

*The Council resumed virtually at 11.45 a.m.
Proceedings were conducted and broadcast live
from the Legislative Council Chamber.*

[Mrs BARBER *in the Chair*]

Procedural

The Chairman (Mrs Barber): Thank you, and welcome back to this second part of the Environment and Infrastructure Policy Review Committee's Inquiry today, where we are taking evidence from the Minister and Chief Executive of the Department of Infrastructure, and we are focusing now on the RTLC and Bus Vannin.

EVIDENCE OF Hon. Tim Baker MHK, Minister and Mr Nick Black, Chief Executive, Department of Infrastructure

5 **Q1. The Chairman:** I wonder, in an answer to a Question on 23rd February 2020 in the House of Keys to Mr Thomas, it was stated that the Department has submitted evidence to the Office of Fair Trading, but has not yet been advised of any outcome.

I wonder if you could let us know when you were asked for the evidence and when it was submitted, so we can try and get a timeframe clear in *our* mind for where the OFT are in terms of this Inquiry?
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The Minister for Infrastructure (Mr Baker): I think, Chair, if I could pass that to the Chief Exec, given that the date you have quoted predated my appointment as Minister. You said February 2020.
15

The Chairman: Sorry, 2021, my error.

The Minister: Okay, sorry.

So the situation, as far as I am concerned, is that things have not changed from that point. So clearly I will let Nick pick up the detail on that. But that is the current state of play to the best of my knowledge.
20

Mr Black: Mrs Barber, if you are happy that I answer your question for you, I can give you the dates.

25 The Office of Fair Trading – properly, the Isle of Man Office of Fair Trading – wrote to the Department, care of myself, on 17th February 2020 to advise the Department of an investigation in respect of the provision of demand-responsive services. The letter was headed that it should be construed as a notice in writing, pursuant to paragraph 6(1) of Schedule 3 to the Fair Trading Act 1996.

30 The Department provided a response to that letter in March of 2020, and there was further correspondence with the Office in response to its public notice, which was published by the Office of Fair Trading on 19th August 2020, and I have letters going on from then – one on 25th September, for example; and we have provided the Office of Fair Trading with the information. I do not believe that we have had any further requests for anything further, so I can only assume that the Office of Fair Trading remains interested in the matter and that it continues to pursue an investigation.

35 That is all I have, I am afraid, Mrs Barber, today. I can of course check if you think I need to provide you any more.

40 **The Chairman:** Thank you.

I think it would be helpful if there was a clearer time, and we can pick that up also with the Office of Fair Trading directly, but anything you can provide would be received gratefully.

Mr Robertshaw?

45 **Q2. Mr Robertshaw:** It is the concern, and it is an expression of the obvious really that there are serious concerns around the impact of the original service which, as you recall, was operating for a year on a trial basis that is now being extended significantly, without real knowledge as to the damaging impact that would have on a fair trading basis on the taxi sector.

50 Does the information that you have provided thus far, give full examination of the true cost of the operation for Government of these now-competing services in certain areas, compared to the cost base of the taxi service?

55 So there are two parts to that: is it right to go ahead before we know whether this is a fair trading situation? And how, to your knowledge, have you presented OFT with a fully comprehensive list of true costs including things like, for example, depreciation costs, because they have to be factored in in the private sector?

Over to you.

The Minister: Yes, thank you, Mr Robertshaw.

60 Clearly I fully understand the sensitivity of this whole proposition and I think – I will pass to Nick to cover the detail particularly around the costs, and the information that we have provided. But to try and paint the big picture, what is the Department trying to achieve, here? Because I think that has perhaps been lost in all this between the OFT and the RTLC.

65 The Department obviously is responsible for delivering public transport services across the Island and, like everywhere else, there are cost pressures around that, and there is a desire to find new ways of delivering service to adapt to the needs that people have now, rather than perhaps those that they have had in the past. It is quite clear that good public transport, particularly in rural areas, but it is clearly important in urban areas as well, is key to social inclusivity, particularly with an ageing population for people who do not drive. Not everybody has the financial wherewithal or the situation where they can have their own car.

70 So the Department has been trying to balance the conflicting pressures of doing more with less money, delivering better services and adapting to the changing needs, as the population of the Isle of Man changes. The demand-responsive transport concept as first introduced on the trial basis was a response to that. It reflected things that have been tried in other jurisdictions and it was the Department's attempt to modernise its proposition, as opposed to the inexorable cut, cut, cut of services, which we have seen in other places. One only needs to look across to the UK
75 to see how, particularly, bus services have gone with services being fully prioritised and being left

to the market, combined with some authority funding. The pattern of services are at best patchy, and certainly not comprehensive. The Department felt it had an opportunity to do something different, something better, which would deliver a better service and deliver better value to the public purse.

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So the trial was done. It is fair to say that the trial had some strengths and some weaknesses that the Department has addressed over time. So there were certain areas where it worked well and other areas where it did not, and the Department has tried to iterate its proposition. It did put in another application subsequent to that original trial run, and you are obviously aware recently of a further series of applications to the RTLC, as the independent regulator of the sector.

85

Now, the Department has to put forward what it proposes to do and the regulator has to assess and regulate. The important thing that I would like to stress in this is that the proposition which has been put forward at the moment for the RTLC to consider is very different from the version one, if you like, that was the subject of the trial. The key difference is that, essentially, whilst it retains the personalised service to the passenger in terms of collecting them from their door, what it proposes to do is deliver them into hubs within the existing bus network.

90

So if the hypothetical potential passenger in the new area wanted to access the service, they would be picked up from their home and transported to one of a number of points where they would then transition and transfer into a normal service bus. So it is very much a hub-based model which the Department's insight has shown works quite successfully in parts of Europe. From memory, it was parts of France that were particularly relevant for this. But that is about feeding traffic into the bus network. That is very different from the service that a taxi would offer.

95

So I think it is absolutely right that the Department continues to try to innovate and tries to push forward. It has not been helpful, the fact that this has gone on for such a long period of time. The RTLC has not considered the last application, which I think was in 2019 from memory, which leaves Bus Vannin in a very difficult position that, essentially, we are in a stand-off; and we cannot do nothing, because the world is changing around us. I think certainly my perspective is that the bus service has got a hugely valuable role to play, not just in making sure that the people of the Isle of Man remain connected socially, and have the ability to get to and from work and education. But also, as part of our response to the climate change agenda, public transport clearly is a big opportunity to actually address the carbon emissions issue, as well as getting traffic congestion down. The fact that the bus service is an integral part of the public service gives us a real opportunity.

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Bus professionals looking at this see the Isle of Man, the fact that everything is connected and integrated, as being a really ideal way of actually organising public bus services. I think we need to recognise what we have got here, recognise that it does need to evolve over time and recognise there is a legitimate role for the bus service and for the taxi service as part of a mixed model.

110

Just in closing, Mr Robertshaw, I would highlight that again one of the bits of the proposition that has been lost was some very innovative arrangements around the north of the Island, in particular, where the taxi trade actually requested the Department to provide enhanced services around the evening trade; because there is a lack of taxi availability in the north of the Island, and there is a market there to support pubs, restaurants, etc., by providing a better service.

115

So as part of my regular meetings with the representatives of the taxi trade, which is three-monthly, albeit there has been a bit of disruption to the most recent one because of COVID, for obvious reasons, they actually asked us to think creatively about what could we offer. The Northern Night Owl service which has been applied for is a direct response to that.

120

I think this has been characterised somewhat unfairly as Bus Vannin versus the taxis. It is very much not that. I fully recognise the valuable role that taxis play and, equally, the bus service has got a very valuable role to play as well, as part of a mixed economy.

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Nick, do you want to pick up from there?

Mr Black: Mrs Barber, Mr Robertshaw, I think the question that leads them is the issue of cost. We have discussed the issue of cost with the RTLC and the OFT. What I am slightly hesitant about,

130 though, is that as I read to you from the letter, the inquiry of the OFT is a letter under the Isle of
Man's fair trading legislation. So the investigation the Department is facing is a statutory one
under formal powers, and unless your Clerk can assist me, I am somewhat unprepared to know
whether I am permitted to disclose in a public forum information that is part of an inquiry under
formal powers that is yet to be concluded.

135 So, Mr Robertshaw, I absolutely understand the importance of your question, absolutely. And
you will know from your own experience in business and beyond that, how we allocate things like
costs when assets are shared between services. So, as the Minister has explained we have tried
to be quite innovative here. It is not just that we have one vehicle trundling around the north.
That vehicle might also be used for other things; that service might be used for other things. We
combine a variety of services to try and drive value for money for the taxpayer; and how you
140 allocate those costs and how you disaggregate the central head office overheads, they are all
things, as you quite rightly say, are real costs for real businesses, but are not often accounted for
in Government. We do not have depreciation in our accounts, as you know, Mr Robertshaw, we
have a replacement strategy for capital, so we can put in figures for depreciation, but they are not
real depreciation based on real figures. So I am confident we have done a lot of work on that.

145 Mrs Barber, would it be more appropriate for me to send the Committee something to answer
Mr Robertshaw in a confidential written form at this stage? I do not wish at all to be unhelpful,
but nor do I wish to get myself in trouble with the OFT for putting into the public domain things
they are still subject to inquiry. Maybe your Clerk could assist me. Would that be possible?

150 **The Chairman:** I think perhaps if we take it in that form initially and then we can seek advice
from the OFT whether they are comfortable with that being published, that gives us the
opportunity to ensure we have covered that box.

155 **Mr Black:** I am happy to answer the question, absolutely, Mrs Barber, that is not the point, it
is the question of doing so in public at this stage.

Q3. Mr Robertshaw: Thank you both for your response there.

160 I think my next comment hangs on and comes out of something important that Tim said, which
was effectively that this seems to be sort of a battle between Bus Vannin and the taxi service and
to some extent there is a truth in that. But the problem is that the issue, the relationship between
the two has not been resolved and the Minister, quite rightly, articulated the mindset within the
Department and within Bus Vannin as to what its ambitions are, but that is outwith the interests
of the taxi trade. The Minister said, what we are doing here or there is not necessarily competing
with the taxi trade. But we need that process to be completed, which analyses and examines the
165 situation sufficiently well to understand that, yes, we are able in all our actions to protect a viable
and good taxi service. And at the same time, developing our bus service. It is this *lack* of
conclusion, of detailed information – that examination that needs to happen – that is causing
effectively all these difficulties and places the RTLC in a difficult position.

170 The taxi trade know, in detail, their monthly and annual costs. The bus services as the CEO has
said, is a different kettle of fish. But we really need to resolve this before we push any further
forward, because we are in danger of losing the taxi trade, which would be a really serious
outcome and would occur because we had never properly examined the scope and role of both
areas.

175 So I do not think the Committee is standing against Bus Vannin or the Department in its
ambitions, but it is determined that it must recognise the interests of the taxi trade, which thus
far are openly acknowledged at a distance. That is fundamentally the problem.

180 The view of the Committee, as it is trying to consider this, certainly is one of 'We really need
to get this issue resolved. If we do not resolve it, what is the point of having an OFT, or the new
Competition Bill that comes in, because Government cannot sit itself outside of that – and you
will know that the Competition Bill specifically includes Government bodies and that will include

Bus Vannin. So ultimately, if your Department rushes ahead with good intent, it could very easily find itself crashing into a problem further down the road.

I think we need to tread *very* carefully and I hope you would agree with that sentiment.

185 **The Minister:** I do agree with your sentiment, Mr Robertshaw, and I think I have tried to acknowledge the very valuable role of the taxi trade in the previous answer.

I would very much welcome a swift conclusion to the investigation from the OFT because it is just a cloud of uncertainty hanging over everybody. Now, I can welcome it, but I cannot deliver it, as I am sure you will recognise, so I do not think there is much more I can say on that.

190 I think this is a complex picture and there are a couple of elements that I would want to draw out. Obviously, all the focus is on the demand-responsive transport element, which at the moment is a relatively small component of the overall travel mix, and it only covers particular geographical areas. I think it may have been partly interlinked with the wider patient transfer situation potentially, in some people's minds, which obviously is where there has been a fair bit of change from previous arrangements. But I would welcome a swift response from the OFT and equally the RTLC – they are the regulator. We are really in their hands, Mr Robertshaw, and I think it is fair to say that, whilst we can do what is licensed under our continuation of the trial without endorsement from the RTLC, we would not be able to press on and put these new services in place.

200 Bizarrely, the RTLC, whose role is really there to protect the travelling public, could end up then not allowing us to put these innovative solutions in place, but leaving us with services which are no longer viable and actually create the absolute opposite of what the intention is here, because clearly there are cost pressures on the Department – and Nick can explain those far better than I can. So, we have to evolve the service and in many areas the patronage is relatively low and commercially those services just would not be seen as viable.

205 But there is a clear social inclusion element to what the Department does through Bus Vannin here, and I absolutely want to protect that and enhance it. I want to see people being connected. We know that community is hugely important. We know that people getting out and connecting and seeing different parts of the Island and seeing other people is really important. The demand-responsive transport solution facilitates that far better than a bus service, which has been cut away over the years in certain parts of the Island.

Q4. Mr Robertshaw: I do totally respect the articulation of the view of your Department in terms of Bus Vannin and this concern about non-viability, but if you were to charge for – perhaps
215 'charge' is too strong a word – if you were to push forward with the new services in a genuine attempt to reduce your cost exposure in seriously non-viable areas, what you are doing without that Fair Trading comparison achieved, you are damaging effectively, as a Government body, the elements of the private sector. It would be utterly remiss of me if I did not, in this particular public session, recognise such companies as the private sector coach operator, who has found the circumstances in recent years *very* difficult indeed. It is right: the stronger you represent the public sector transport services, then it is right for somebody from my background, which is fundamentally a private sector one, to ever more forcefully to argue for the genuine and rightful interests of the private sector to try to protect its viability.

225 If I can pick you up on one point, because you have made it twice in this meeting, and I heard you say it on the floor of either Keys or Tynwald – forgive me, I cannot remember which one it was. But you said you had co-operation of the taxi service sector with regard to the north – and I understand the reasons why that happened. But you are now embarking on other areas and it would be, with respect, wrong to suggest that the co-operation you have had with regard to the extreme rural areas of the north necessarily applied to the same extent elsewhere. So I think it is
230 *very* importantly to keep this balance.

I think at least we understand that this whole matter remains incredibly tense until we thoroughly understand the interests of the public service transport providers and the private

sector, and making sure that they are properly integrated. We cannot look at one side without understanding the other. This delay in the OFT reporting situation is a deep worry and places the
235 RTLC in an impossible position because it cannot possibly really allow a process to go forward where public sector transport facilities are seriously damaging the private sector facilities. It is a really bad situation we are in at the moment.

The Minister: Yes, and if I could just respond to that before bringing Nick in for his perspective
240 on this.

There is nothing in what you said, Mr Robertshaw, that I would disagree with. Of course my background is the private sector, as you know, before coming into the political world. My perspective: I try to stand back from this and say what delivers the best outcomes for the people of the Isle of Man? That is my lens through which I try to look at everything here.

245 Going back to my comments earlier, clearly taxis have a part to play in that solution, so we need a taxi sector. Clearly, Tours Isle of Man provides coach solutions and again they have got a niche in the market which I would like to see retained and continued. Bus Vannin, equally, has to find its way forward. At the moment, I would add – you have made it clear that you believe that the RTLC is in an impossible position – it leaves the Department and Bus Vannin in a very difficult
250 position, because we have got propositions which we wish to bring in, where effectively we have no mechanism to get them approved and no means of actually forcing that through to a decision. As we both know, Mr Robertshaw, uncertainty is really unhelpful.

I would like Nick to just come in and comment on the implications, because it is my belief that we are entirely in the RTLC's hands and that without their express consent we cannot bring in
255 these proposed services in the middle part of the Island.

Mr Black: Chairman, Mr Robertshaw, I am happy to provide the information the Minister mentioned there; and perhaps, if I may, Mr Robertshaw, I could pick up a couple of your other points on the way through, just to try and provide you some assistance.

260 The Minister is absolutely right. The Department's bus services and its demand-responsive transport services are licensed as public services by the Road Transport Licensing Committee. As Mr Robertshaw has said, they are in a difficult position because they feel that they cannot issue a licence because the OFT issue remains outstanding. I have not obviously seen the legal advice that they have had on that matter. That is a matter for that Committee to determine whether it could
265 or could not issue a licence. We are currently on a holding-over licence, our licence was for the period of the trial, as you have correctly referred to, Mr Robertshaw. We have applied for that to be extended, and they have advised us that we should carry on on the original licence and that we are empowered to hold over within that.

As the Minister has said, we work with the taxi trade to the north which I accept,
270 Mr Robertshaw is different; every area of the Island is different. In the north, as the Minister referred to, the northern owl picking up people particularly in the licensed premises, but also connecting with our services to late services to Douglas, and taking people out of northern parishes would be *hugely* welcome and beneficial to the communities there. It will be a real shame if we cannot operate that, and it may be that we can apply for that separately to some of the other
275 things.

In the other areas that you referred to, which certainly different, Mr Robertshaw, you are right, the aim is to replace buses that are currently running with low numbers of people and to move forward into a demand-responsive rural transport that takes people, as the Minister said, from where they are to a big bus route – not to replace the taxi and take them to say, Shoprite or the back door of Marks and Spencer's as we see, but to take them to a big bus route. That is a very
280 different hub-and-spoke model, as I think the Minister has already made clear to you.

So we cannot operate those services without the RTLC. We have not got approval, so we cannot bring them in. What we have had to do, Mr Robertshaw, Committee, and Chair, is to put in an emergency application for backfilling that with a continuation of the current service. We have to

285 proceed with our application for a new service because Pulrose Bridge closes for works, hopefully,
in early April. Pulrose Bridge is part of the main bus route. We are going to have to divert via
Quarterbridge, which means at certain times it will take a lot longer. So we need to divert our
services. Everything then hinges on that route: the main 1, 2, 11, 12 services that everything in
the timetable is built around.

290 So we have to move ahead with the new timetable. What we will have to do is put in a variation
for those areas that we were hoping to serve with this new demand-responsive rural transport
and hope that the RTLC will approve it, otherwise we could be effectively stuck with an old
timetable that cannot work because of major roadworks that have to go ahead, because now is
the ideal time for them.

295 In terms of coaches, Mr Robertshaw, you will know as well as I know that the gentleman who
heads the coach firm used to be one of my very valued colleagues. They provide an excellent
support to the Island and we work with them, but we always make sure that we do not take
bookings for things like cruises until they have been approached as the private sector operator.
We are aware that we buy our buses and our vehicles more cheaply than they can because of our
300 purchasing power, which of course is taxpayer funded. We are aware that we use vehicles
sometimes 22 hours a day. Our vehicles are exhaustively used; theirs cannot be, there is much
less work. So we try and make sure that we do not tread on the toes of our coach operator. That
is a policy decision that has been made by successive Ministers – I do not think explicitly by this
one; he inherited that position – but it is not in our interests to put a coach operator out of
305 business. They provide a different sort of vehicle. In very simple terms, a coach is not a bus. They
look similar to the public, but they are doing a different thing for a different group of people.

You will know that the financial regs in respect of shared services means that where a budget
is transferred, the Department is the shared service provider, but where the budget is not
transferred, then there is tendering. So we do bid a price for school work, but mostly Tours are
310 able to bid and secure that work. That is totally above board and fair and the sort of competition
we should have.

Q5. Mr Robertshaw: Can I come in, Nick, because that is quite a long answer. But with regard
to this determination you have, to build or replace part of existing services with what I think you
315 have described as a hub-and-spoke system, is it your intention to be able to show on examination
that your service is compliant with the hub-and-spoke process as per the licence application, as
and when it goes in?

Mr Black: Mr Robertshaw, there are absolutely two answers, but they are both affirmative.
320 Firstly, we have to comply with our licence as issued. We have no choice. The RTL licence is issued
under legislation, so we have to comply with that or the RTLC's enforcement officer – and they do
have somebody checking compliance – would rightly point us out as having failed.

Secondly, when the Minister makes a policy determination about how we work, then I am
obliged to make sure that his policy is carried into effect and to check that is the case.

325 So, yes, absolutely, that is exactly what we should be doing, and that it is normal for us. Of
course, it is, yes. So the answer to your question is, yes, Mr Robertshaw.

Q6. Mr Robertshaw: Yes, but with respect, an inspector may periodically from time to time
wish to – because it cannot be a full-time job – check whether a minibus is pursuing its duties in
330 the future in line with its licence. Should there not be some system of the drivers noting the route
that they took from a particular place to the hub point and back again, as a matter of routine
evidence, so that rather than an inspector – forgive the flippancy – jumping out of a hedge and
trying to decide whether a minibus was complying with a licence or not, that actually a log book ...
It would take seconds at the beginning or the end of a journey, for that minibus driver to say, 'Yes,
335 here is my logbook. This is the number of rotations I have done between a point of pick and the
hub, and I have not gone outside of that.'

Would that not be a sensible a way forward of making sure that you were complying with whatever the future licence allocated you to do, and being able to show to others that you were living within those limitations?

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Mr Black: Mr Robertshaw, fortunately, I can provide you, I think, the assurance you need. We do not need men jumping out – or ladies, jumping out of hedges at us. We do not even need logbooks. All our vehicles are tracked, all our bookings are taken on a central system, all the work is allocated. The Minister has been shown a new app that we hope to be able to secure and a new booking system that we hope to be able to use.

345

If I were quick enough, Mr Robertshaw, I could look on my computer now and tell you where every bus on the Island was, who is driving it, what speed it is doing and work out its passenger load. So we have very good data. We could absolutely do you a report, or indeed the RTLC a report, to show what went where, when and why, and how fast and who drove it, and who got on to it. Obviously with passengers, not personal data, we only have numbers of people. I cannot tell you that you have been picked up at your house. I could just say that somebody got on near your house.

350

So we can absolutely do that, and we already monitor the money that we collect, for example, in the north of the Island, and we know that has been a very limited impact. What I suspect might have been a bigger impact is our shared service model, which again is covered by the Tynwald procurement policy that you and I have discussed before in this Committee; and the shared service. I can tell you that we are a customer of taxis and we do use taxis where it is not appropriate for us to send a bus, and that is an area I think the Minister would like me to look at further, because sometimes it would be right for us to subcontract to a taxi, and indeed we do that, but where possible on things like patient transfer, we block people together, so we can take a number of people on a minibus rather than ordering four different taxis. That is economically and climate-wise, best.

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I know you are right, that has had an impact on the taxi industry, because that work is not now available to them and it was good work. I understand that, and I think that whilst you are understandably having concerns raised by taxis and some of the taxi representatives have raised them direct with the Minister, it is not so much about patient transfer, it is not so much about demand-responsive transport; I think it is about other Government work.

365

So perhaps that is for another time.

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Q7. Mr Robertshaw: Well, yes, but with the Chairman's agreement, perhaps you might agree for the Committee to come and view your system, for us to be content and satisfied that it can validate the journeys achieved? If you could invite us to that, once normal service resumes, as they say?

375

Mr Black: I am sure if you come by bus we will be more than thrilled to see you, Mr Robertshaw.

Q8. The Chairman: I just wonder if we can pick on the perceived conflict of interest and the separation of powers, because we obviously had a discussion about where the RTLC sat initially and then that was moved to DEFA, with a view to try and remove the conflict between Bus Vannin and RTLC. But we now have RTLC and OFT both sitting under DEFA, so in solving one conflict, potentially there is the perception of another, which I think is an area that has come up to us on multiple occasions by multiple individuals. I think it plays to me to that real need for separation of powers – more broadly, actually in Government.

380

I wonder what your thoughts were beach in terms of any concerns *you* have. The OFT have said, they are not going to report potentially until September, I think it was, 2021 on this, that was pre- this further lockdown, and that was a speculative date but they hoped it might be sooner. But in the interim, of course, as Mr Black rightly said, have a licence that was issued initially just as a temporary licence but has now been allowed to continue essentially till whenever it is needed.

385

390 So I can understand absolutely the concern that is held by individuals in other communities
who feel that their business has being taken away, because this seems to be almost open-ended
in terms of that licensing permission.

The Minister: If I could just come in on that, Chair?

395 Clearly the RTLC has granted the Department the continuation of the trial licence, which I think
is fair and reasonable. If they are not able to make a decision on anything new, then leaving what
we have already got I think just passes a sense test. But clearly, the current situation is preventing
the Department moving forward, as we have already covered.

400 It is not for me to speak either about or for the OFT, they clearly will have pressures on them
and I do not know the complexity or the details of their investigation to comment. But I have to
leave that in their hands.

In terms of the RTLC clearly there is a perceived conflict. You are quite right, Chair, that the
RTLC physically sits within DEFA at St John's, but the Transfer of Functions Order that you do recall
did not actually get Tynwald approval. So the current situation is that the RTLC is absolutely in the
wrong place, because its sponsoring body is still the DoI. Optically, that appears completely wrong.

405 The reality of it is that the powers as a sponsoring body are very limited and in reality, other
than a periodic compliance/governance discussion, which is very light touch, there is no real
impact, other than if there was any legislation to be brought through on behalf of the RTLC. So
perception is it looks very poor. I would fully support the RTLC being moved elsewhere. It is not in
my gift, it is a matter ultimately for Tynwald. But, as I recall the situation, the proposal at the time
was for it to go into OFT, I think, and that was not accepted.

410 So it could go to DEFA, I hypothesise, but again I think there is a wider question around the
accountability of these bodies because the RTLC is making a decision to not progress the
Department's applications and the Department has no ability to challenge that, or effectively
unlock the logjam.

415 So I think, putting things on to an independent basis has lots of attractions, but it does bring
some consequences as well.

I do not know if Nick wants to add anything to the detail around the RTLC?

420 **Mr Black:** I do not think I can add much to the Committee, Chair, because the role and the
work of the RTLC follows a very clear political principle. The legislation was put forward by this
Department to make sure that the sector was regulated and that standards were imposed, and I
think it is often missed that the Department works with the RTLC to try and work with the trade
to move standards on, so the Minister has recently had questions about issues like safeguarding
standards, about vehicle standards, about codes of conduct. There are all important things that
we will work closely on it. It was never a problem until we had a bus service as part of the
Department which, as you recall, moved in only a few years ago.

425 The Minister has quite rightly said that the conflict of interest is something that could be
perceived to be a problem. And, indeed, those who also hold licences have used that to say that
this cannot be right. I understand that conflict of interest is the perception.

430 The Minister has quite rightly said that discussions have been had about moving the
responsibility for sponsoring away, and any solution that separates the two will be fine. It does
not really matter how that is achieved. What matters is that the organisation running the buses
does not also make decisions. But of course I have to say very clearly that the independence of
the RTLC, statutorily and both organisationally, is they make their own decisions. I do not believe
435 for a second that we get an easy ride. We do not get some sort of free pass to a licence. We have
just referred to the fact that we still have not got licences for some of our services. A private
company might have raised hell about that. We have not, we have accepted that is a difficult
situation.

440 So I think the conflict is the perception; in reality I do not think we are advantaged in any way.

Q9. The Chairman: Is the RTLC able to gain independent legal advice if they need additional support in that regard?

445 **Mr Black:** I am aware that the RTLC makes the use of the services of the Attorney General's Chambers, but they do that without any reference to me, of course, absolutely. So, independent of *this* Department, yes. If they wanted to go outside, I think the procedure would be the same as the rest of us, Mrs Barber, that we need the AG's approval to go to an external legal provider. But I do know that they get advice from Chambers.

450 **Q10. Mr Robertshaw:** When you say that the advice is from the AG's, in the normal course of events as a Department, you will from time to time make quite necessarily approaches to the AG's Department for advice in certain areas. Is it your experience – may I ask this of Nick – that you deal with semi-specialist advocates within the AG's, rather than – here I am talking about not approaching the Attorney General himself? And – the point of this question – is it coincidentally
455 the case that that individual or individuals happen to be the same ones who also advise the RTLC?

Mr Black: I think you might have to pose that question to Chambers. We, as an experienced operator, do not regularly need advice on transport law because we have a nominated transport manager who has experience in that sector. So I cannot think that we have asked many questions
460 of the RTLC in terms of what I would call operating a transport business.

So I do not think we use the same person, Mr Robertshaw, but I could check with the AG's or maybe you could do that yourselves. That would be a matter for the Chair to decide.

Q11. Mr Robertshaw: Looking at that, Chair, I think we would ask that question ourselves,
465 would we not, Chairman?

Thank you, Nick.

Q12. The Chairman: You said previously there, Mr Black, as well, that – I think it was yourself – you did not really mind where the RTLC went, but obviously you would rather it was not sitting
470 under DoI, because there is a conflict. The Minister talked about the motion that was presented to Tynwald by CoMin, which was to move it to DEFA. I wonder if you share the reservations around DEFA as being the right host for that, because obviously that has been withdrawn pending the OFT investigation, which we as yet do not have the result on.

475 **The Minister:** Chair, could I just clarify? My understanding was that the motion, which obviously predated me being in Council of Ministers, was actually to move it to OFT, but maybe I got that wrong, but that is what I thought was the proposal back a couple of years ago, when it Tynwald said no. I may be wrong.

480 **Q13. The Chairman:** Yes, I think you may be right actually. I just know that there was a conflict between the OFT, DEFA and RTLC picture. So, yes, you may well be right.

The Minister: Yes, I think the reality is that there is undoubtedly a perceived conflict of interest. I think Nick's comments indicate that it is more of a perception than a reality, but for many people
485 perception is reality and I think it is in everybody's interests that the RTLC is seen as independent of the Department, not just because of the bus operation, but also the whole fleet that the Department operates. Much of the Government fleet is actually now within DoI through Transport and Fleet Services, so I would very much welcome it being moved somewhere else. But I certainly have not seen it causing conflict of interests which work in the Department's favour, but there is
490 clearly a perception on that.

Q14. The Chairman: So you are comfortable at the minute that the framework agreement and the Chinese walls that exist are working?

495 **The Minister:** I have seen nothing which has given me any concern that the Department is getting an unfair advantage. I think the fact that the RTLC physically sits in DEFA actually provides that separation. So it is not just a theoretical Chinese wall around a few desks, but actually they are to all intents and purposes embedded in the DEFA set-up and certainly not in the consciousness of the Department on a day-to-day basis. Nick?

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Mr Black: I completely echo the Minister's comments there.

Operationally we are very different. We hold two licences, I just want to make that clear, because I think the Minister hinted about fleet there. We actually hold an operator's licence on the heavy goods vehicles and a number of licences as a bus provider; and even if we did not run bus services, we have still got fleet services. So the Minister's point is absolutely one of principle and political principle that I will work with my colleagues to deliver. It is absolutely important that we can manage to do that.

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The Chairman: Rob?

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Q15. Mr Mercer: Chair, thank you.

I just want to touch really on the RTLC's appeal procedure. It has been observed by some commentators that the appeals procedure used by the RTLC is not really fit for purpose. Specifically, unlike in the UK where there is a 28-day appeal window before a licence is granted, here in the Isle of Man the licence, once granted, is able to be used immediately. Those adversely affected by the granting of a licence can still appeal within 28 days, but their businesses may harm in the meantime. Would the Minister agree that this is something that needs looking at?

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The Minister: I think that it is always useful to look at procedures and arrangements with a fresh pair of eyes, Mr Mercer, and I think listening to the situation that you have described there clearly those things have some unsatisfactory elements to them.

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I would also highlight that it cuts the other way as well, that an applicant bringing a proposal through to the RTLC for approval has no timescales within which their applications can be considered. There is no ability to bring those to a conclusion or to encourage the RTLC to make a decision. So that is very unsatisfactory and, clearly, there are parallels in other areas of the public service where those sorts of things are properly covered off.

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I am sure that the RTLC could look at their arrangements and benefit from refreshing them; but it is really a matter for the RTLC as an independent body rather than for me, as the Minister, to take the lead on that, in my view.

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The Chairman: Do you want to come back in, Mr Mercer?

Mr Mercer: No, that is it for me, for the time being.

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The Chairman: Mr Robertshaw?

Mr Robertshaw: No, thank you, Chairman, I think that concludes my questions for the moment.

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The Chairman: I would like to thank Minister Baker and also Mr Black for your time today and also for allowing us to extend slightly over the planned time.

If we have any other queries we will forward them, and obviously we will be asking some questions of the OFT, so we may need clarity.

But with that, I would like to thank you and we will now sit in private. Thank you.

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The Minister: Thank you.

The Committee sat in private.