

Neutral Citation Number: [2018] UKUT 97 (AAC)

**Appeal No.** T/2017/76

**IN THE UPPER TRIBUNAL  
ADMINISTRATIVE APPEALS CHAMBER  
TRAFFIC COMMISSIONER APPEALS**

**IN AN APPEAL FROM THE DECISION OF  
Kevin Rooney, Traffic Commissioner for the  
WEST OF ENGLAND dated 15 September 2017**

**Before:**

**Her Hon. Judge J Beech, Judge of the Upper Tribunal  
George Inch, Specialist Member of the Upper Tribunal  
Andrew Guest, Specialist Member of the Upper Tribunal**

**Appellants:**

**ANDREW STEVEN GINGELL**

**Appellant**

**and**

**DRIVING AND VEHICLE STANDARDS AGENCY**

**Respondent**

**Attendances:**

For the Appellant: In person

For the Respondent: Mr Tim Nesbitt QC instructed by Hine & Co, solicitors

**Heard at:** Field House, 15-25 Bream's Buildings, London, EC4A 1DZ

**Date of hearing:** 20 March 2018

**Date of decision:** 26 March 2018

**DECISION OF THE UPPER TRIBUNAL**

IT IS HEREBY ORDERED that the appeal be DISMISSED

**SUBJECT MATTER:-** Impounding: whether a mini-bus was being or had been operated for hire or reward.

**CASES REFERRED TO:-** Bradley Fold Travel Ltd & Peter Wright v Secretary of State for Transport [2010] EWCA Civ 695.

## **REASONS FOR DECISION**

1. This is an appeal from the decision of the Traffic Commissioner for the West of England Traffic Area (“the TC”) made on 15 September 2017 when he refused Mr Gingell’s application for the return of a sixteen seater minibus registration RX57 BSU (“RX57”) which had been impounded on 18 July 2017.

### **Background**

2. The background to the appeal can be found within the papers and the TC’s written decision. On 14 June 2017, Traffic Examiner Francis (“TE Francis”) was on duty at Chew Valley School when he had cause to check a sixteen seater minibus registration number EA15 WRD (“EA15”) being driven by Gary Skuse. The vehicle was carrying school children and had travelled from Brislington. It was displaying the livery of Chief Rentals, a hire company and was not displaying an operator’s licence disc. Mr Skuse did not hold the correct vocational driving licence to drive the minibus for hire or reward and he did not hold a driver CPC. The vehicle hire agreement showed that the vehicle had been hired by Anthony Sheppard and the vehicle insurance only permitted Mr Sheppard and another (Mr Barnes) to drive the vehicle.
3. Mr Skuse was interviewed under caution. He told TE Francis that he was *“just dropping some kids off at school as a favour to a friend across the road”*. He had received his instructions from Mr Gingell and he was not getting paid. Mr Gingell had not checked Mr Skuse’s driving licence and Mr Skuse had assumed that he was entitled to drive the vehicle.
4. On 23 June 2017, Mr Sheppard was interviewed under caution. He operated as Top Drive Minibus Hire as a sole trader. He provided school transport for children from Whitchurch to Chew Valley School. He confirmed that the mothers of his passengers paid a daily collective fee for the service. Vehicle EA15 had been provided to him as a courtesy vehicle whilst another vehicle was in for repair. On 13 June 2017, Mr Gingell had asked to borrow a vehicle and Mr Sheppard had agreed. He assumed that the vehicle would be covered by Mr Gingell’s insurance and that Mr Skuse, who worked for Mr Gingell, would be instructed to drive. He had in fact seen Mr Skuse’s driving licence but not a driver CPC.
5. On 11 July 2017, Mr Gingell attended Bristol Test Station to be interviewed under caution. Mr Skuse accompanied him. Mr Gingell accepted that he was the operator of EA15 on 14 June 2017 as he had given instructions to Mr Skuse to drive the minibus although he did not employ him. He had only used the vehicle for that morning. The interview went on:

Q *How many passengers were being carried on the vehicle?*  
A *It varies*  
Q *Who were the passengers?*  
A *Friends' children*  
Q *How long has this journey been carried out for?*  
A *Just that morning on that bus*  
Q *How long has this journey been carried out for in other vehicles?*  
A *A few weeks*  
Q *What are the registration numbers of other vehicles used to do this?*  
A *Mine, RX57 BSU with 17 seats including the driver*  
Q *How long have you owned this vehicle for?*  
A *10 months*  
Q *Do you use it for carrying out other journeys of this nature?*  
A *No*  
Q *How long have you used the vehicle for in relation to this?*  
A *Weeks*  
Q *How many weeks approximately?*  
A *Not sure*  
Q *Who paid for the journey on 14/6/2017?*  
A *Nobody*  
Q *Who paid for the journeys in RX57 BSU during the previous weeks?*  
A *A parent*  
Q *Who was this parent?*  
A *No comment*  
Q *How much did they pay you?*  
A *About £20 per week for fuel*  
Q *What contribution did they make towards maintenance and purchase cost of this vehicle?*  
A *Nothing*  
Q *Who pays for this?*  
A *Me*  
Q *Why was no Operators Licence disc displayed in the vehicle on 14/06/2017?*  
A *Because it was not needed*  
Q *Why is this?*  
A *Because the journey wasn't being paid for ....*  
Q *For how long has Gary John Skuse driven for you?*  
A *Just that morning .....*  
Q *The driver has a 101 restriction against category D1 on his driving licence which doesn't permit him to drive for hire or reward. Why was he driving on 14/06/2017 with this restriction?*  
A *Not for gain or reward ...*

Mr Gingell went on to explain that he knew Anthony Sheppard from the pub and "football friends" and had never carried out journeys for him in the past. He went on:

A *It was done as a favour for a trial period for a contract due to start in the next school year (September 2017). On the 14/06/2017, myself and Gary Skuse were unaware that the vehicle was uninsured. We*

*were under the impression it was insured through Anthony Sheppard's company. It is all done as a trial, a favour to the children and their families. I am putting in place all the licences, driver CPC and insurances to cover the contract starting in September.*

6. As a result of information received that Mr Gingell was continuing to operate the school service, TE Francis was again on duty at Chew Valley School on 18 July 2017 where he examined vehicle RX57 BSU being driven by Mr Gingell. The vehicle had travelled from Brislington and was carrying school children. The vehicle did not have a current MOT certificate and Mr Gingell did not hold a driver CPC. He was interviewed under caution in which he stated that he owned the vehicle and that he was neither employed or self-employed. He did not have an operator's licence to operate the vehicle because it was not being operated for "reward or gain". He was paying for the fuel. At 0837, the vehicle was impounded.
7. On 25 July 2017, TE Francis was telephoned by Lorraine Pearce who was the parent who organised the transport provided by Mr Gingell. She did not want to provide a witness statement to TE Francis but informed him that a daily charge per passenger for the journey was made by Mr Gingell.
8. On 1 August 2017, Mr Gingell applied for the return of the vehicle, relying on ground (b) namely, that the vehicle was not being and had not been used in contravention of s.12 of the Public Passenger Vehicles Act 1981 ("the 1981 Act"). The details of his application were:

*"I had a meeting with Richard Francis at Avonmouth Depot (DVSA) he informed me that it was OK to continue doing what I was so long as I wasn't getting paid.*

*So as I told him I was trying to get a contract and to impress the people who wanted me to work for them.*

*So I didn't receive any payments from anyone, I even put the fuel in myself. He stopped me on the 18/07/17 and impounded my vehicle ... I feel very confused and taken in by Richard Francis. I have a witness who was present at the meeting ... and can vouch for my statement.*

*I would like my family vehicle returned, as a family we are very lost without it and think that impounding it was very harsh.*

*I have taken other advice from Richard Francis as to setting up a PSV company to undertake the contract that have now lost. He has told me of all the licences and tests I need for me and my vehicle and as no payment or gain was received then I wasn't breaking any laws.*

*I have looked into starting my own PSV company but this hasn't helped me in any way shape or form.*

9. On 4 August 2017, Vehicle Examiner Rozier was on duty at Bath Racecourse where he checked a minibus registration SF58 NTK being driven by Mr Gingell who told VE Rozier that the minibus was borrowed from a friend to take a group of friends to the races. He was driving the bus as a favour for his mates and was dropping them off with the intention of returning home to get changed before returning to join them. He was the nominated driver on

this occasion because he did not drink. VE Richards followed this matter up with Vans-365.com, the registered keepers of the minibus, but those operating the firm failed to co-operate.

10. On 17 August 2017, John Purnell signed an s.9 witness statement. He is a professional driver and had met Mr Gingell at Chew Valley School. He maintained that he had witnessed Mr Gingell driving a minibus to the school since September 2015 and had seen him nearly every day since September 2016. On most occasions, Mr Gingell was driving RX57. In May 2017, Mr Purnell had asked Mr Gingell if he could provide transport to Bristol Airport on 19 July 2017. Mr Gingell said that he could and that the charge would normally be £80 but that it would be £60 to Mr Purnell. Mr Purnell did not take Mr Gingell's offer up. During this conversation, Mr Gingell gave Mr Purnell a business card in the name of E & A Mini Bus Service. Mr Purnell then gave the business card to Mr Munden who also provided a s.9 statement to the effect that he had written on the card, the information provided by Mr Purnell about Mr Gingell. He wrote on the card, Mr Gingell's surname, the registration number of RX57 and "two years" being the time that Mr Purnell estimated that Mr Gingell had been operating for.
11. The business card informs the holder that E&A Mini Bus Service provides a "*cheap minibus service ANYWHERE in the UK! Available any time, 7 days a week. Any party size catered for*". The service was "*available for any occasion. Airport runs, stag/hen nights, family parties, weddings, weekends away. Accommodation organised if needed*". The card gave details of a mobile telephone number and an email address [eandaminibus@hotmail.com](mailto:eandaminibus@hotmail.com).
12. A printout from Companies House records show that Mr Gingell became the sole director of E & A Mini Bus Services Limited on 12 May 2017. The printout does not give the date when the company was incorporated.

### The hearing

13. Mr Gingell's application was considered at a hearing that took place on 5 September 2017. TE Francis, Mr Gingell and Mr Skuse were in attendance; the DVSA was represented by Ms Hine. The first issue was proof of ownership of the vehicle. Mr Gingell had not provided to the TC any evidence to support his claim of ownership. His explanation was that he was waiting for the previous owner to send through the details of sale to him. As a result, the TC determined that as he had not received any other application for return of the vehicle from anyone else purporting to be the owner, he would continue with the hearing in the expectation that Mr Gingell would provide the necessary evidence following the hearing.
14. Mr Skuse then explained why he was at the hearing. He was an electrician who could only work part time as he was in receipt of carers allowance. He was not employed by Mr Gingell on 14 June 2017.
15. TE Francis then adopted his report and Mr Gingell gave evidence. He maintained that upon the conclusion of his interview with TE Francis on 14

June 2017, TE Francis had given him advice and had said in terms that Mr Gingell could continue as before provided he was not getting paid – “*reward or gain*”. It was for that reason that Mr Gingell had continued to provide transport from Brislington. He had paid for the diesel himself because he wanted the contract to provide the school transport from Brislington to Chew Valley School for the following year commencing September 2017.

16. TE Francis was then recalled to give evidence about the conversation that Mr Gingell maintained he had had with him. TE Francis could not recall the detail of the conversation save that it lasted for approximately thirty minutes and that he had advised that the vehicle could only be used in a private capacity. He was able to recall this because Mr Gingell had talked about his family and that he wanted to take one of his children to a recording of the television programme “X Factor”. TE Francis had said that if he was using the vehicle to transport his family, then that was fine. He could not use it for hire or reward, otherwise he would require an operator’s licence. Mr Gingell confirmed that this is what TE Francis had said and then asserted that if TE Francis had told him to stop using the vehicle, he would have done so.
  
17. Mr Gingell then turned to the witness statement of Mr Purnell. He had been a neighbour of Mr Gingell for many years They had fallen out about the quality of a buffet that Mr Purnell had provided to one of Mr Gingell’s sons. Whilst Mr Purnell maintained that he had seen Mr Gingell operating a minibus at Chew Valley School since September 2015, Mr Gingell had not acquired RX57 until 22 July 2016 (Ms Hine pointed out to the TC that Mr Purnell did not mention which minibus Mr Gingell was driving from September 2015). Mr Gingell continued: E & A Mini Bus Limited was not incorporated until March 2017 and he had been employed by Sita Suez as a refuse operative until January 2017 although he had undergone a shoulder operation in May 2016 and had not been allowed to drive at that stage. Further, “*if Tony Sheppard of Top Drive was going to start another .. minibus to .. his runs this year, I was planning on putting two minibuses on this year with all the right licences .. and the drivers’ insurances and everything else, PSV. Basically, the children were going to be on my bus and Tony Sheppard’s bus would’ve come off the A Bus (another minibus operator), which John Purnell drives .. So he would’ve possibly lost his job or gone somewhere else. And the airport, when he actually asked me if I can do an airport run .. that was going to be put through Tony Sheppard, cos I wouldn’t have done it cos I’m not licensed to do it*”. He went onto explain that the reason why E & A Mini Bus was established in March was because it was convenient to his accountant who was in Bristol at the time. It was set up with a view to starting the school run in September 2017.
  
18. As for Lorraine Pearce, he said “*.. I think Lorraine Pearce was something to do with .. originally, when Tony Sheppard, Top Drive, started the school run for Chew Valley, it came from me. It was my partner’s friend who was a care assistant who asked me if I knew anybody with a big enough bus to do school runs to Chew Valley School from Whitchurch. So it was me that put all the phone numbers on forward, and I think that’s where the mistake’s gone in about Lorraine Pearce and me. ... Tony has been doing it from 2015 .. RX57*

*was my .. own personal family bus. I've got six children and grandchildren, I help to run my grandchildren's football club."*

19. In answer to questions put to him by Ms Hine, Mr Gingell explained that he was using EA15 on 14 June 2017 because RX57 had a clutch problem. He acknowledged that in the weeks prior to 14 June 2017, he was using RX57 to take children to school for which the parents paid £20 per week for fuel. His ex-partner had organised the transport and she was paying the money. She had only given him £20 on one occasion and then £10 on the next occasion with Mr Gingell contributing £10. RX57 had only been used in this way for a week and a half. In fact it was only eight or nine days. He had said that he had provided the service *"for weeks"* when interviewed because he could not put his finger upon the *"correct date"*. Nine days is a week. He was carrying as passengers his own son and a couple of his school friends. The number varied and it was purely a trial run. Mr Gingell accepted that he was probably *"a bit green, a bit naïve to the circumstances and the things needed to do this type of work"*. TE Francis had helped him a lot via emails and had given him advice. The arrangement for 18 July 2017 was the same as before and he thought that he had carried seven children although TE Francis put the number at sixteen. It was a favour *"to gain a contract" ... and my reward would've come back after obviously if the contract started"*. Somebody would pay for the runs at that stage. He denied being given any money for petrol on 18 July 2017 and asserted he was providing the service free of charge: *"If .. trying to get a contract that would .. run into thousands, you would wouldn't you? ... speculate to accumulate"*.
20. In answer to questions put by the TC, Mr Gingell said that he had acted as a facilitator for Tony Sheppard, who operated two or three minibuses, to start running a school service from Brislington to Chew Valley but Mr Gingell disagreed that he had taken that service over from him. Mr Sheppard had stopped operating school services to the school because (according to Mr Skuse) one of Mr Sheppard's vehicles was also checked on 14 June 2017 and an issue was raised about either the driver's driving licence or his CPC. Mr Gingell was intending to operate a service contracting directly with the parents to commence on 4 September 2017. At the time of the "trial run" he had not applied for an operator's licence but had since started to complete an application form on line. He had not submitted an application by the date of the hearing because he needed to know the outcome of his application for the return of his vehicle. He accepted that even if he had made an application during the "trial run", he would not have been granted an operator's licence for the beginning of new term.
21. He had set up the limited company having spoken to his cousin who knew an accountant who Mr Gingell had then contacted. The accountant said that he would set up a business for him whilst he was in Bristol although the company remained *"non-functional"*. Mr Gingell had the business cards printed because he has a friend who is a printer. He had given the business card to Mr Purnell because it had Mr Gingell's telephone number on it. He had told Mr Purnell that Tony Sheppard would take him to Bristol Airport. At the conclusion of the TC's questions, Mr Gingell brought up the Bath Racecourse check on 4

August 2017. He wished to emphasise that he had borrowed the minibus in question to take his son and football mates to the races. He had been running late and so picked up the group dressed in a tee-shirt and shorts which he needed to change out of before returning to the course.

22. The hearing then concluded. At 11.45, Mr Gingell forwarded an email to the OTC from Colin Sanfilippo which itself was dated 5 September 2017. It read: *Hi Andy, please find enclosed invoice for the LDV bus.* There was no attachment to the email but rather, the email itself purported to be the receipt. It gave the date of sale as 22 July 2017 with a sale price of £3,500 cash.

#### The TC's written decision

23. The TC summarised the evidence he had heard and in doing so, recorded that Mr Gingell had said during the course of the hearing that he had taken over the Brislington service from Tony Sheppard who had operated it since 2015. The TC then dealt with the email purporting to be a vehicle sales receipt. He noted the date of sale as being 22 July 2017 and he further noted that the previous registered keeper of the vehicle had been Steyning Grammer School and that there was no indication that Mr Sanfilippo was in the motor trade. Indeed, Mr Gingell had told the TC that he was a barber. The TC found that the document had been recently produced and could not be relied upon. However, absent any indication of an alternative owner and given Mr Gingell's evidence, the TC was content to find that on the balance of probabilities, Mr Gingell was the owner of the vehicle.
24. The TC then turned to the witness statements of Mr Purnell and Mr Munden and determined that he could only attach limited weight to them as the witnesses had not been present to be cross-examined. Nevertheless, he did not consider that Mr Purnell's statement to be materially at odds with Mr Gingell's own account. Mr Purnell did not state that Mr Gingell had been driving RX57 since September 2015 or that he saw him every day. That element of Mr Purnell's witness statement was in line with Mr Gingell's evidence of the service having been operated by Tony Sheppard for two years. Further, there was nothing in Mr Gingell's evidence that could result in a finding that Mr Gingell was prevented from having driven RX57 every day since September 2016. He acquired the vehicle in July 2016 and he had a long period of medical absence from his then employer before losing his employment in January 2017. Mr Gingell may well have been fit enough to do a school run twice a day if not fit enough to undertake a full day's work engaged in refuse collection.
25. The TC then went on to consider the case of Director of Public Prosecution v Sikonder (1993) RTR 90 which he considered to be on all fours with Mr Gingell's case: a minibus driver was stopped providing transport to eleven school girls, two of whom were related to him. He admitted that he had been conveying the girls to school for the previous five months and received payment from the parents of the girls towards the cost of petrol. The Divisional Court held that the construction of "hire or reward" in Albert v Motor Insurers' Bureau (1972) RTR 230 was to be applied to section 1 of the 1981



Act so that it was unnecessary for the prosecution to establish a legally enforceable agreement and that on the evidence, there was plainly a systematic carrying of passengers for reward which went beyond the bounds of mere social kindness and that Mr Sikonder came within that test and was driving a PSV within the meaning of s.1 of the 1981 Act.

The TC determined that it was common ground that Mr Gingell had taken some payment for at least some of the journeys. On that basis alone, the ground sought to be made out in the application could not succeed. Whether he took or intended to take, payment for the journey on 18 July 2017, it was his own evidence that he was running the service on that day as a “trial” because he wanted the contract in the future. The TC “had no hesitation” in finding that the operation of the vehicle on that day “went beyond the bounds of mere social kindness”. It was a systemic operation intended, at the very least, to deliver a future contract. If it was not for “hire” and the TC was far from sure that this was the case, it was certainly intended to be for “reward”, the reward being a future school contract and as a result, the ground for the return of the vehicle was not made out and the application was refused.

### The Appeal

26. At the hearing of this appeal, Mr Gingell appeared in person and Mr Nesbitt QC represented the DVSA. Mr Gingell repeated the evidence he gave to the TC about undertaking a trial to see if it was feasible to provide school transport in the long term and also repeated his assertion that TE Francis had told him that he could continue to operate the vehicle in the same way that he had done provided Mr Gingell did not receive payment. Mr Gingell felt that he had been entrapped by TE Francis. He denied that he had ever operated for hire or reward and in fact only received one payment of £20. What he had said in his own interview under caution about having operated “for weeks” and receiving £20 per week for fuel was wrong. He accepted that he was trying to win a contract which would be “worth thousands” but it did not materialise. He denied that he had discussed the idea of operating a school run with Mr Sheppard prior to the trial run and he had not taken the service over from Mr Sheppard and the TC was wrong when he found he had. All he had done was to borrow one of his vehicles. He repeated that if TE Francis had told him to stop operating the service, he would have done so.
27. Mr Nesbitt QC took us to s.1(1)(a) of the 1981 Act and submitted that the operation of Mr Gingell’s vehicle fell within that definition of a PSV. He accepted that “hire or reward” was not defined in the Act or the accompanying Regulations but s.1(5) did set out some non-exhaustive examples of operating for “hire or reward”. He considered that s.1(5)(a) was particularly helpful in the context of this case. He submitted that the 1981 Act made it very clear that any payment by or on behalf of a passenger brought the vehicle into the scenario of “hire or reward”. By virtue of s.1(2) of the 1981 Act, a vehicle “is used” for the purposes of s.1(1) if it is being used or if it has been used and that use has not been permanently discontinued. Mr Nesbitt QC referred us to DPP v Sikonder (supra) and the reference to Albert v Motor Insurers’ Bureau (supra) and the finding that the carriage of passengers for “hire or

reward” meant a vehicle used for the systemic carriage of passengers for reward not necessarily on a contractual basis, going beyond the bounds of mere social kindness and amounting to a business activity did amount to carriage for hire or reward. He also pointed to the reference to Motor Insurers’ Bureau v Meanen (1971) 2 All ER 1372 in which the features in that case were highlighted by Lord Donovan: “*The long standing and regular arrangement for the carriage of passengers; the use of a minibus fitted with seats for 11 passengers; the arrangement (albeit informal) among the regular passengers to pay for the cost of the petrol; these features add up to and justify the conclusion that McKale was engaged part-time in carrying passengers under an arrangement which went beyond mere social kindness. It had the flavour of business about it*”. This was the test applied in Sikonder.

28. Mr Nesbitt QC went through the TC’s decision and pointed out that the TC had recorded Mr Gingell’s strong denials of having been paid during the trial run. He gave Mr Gingell the benefit of the doubt in relation to ownership of the vehicle. His ultimate analysis of the position was “impeccable” and the finding of fact that Mr Gingell had received some payment in the past and that on that basis alone he had been operating for hire or reward was correct. Section 1(5) of the 1981 Act clearly covered the use of the vehicle. Further, the TC’s determination that the operation of RX57 on 18 July 2017 was with a view to future profit made the TC’s decision unassailable. The provision of transport to the school children went beyond the bounds of mere social kindness and had a flavour of business about it. In the circumstances, the TC’s decision was plainly right.
29. In response, Mr Gingell accepted that if payments had continued to be paid, then the operation of the vehicle would have fallen within s.1(1)(a) of the 1981 Act. However, they did not. Further, Mr Gingell was not operating the service on behalf of or instead of Mr Sheppard as he continued to operate his vehicles at the same time. He accepted that he was “green” in not realising that payments for petrol would amount to “*gain or reward*”.

### Discussion

30. We should state at the outset of this discussion, that it would appear that the TC misunderstood Mr Gingell’s evidence about the role Mr Sheppard played in the operation of the Brislington service and that he had mistakenly recorded that Mr Gingell had taken over the school service from Mr Sheppard. Mr Sheppard was in fact operating a school run from Whitchurch. We do have considerable sympathy with the TC in this regard because Mr Gingell’s evidence was confused and confusing to say the least. However, we are satisfied that nothing turns upon the TC’s misunderstandings because the TC did not then rely upon them in support of his ultimate determination that Mr Gingell is or had been operating RX57 for hire or reward. Rather, he relied upon Mr Gingell’s own admissions as to the use he had been making of RX57 and the answers he gave in his interview under caution.
31. We are satisfied that the TC’s determination is beyond challenge or as Mr Nesbitt QC put it, it is “unassailable”. The TC was entitled to be sceptical

about Mr Gingell's account that on 18 July 2017, he had not, or was not going to receive payment for the service on that day but in view of the other evidence, it was not necessary for him to make any findings about it. It is clear that the TC rejected the evidence that Mr Gingell gave at the hearing having considered the answers that Mr Gingell gave in his interview under caution and he was entitled to do so. Upon that evidence alone and when applying the principles set out in Sikonder, the TC was plainly right in concluding that RX57 had been operated for hire or reward. Further, upon the basis of Mr Gingell's evidence about the journeys being a "trial run" in order to win a contract with the parents, including the journey of 18 July 2017, the TC was plainly right in concluding that RX57 was being or had been used for reward and in particular, the school contract commencing in September 2017 which he estimated was worth "thousands".

32. To conclude, we are satisfied that this is a case where neither the law nor the facts impel us to interfere with the TC's decision as per the decision in Bradley Fold Travel Ltd & Peter Wright v Secretary of State for Transport (2010) EWCA Civ. 695 and the appeal is allowed. The appeal is dismissed.



**Her Honour Judge Beech**  
**26 March 2018**