



## **Response from Bus Users UK to the Review of Traffic Commissioners Function of Great Britain**

**September 2021**

### **How far do you agree or disagree that the function of processing vehicle operator licences for PSVs is necessary?**

It is critical from the viewpoint of passengers that operators are scrutinised to ensure they meet rigorous safety standards and are fit and proper entities to undertake the huge responsibility of transporting the public in an accessible and safe fashion.

### **How far do you agree or disagree that the TCs are best placed to process vehicle operator licences for PSVs?**

It is vital that the role be undertaken by a specialist body which is answerable to the public and has practical knowledge, experience and the consumer interest at its heart. The existing principle of a TCs office could be improved by adding operational and user knowledge to the legal context. A better balance between legal expertise and the practical experience of passenger representative bodies and operators would improve compliance because it will enhance respect for the regulatory system.

### **Who would you prefer to process vehicle operator licences for PSVs?**

A specialist agency, as outlined above. This agency should not have a dual purpose in terms of HGVs as the requirements are not the same and the number of HGVs far outweighs the number of PSVs so the risk of PSV licensing becoming a tickbox exercise is both high and concerning. The passenger element is a very significant difference in the two industries, despite sharing the need for road safety and fair competition. HGV customers tend to be a small number of large buyers with the operator under fixed contracts whereas the bus sector's customers are large in number, small in terms of buying power, and with very individual and differing needs. The regulator has to mitigate the relative weakness of individual passengers by acting in lieu of them, and with their interests and needs to the fore. To do so it is essential that those interests and needs are fully understood.

### **How far do you agree or disagree that the function of processing vehicle operator licences for HGVs is necessary?**

This is outside the scope of our remit.

### **How far do you agree or disagree that that TCs are best placed to process vehicle operator licences for HGVs?**

This is outside the scope of our remit.

**Who would you prefer to process operator vehicle licences for HGVs?**

This is outside the scope of our remit.

**How far do you agree or disagree the function of registering local bus services (outside of London) is necessary?**

Registration of services is vital to ensure that: data on reliability and frequency are available to the public and those providing information services to the public; those providing services are monitored and held to account.

**How far do you agree or disagree that the TCs are best placed to register local bus services (outside of London)?**

Whether or not bus service registration is passed to local authorities involved in Enhanced Partnerships or Franchise schemes, the opportunity should be taken to make the system more effective at delivering the identified needs of customers. In particular, short notice changes based on clear need (such as adjustments to schools services when new needs are identified) should be easier to access.

The current system appears to be bureaucratic and opaque, despite digital access being brought in which should have made it easier and more transparent. However, the rules were devised long before the internet came into general use, so the whole process would benefit from a reorganisation to make it more accessible, less bureaucratic and based on meeting consumer needs.

The TCs, supported by the OTCs, have a valuable function in dispute resolution between local transport authority (LTA) and operator, or one operator with another, especially under Enhanced Partnership agreements, and should continue to oversee public inquiries where needed.

**Who would you prefer to process vehicle operator licences for local bus services (outside London)?**

If the registration and regulation of buses were to be separated from that of HGVs, then the duties could be split between the LTA and a bus service oversight function of the TCs, as above. Alternatively a public Bus Regulator could be set up.

**How far do you agree or disagree that the function of holding public inquiries is necessary?**

Public inquiries (PIs) are a transparent and vital part of the process of holding operators to account for egregious failures. Reputable operators will work hard to avoid being brought to a PI because of the cost and damage to reputation, so it is an important deterrent to failure in the industry. It is also a useful way of showing the public that there are penalties for operators who are persistent offenders.

However there is, and should continue to be, a phased and transparent approach to dealing with apparent failures or offences. STC Beverley Bell pragmatically introduced a three-tier system so that at the lowest level formal warning letters can be issued, the second step is an 'in-chambers' meeting with the TC which may be effective but is not transparent, and only after both of those fail can the operator be brought to PI. This concept is workable, and less onerous for small operators, but does need to have clear guidance in place so that all operators know what the process is, consumers can have faith in the system and that a stepped process will always be undertaken except where DVSA has confirmed an ongoing danger to the public, which could result in immediate suspension of service.

Enabling problems to be resolved at an early stage by an independent office without vast legal costs would clearly be in the public interest and is more in-keeping with the general expectation of Alternative Dispute Resolution practice.

**How far do you agree or disagree that the TCs are best placed to hold public inquiries?**

If the TCs are the Regulator, it makes perfect sense that they would be the ones to order and conduct PIs. However, while PIs on maintenance failures might be common to both HGVs and PSVs and could therefore be directed and processed by the same body, the same cannot be said of PIs focusing on operating standards which require a different approach. One approach which may be worth exploring would be to set up an investigatory panel of former bus industry figures with some input from passenger organisations as needed to look at the arguments being presented. While in theory this could be unduly biased in favour of the operator, in reality there would be little tolerance of excuses as senior figures in the industry are very protective of the industry's reputation. Such a panel, properly constituted, would have the respect of the industry and ensure that wayward operators would do their best to avoid being judged in this way if they have anything to hide.

This would bring great credibility to the judgements of the PIs and avoid accusations of bureaucratic lack of understanding.

**Who would you prefer to hold public inquiries?**

See previous responses.

**How far do you agree or disagree the function of holding conduct hearings is necessary?**

Conduct hearings are a transparent and vital part of the process of holding licence holders to account for egregious transgressions. However it may be useful to separate out conduct hearings for transport managers and those for drivers.

**How far do you agree or disagree that the TCs are best placed to hold conduct hearings?**

If the TCs are the Regulator, it makes perfect sense that they would be the ones to order and preside over conduct hearings for transport managers.

However, driver conduct hearings could usefully be separated out and overseen by a body which is able to act in a more timely, pragmatic and flexible way than the TCs. This could potentially be either the suggested advisory panel of bus industry figures mentioned previously or a disciplinary body of a professional institute, such as the Chartered Institute of Transport and Logistics' Busmark, itself launched by a former STC.

**Who would you prefer to hold conduct hearings?**

See previous responses.

**How far do you agree or disagree the function of overseeing operator licensing services is necessary?**

It is clearly vital that operator licensing services should be overseen by the Regulator. We would wish to see pointless duplication of services interrogated and potentially refused as customers are not well-served by predatory timetabling of services by competitors.

**How far do you agree or disagree that the TCs are best placed to oversee operator licensing services?**

The Regulator seems best placed to oversee licensing services although there is scope for dividing responsibilities as per our response below.

### **Who would you prefer to oversee operator licensing services?**

We believe that the TCs should be responsible for operator licensing services and a body comprised of industry professionals should have responsibility for operational matters, financial standing and driver conduct hearings.

### **Do you think there are additional functions that the TCs should be providing?**

All TCs and all their staff (who are not currently subject to the code) should have the public/consumer interest at their heart, as per the Regulators' Code. This would enable all Senior TCs' guidance and directions to be measured against these criteria, bringing them in line with every other industry regulator whose remit is to ensure that the interests of consumers are adequately represented against those of shareholders.

The following sections of the code should be seen to be guiding the work of all TCs, their staff and any other Regulator or devolved authority which takes on any functions currently held by the OTC:

- Regulators should have a range of mechanisms to enable and regularly invite, receive and take on board customer feedback including, for example, through customer satisfaction surveys of those they regulate
- Regulators within scope of the Regulators' Code are diverse but they share a common primary purpose – to regulate for the protection of the vulnerable, the environment, social or other objective
- Those principles are that regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent;

### **What other functions?**

One of the main purposes of TCs needs to be the protection of the public interest. This currently focuses mainly on the mechanical and safe driving aspects of the law, which appears logical. However they should interpret their role to not only be guardians of road safety and fair competition but also of community and passenger interests.

It should also be noted that, while road safety is a statutory requirement for TCs, fair competition is the statutory responsibility of the Competition and Markets Authority (CMA) and not the TCs, which is unhelpful, especially as the CMA also does not involve the main stakeholders (the passengers) in their deliberations. We believe that this should change so that there is a requirement on the industry-specific Regulator to consult passenger representatives in relevant areas or to satisfy themselves that such representatives have already been consulted.

A specific role for TCs in terms of protecting the public is in areas of major service change, taking a lead role in instructing OTC and DVSA staff to ensure that there are adequate operators and discs to ensure suitable service replacement, by acting in concert with all interested parties. This does not always currently take place but it should.

In Wales and Scotland, where TCs have a close relationship with Bus Users UK, which carries out the role of Bus Compliance Monitoring, there is more evidence available to the TCs concerned, which allows them a rounder picture of the situation on the ground in terms of punctuality and compliance with their registration. In England, this is not the case. Self-monitoring is the norm for operators and the DVSA has constraints on its resources which mean that, in general, their time is understandably taken up with safety work and inspections. We do not anticipate a major change in this situation in England in the near future, although we stand ready at any time to discuss options as we feel that independent monitoring of performance against registration, along with accessibility and environmental regulations should form part of the TCs' compliance role.

**How far do you agree or disagree that the TCs are sufficiently independent from central government?**

While we are not directly involved in this field, we hold a strong view that independence is important for the transparency and protection of the customer's needs.

**How do you think, if at all, that the provision of DVSA staff to the OTC affects the independence of the Traffic Commissioners function?**

All staff working for the Regulator should be covered by the provisions and expectations within the Regulator's code. The current separation of OTC/DVSA is unhelpful in this regard.

The centralisation of DVSA staff is also a problem in terms of the ability for LTA staff and operators to liaise with them, and in terms of their understanding of any local issues. This is unhelpful for passengers in the area as it results in a generalist approach when local transport depends on local knowledge.

**How far do you agree or disagree that the TCs provide a good service?**

The lack of consistency across the UK means that there is a postcode lottery in terms of service quality. The imbalance in some areas between HGV and PSV work also mitigates against the priority needed to ensure high quality public transport.

**How far do you agree or disagree that the TCs offer good value for money to those who pay its fees?**

The costs of such procedures have an impact on the ability of operators to offer reasonably-priced fares and to supply the service levels needed by their customers. In particular, the costs of bus registration or changes seem expensive.

It would seem reasonable to be able to make a number of small changes each year to a registered route without charge to protect the route's passengers from sudden fare increases.

**How far do you agree or disagree that Traffic Commissioners provide their services in a timely fashion?**

This can also be a postcode lottery with some TCs providing excellent and swift responses and others being sluggish or unresponsive.

**How far do you agree that the Traffic Commissioner function is accessible for people who require adjustments because of a disability?**

Access to the TCs' function is opaque to most members of the public so it would follow that this makes it inaccessible to most, let alone those with additional needs.

**How far do you agree or disagree that the TCs provide good coverage of Great Britain?**

Since the reduction of the number of TCs' territories from 11 to 8, the areas covered in England have become even larger and, without access to information about services and circumstances on the ground, it is hard to assess some issues which arise. In Wales and Scotland, TCs have access to bus compliance officer information and can ask for a specific service or area to be monitored in the event of a reported problem. In England this is harder to achieve but it would be possible to set up such a support service if required. Bus Users stands ready to help with this function.

In addition, we would suggest that a cost/benefit analysis of expanding the number of regions be carried out. This analysis should include the reintroduction of local staff for all relevant functions

which would increase effectiveness and vastly improve local relevance, knowledge and accessibility. Centralising functions which depend so much on local understanding does not seem to be providing anything other than a barrier to service and wholly unnecessary delays to an already lengthy process.

**How far do you agree or disagree that current fee levels are appropriate?**

There are knock-on effects on the bus passenger of the fees which have to be paid by operators, especially in terms of bus service registration and changes, which seem cumbersome and costly. In order to meet customer needs, operators should be willing to make small changes, but at £72 per change this becomes difficult for small operators. They will be either reluctant to make the required changes or will pass costs directly or indirectly on to customers. If fares go up, this becomes a bigger barrier to bus use for many and results in a vicious circle of lower passenger numbers leading to the need for more fare rises or fewer services and so on.

We would therefore ask that there be a review of costs and charges to determine if they could be lowered, or periodic 'passes' be made available to assist in the planning of services and fares and ensure that customers can plan ahead with confidence.

**You think the current fee levels are: - too high? - too low?**

See previous responses. The lower the fare, the better value can be offered to passengers, who do not want to see their fares being raised to pay the costs of the Regulator or licensing authority. Most passengers would agree that funding would be better spent on improving or increasing service levels.

**Which of the existing functions would you like the TCs to prioritise in the future?**

Serving the public interest more broadly in terms of public transport rather than the current narrow view being taken.

**How you do think the priority areas you have chosen can be improved?**

As stated elsewhere in this document, by focusing on the consumer interest, specialising in bus service provision, reorganising registration and driver conduct procedures, statutorily consulting with passenger organisations and developing an independent bus monitoring role.

**How likely would you support an increase in fees if it meant the TCs could perform a better service?**

As costs already seem high and impact on the ability to provide services, we would want to see a review of all costs and charges being reduced as far as possible before agreeing that this would be an appropriate step.

**Any other comments?**

We would strongly suggest that the law regarding Financial Standing should be reviewed at the earliest possible opportunity. Operators have to remove funds from use in order to meet the legal requirement, which means removing them from being able to serve the customer better. While it is presumably designed to mitigate against the financial failure of the operator, it can actually trigger it. The costs are not proportionate and make rural services much harder to set up. In addition, the practice of a large PLC being able to use the same account deposit for all their UK operations which is only audited every 5 years, whereas each small business has to have their own fund which can be audited at any time, is illogical.

While it is clearly not desirable to have unscrupulous outfits setting up services on which people depend, only to become bankrupt when something minor happens, no other entrepreneurial endeavour is expected to put funds beyond use in this way. It also unintentionally mitigates against new, young and innovative entrants to the market, who could bring something creative and exciting to the passenger transport market. An alternative approach ought to be considered.

Likewise, the Driver CPC training needs another overhaul as the current bureaucratic system provides variable quality training which is not based on the needs of the passenger. The training given is provided at relatively high cost which is inevitably passed onto the passenger. There seems no obvious reason why continuous professional training which includes the needs and expectations of passengers could not be self-regulated, based on agreed high-quality UK standards and subject to spot checks and a 5-yearly review by the TCs during the O licence renewal process. This would increase operators' responsibility for the quality of the training and adherence of their employees to those standards, reduce the bureaucracy involved and reduce costs, which would therefore not need to be passed onto the passenger.

The current systems' issues work against the best interests of the excluded in marginal/rural areas, where cost per passenger is inevitably much higher.

### **About Bus Users**

Bus Users campaigns for inclusive, accessible transport. We are the only approved Alternative Dispute Resolution Body for the bus and coach industry and the designated body for handling complaints under the Passenger Rights in Bus and Coach Legislation. We are also part of a Sustainable Transport Alliance, a group working to promote the benefits of public, shared and active travel.

Alongside our complaints work we investigate and monitor services and work with operators and transport providers to improve services for everyone. We run events, carry out research, respond to consultations, speak at government select committees and take part in industry events to make sure the voice of the passenger is heard.

Bus Users UK Charitable Trust Ltd is a registered charity (1178677 and SC049144) and a Company Limited by Guarantee (04635458).

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