



SENIOR TRAFFIC COMMISSIONER

Statutory Document No. 14

LOCAL BUS SERVICES IN ENGLAND (OUTSIDE LONDON) AND WALES

This document is issued pursuant to section 4C of the Public Passenger Vehicles Act 1981 (as amended). Representative organisations have been consulted in accordance with that provision.

Contents:	Page
<u>GUIDANCE</u>	1 – 9
<u>Legislation</u>	1 – 5
<u>Case Law</u>	5 – 9
<u>DIRECTIONS</u>	10 – 14
<u>Standards</u>	10 – 11
<u>Public Inquiry</u>	11 – 13
<u>Starting Points</u>	13 – 14
<u>Data & Information</u>	14
<u>Annex To Guidance - Examples Of A Good Operation</u>	15 – 16

R Turfitt
Senior Traffic Commissioner

GUIDANCE

1. The Senior Traffic Commissioner for Great Britain issues the following Guidance under section 4C(1) of the Public Passenger Vehicles Act 1981 (as amended)¹ ('1981 Act') and by reference to section 1(2) of the Goods Vehicles (Licensing of Operators) Act 1995 to provide information as to the way in which the Senior Traffic Commissioner believes that traffic commissioners should interpret the law in relation to local bus services in England (outside London) and Wales, registered with the local traffic commissioner.

Legislation

General Provisions

2. Section 139 of the Transport Act 2000 ('TA 2000') provides that each local transport authority must determine, having regard to their local transport plan, what local bus information should be made available to the public and the way in which it should be made available. Section 140 makes provision for where local authorities cannot make satisfactory arrangements with operators.
3. To operate a local service, operators must meet the requirements of the Transport Act 1985 ('TA 1985') and TA 2000 and the Public Service Vehicles (Registration of Local Services) Regulations 1986 ('1986 Regulations') and the Public Service Vehicles (Registrations of Local Services) (Amendment) Regulations 2018 ('2018 Regulations') and hold either an unconditional PSV operator's licence or a section 22 permit.
4. Section 2 of the TA 1985 defines local bus services and section 6 sets out the requirements for the registration of those services. Regulation 10 of the 1986 Regulations provides that section 6 of the TA 1985 shall not apply to services which are excursions or tours except to any services operated at least once a week for a period of at least 6 consecutive weeks.
5. The 2018 Regulations amend the 1986 Regulations, introducing a new requirement for England only, to notify the relevant local authorities 28 days in advance of any application to a traffic commissioner to introduce, vary or cancel a local bus service.² The period of notice provided by Regulation 5 of the 1986 Regulations has reverted back³ to 42-days' notice of the intention to start, vary or cease a service. In Wales the notice period under Regulation 5 of the 1986 Regulations remains at 56-days' notice be provided of the intention to start, vary or cease a service and there is still no requirement to notify the relevant local authority. Traffic commissioners have a discretionary power (Regulation 7) to accept short notice applications for services:
 - that will be substantially similar to and replace a service or part of a service which either the operator or another operator has ceased or is ceasing to operate;

¹ As amended by section 3 of the Local Transport Act 2008

² <https://www.gov.uk/run-local-bus-service/how-to-register>
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/715920/notifying_a_local_authority_of_a_bus_registration.pdf

³ As amended by The Public Service Vehicles (Registration of Local Services) (Amendment) Regulations 2018

- that are either not available to members of the general public or not regularly used by them (standard services only);
 - that in response to representations from a person authorised by either a traffic authority or a chief officer of police on a matter concerning road traffic regulation or road safety, an operator applies to vary or cancel the registration;
 - that augment an existing service, in order to provide the new or augmented service for a period not exceeding 21 days, in connection with a specified event or occasion which will cause an additional demand for a service;
 - with a proposed adjusted timetable which will not significantly affect the level of service provided, and the adjusted timings are either in no case more than 10 minutes earlier or later than those in the registered timetable, or required to adapt the service to a variation in a connecting rail, ferry or air service;
 - where the operator applies to vary the registration during a period not exceeding 14 days in response to public holidays restricted to the relevant locality;
 - where the operator, due to circumstances he could not reasonably have foreseen, failed to make an application in sufficient time for the period of notice applicable;
 - where an operator applies to register or vary a registration to meet an urgent or exceptional public passenger transport requirement.
- 6.** Whilst anyone can register, vary or cancel a service, the substituted schedule⁴ to the 1986 Regulations specifies the particulars that need to be provided, including the name of the operator and the times of individual services at principal points on the route.
- 7.** Regulation 3(3) of the 1986 Regulations provides that an application shall not be accepted by the traffic commissioner unless the applicant gives the traffic commissioner such information as the traffic commissioner may reasonably require in connection with the application.
- 8.** The term ‘frequent service’ is not defined in legislation. However, where the service interval is 10 minutes or less a statement of that fact may be given. Services operating at this level of frequency are widely recognised throughout the industry and are commonly known as ‘frequent services’.
- 9.** Sections 7 and 8 of the TA 1985 enable a traffic commissioner, at the request of the traffic authority, to attach traffic regulation conditions to an operator's licence if the traffic commissioner is satisfied that they are, or are likely to be, required in

⁴ As amended by The Public Service Vehicles (Registration of Local Services) (Amendment) (England and Wales) Regulations 2004

the interests of safety or to reduce severe traffic congestion or reduce or limit noise or air pollution in a particular area.

10. Section 27A⁵ provides that a traffic commissioner may direct a local traffic authority⁶ to provide him, within a specified period of time, with specified information connected with any aspect of the performance of their duties for network management (as outlined in sections 16 and 17 of the Traffic Management Act 2004). The information that may be specified must be information which the local traffic authority has in their possession or can be reasonably expected to acquire. This includes information relating to the management of a local traffic authority's road network or the use of their road network by different kinds of traffic or the effects of that use.
11. If the traffic commissioner identifies any remedial measures which could be taken by the operator, or by a local traffic authority, section 27A enables the traffic commissioner to prepare a report recommending the implementation of those measures to enable or facilitate the operation of the service in accordance with the registration.
12. Section 27A⁷ provides that if a traffic commissioner holds a public inquiry into poor punctuality they can, by summons, require a representative from the local traffic authority to attend to give evidence or to produce any documents in their custody or under their control which relate to any matter in question at the inquiry.
13. Failure to comply with the relevant legislation is also likely to influence the determination of a company's good repute.⁸

Sanctions

14. Traffic commissioners have powers to take regulatory action against operators who do not operate services in accordance with the registered particulars. Section 26 of the TA 1985 enables the traffic commissioner to attach conditions prohibiting the operator from running certain local services or local services of any description.
15. Section 155 of the TA 2000⁹ provides that the traffic commissioner can impose a penalty on the operator where it has without reasonable excuse:
 - failed to operate a local service under section 6 of the TA 1985, or has operated a local service in contravention of that section;
 - failed to provide information required by virtue of section 6C of the TA 1985;
 - failed to comply with or operated a local service in contravention of: an advanced quality partnership scheme, quality partnership scheme, enhanced partnership scheme, quality contract scheme, franchising scheme, advanced ticketing scheme or ticketing scheme imposed under the TA 2000;

⁵ As amended by section 63 of the Local Transport Act 2008

⁶ Legislation refers to both local traffic authorities and local transport authorities and the term "local authorities" will often cover both

⁷ As amended by section 63 of the Local Transport Act 2008 which cross refers to section 250 of the Local Government Act 1972

⁸ See Statutory Guidance and Statutory Directions on Good Repute and Fitness

⁹ As amended by section 64 of the Local Transport Act 2008

- failed to comply with TUPE requirements imposed by a franchising scheme, advanced ticketing scheme or enhanced partnership scheme under the TA 2000;
- failed to comply with a request to make information available under section 140, 143A, 143B of the TA 2000;
- failed to comply with Regulations made under section 181A of the Equality Act 2010¹⁰.

16. It also provides that traffic commissioners can order:

- that the operator expends a sum of money, limited to the provision or improvement of local services or facilities;
- that the operator provides compensation to passengers; or
- an order of such other description as the Secretary of State (as respects England) or the Welsh Ministers (as respects Wales) may by order prescribe.

17. The amount of the penalty is up to £550 multiplied by the total number of vehicles which the operator is licensed to use under all the PSV operator's licences held by them.

18. An order for compensation may take the form of payments of money, or other form (including the provision of free travel or travel at a reduced price) and must also not exceed the equivalent of £550 per authorised vehicle.

Complaints

19. Regulation (EU) No 181/2011¹¹ establishes rules for bus and coach transport in respect of the following:

- non-discrimination between passengers with regard to transport conditions offered by carriers;
- rights of passengers in the event of accidents arising from the use of the bus or coach, resulting in death or personal injury or loss or damage to luggage;
- non-discrimination and mandatory assistance for disabled persons and persons with reduced mobility;
- rights of passengers in cases of cancellation or delay;
- the minimum information to be provided to passengers.

¹⁰ Public Service Vehicles (Accessible Information) Regulations 2023. Whilst not specifically made under this provision, The Public Service Vehicles Accessibility Regulations 2000 were made under Disability Discrimination Act 1995 which was replaced by the Equality Act 2010

¹¹ Regulation (EU) No 181/2011 of the European Parliament and of the Council of 16 February 2011 concerning the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004

- 20.** For the purposes of Article 28(3), the Traffic Commissioners for Great Britain¹² are designated as the national enforcement authority¹³ in respect of a relevant person who holds a PSV operator's licence. The designated body to which any passenger may submit a complaint about an alleged contravention of Regulation (EU) No 181/2011 by any relevant person is first to the relevant person who is the subject of the complaint. If the complaint is not resolved within three months after submission to the relevant person, the body specified in respect of any complaint concerning:
- London road passenger transport services or facilities, the body is London TravelWatch;
 - any other services or facilities, the body is Bus Users UK.

If a complaint is not resolved within three months after submission to the above specified body, that body must refer the complaint promptly or failing which, the complainant may refer the complaint to the relevant traffic commissioner.

- 21.** Regulation 10 of The Rights of Passengers in Bus and Coach Transport (Exemptions and Enforcement) Regulations 2013 empowers the traffic commissioner to exercise their powers under sections 16(3), 16(5)(a) and 17 of the 1981 Act in such manner as may be necessary in the opinion of the traffic commissioner to remedy any contravention of Regulation (EU) No 181/2011 by the holder of a PSV operator's licence in respect of whom that traffic commissioner is the enforcement authority.
- 22.** The Regulations also allow the traffic commissioner to take other appropriate enforcement measures, including issuing improvement notices¹⁴, the attachment of conditions to any PSV operator's licence¹⁵ or the imposition of a penalty.¹⁶ Any appeal of a traffic commissioner's decision is made in the usual way to the Upper Tribunal.¹⁷

Case Law

- 23.** This Guidance may be subject to decisions of the higher courts and to subsequent legislation. The Senior Traffic Commissioner, however, has extracted the following principles from existing case law.

¹² i.e. such traffic commissioner as the senior traffic commissioner may, pursuant to section 4B of the 1981 Act, require to carry out the functions of a traffic commissioner in respect of those licences, failing which, the senior traffic commissioner

¹³ Regulation 8 of The Rights of Passengers in Bus and Coach Transport (Exemptions and Enforcement) Regulations 2013

¹⁴ Regulation 10(4) of The Rights of Passengers in Bus and Coach Transport (Exemptions and Enforcement) Regulations 2013

¹⁵ Regulation 9 of The Rights of Passengers in Bus and Coach Transport (Exemptions and Enforcement) Regulations 2013

¹⁶ Under Regulation 11 of The Rights of Passengers in Bus and Coach Transport (Exemptions and Enforcement) Regulations 2013. Any penalty is capped by Regulation 12 to £550 multiplied by the total number of public service vehicles which that person is licensed to use under all PSV operator's licences held by that person

¹⁷ See Statutory Guidance and Statutory Directions on Appeals

General approach

24. The approach adopted in most of the case law¹⁸ indicates that the correct approach for the traffic commissioner is to first determine whether the operator has failed to operate a local service registered under section 6 of the Transport Act 1985, and secondly whether the operator has operated a local service in contravention of that section pursuant to section 26(1) of the Transport Act 1985.

Service amendment notice

25. Where an operator applies for the period of notice to be abridged and relies on circumstances which could not have been foreseen, the test is not to be applied to the situation as at the date when the application for short notice cancellation is actually made. The test has to be applied at an earlier stage, namely at the date on which the operator would have made the application if he had been able to foresee the events which were not reasonably foreseeable.¹⁹
26. The legislation is intended to ensure that operators take all reasonable steps to keep services operating but that if they do so and still find that it is not possible to operate a particular service the traffic commissioner has the power to abridge the period of notice.²⁰ Traffic commissioners have to balance the promotion of fair competition and therefore the swift facilitation of service improvements against the restrictive requirements of the regulations, but beyond that there is no power.

Window of tolerance

27. The window of tolerance takes account of many of the day to day problems which operators can face and that operators can, reasonably, be expected to have contingent plans to deal with other, foreseeable, problems.²¹
28. The Upper Tribunal has stated that the window of tolerance and 95% punctuality target is a sensible and pragmatic approach to short-term problems causing congestion beyond that which should have been taken into account when setting the timetable, and it is therefore accepted that an operator, whose services come within the bracket of up to 1 minute early and up to 5 minutes late, for 95% of the time, has a reasonable excuse for not achieving 100% compliance.²²
29. Traffic commissioners must decide whether to discount the findings presented to them by the relevant enforcement agency and may decide to give the operator the benefit of the doubt in relation to journeys which are close to the window of tolerance.²³

¹⁸ For example, [2000/024 & 2000/025 Arriva Tees and District Ltd & Arriva Teeside Ltd](#)

¹⁹ [2009/030 Pilkingtons Accrington Ltd trading as King Transport](#)

²⁰ [2009/030 Pilkingtons Accrington Ltd trading as King Transport](#)

²¹ [2009/030 Pilkingtons Accrington Ltd trading as King Transport](#)

²² [2012/015 First Manchester Ltd](#)

²³ [2004/138 Parkash Ram Banga trading as Banga Travel](#)

Sampling / monitoring / information provision

30. It is important that the sample of journeys monitored is sufficient to represent the whole operation.²⁴ However, there is a limit to the extent to which the latitude in decision making allowed to traffic commissioners can go to overcome problems of methods and sizes of samples, and of special traffic situations.²⁵ It is for the traffic commissioner to weigh up the evidence and determine which is preferred having heard the witnesses.²⁶
31. It is also important that traffic commissioners consider the question of the adequacy of monitoring in the round by adopting a global approach.²⁷
32. This was further developed in *First Manchester*²⁸ which stated: *'If there is no evidence to suggest that the sample is not representative then the traffic commissioner is entitled to assume that it is. On the other hand if there is evidence, that tends to suggest that the monitoring exercise may not reflect the general level of performance on all of the operator's services, the traffic commissioner must assess it. If that assessment leads to the conclusion that the overall level of compliance differs from the level found by the monitoring exercise then the traffic commissioner must take this into account when deciding into which penalty range the case falls and where in the range it comes'*.
33. It is important that the traffic commissioner's statutory powers should not be emasculated by an over elaborate approach to the investigation or an unnecessary attention to detail.²⁹
34. In regard to the provision of information and data, all operators have a positive duty to co-operate with the relevant enforcement agency and the traffic commissioner.³⁰

Reasonable excuse

35. The Upper Tribunal has confirmed that the burden of proof to establish reasonable excuse is on the operator.³¹ The traffic commissioner's jurisdiction is essentially inquisitorial rather than adversarial in nature, and, there being no-one to adopt a prosecutor's role in seeking to disprove any excuses proffered, it should be for the operator to establish them.³² The evidence to support the finding of reasonable excuse is peculiarly within the knowledge of the operator and so the burden remains upon him throughout.³³ Traffic commissioners are entitled to look at the overall result, rather than being compelled to assess every single reason advanced for the failure of a particular service to operate compliantly.³⁴

²⁴ [Ribble Motor Services Ltd v Traffic Commissioner for the North West Traffic Area \[2001\] EWCA Civ 267](#)

²⁵ [2000/057 & 2000/062 Yorkshire Rider Ltd & First Bristol Buses Ltd v DETR](#)

²⁶ [2004/138 Parkash Ram Banga trading as Banga Travel](#)

²⁷ [Ribble Motor Services Ltd v Traffic Commissioner for the North West Traffic Area \[2001\] EWCA Civ 267](#)

²⁸ [2012/015 First Manchester Ltd](#)

²⁹ [2015/008 Diamond Bus Ltd, Ribble Motor Services Ltd v Traffic Commissioner for the North West Traffic Area \[2001\] EWCA Civ 267](#); [2000/024 & 2000/025 Arriva Tees and District Ltd & Arriva Teeside Ltd](#); [2003/300, 2003/301 and 2003/302 Andrews \(Sheffield\) Ltd, Yorkshire Traction Company Ltd and Barnsley & District Traction Company Ltd](#)

³⁰ [2010/064 JWF\(UK\) Ltd](#)

³¹ [2003/254 Alison Jones trading as Shamrock Coaches; Ribble Motor Services Ltd v Traffic Commissioner for the North West Traffic Area \[2001\] EWCA Civ 267](#)

³² [Ribble Motor Services Ltd v Traffic Commissioner for the North West Traffic Area \[2001\] EWCA Civ 267](#)

³³ [2000/057 & 2000/062 Yorkshire Rider Ltd & First Bristol Buses Ltd v DETR](#)

³⁴ [2012/015 First Manchester Ltd](#)

- 36.** It is not possible to provide a precise definition of what does or does not amount to a reasonable excuse. Instead we intend to set out factors that should be taken into account and others which cannot be taken into account. The weight to be given to any factor will, of course, depend on the facts of the individual case.³⁵
- 37.** Operators who wish to advance a reasonable excuse to avoid a penalty must satisfy the traffic commissioner of two things. First, that the matters that are being advanced as a reasonable excuse have not already been taken into account in setting the timetable. Secondly, that but for the matters advanced as reasonable excuse the services run would have come within the target set by the traffic commissioners. In the view of the Upper Tribunal, matters that improve the compliance rate but do not bring it within the target cannot amount to a reasonable excuse but they would be part of the circumstances of the case which must be taken into account when deciding the amount of the penalty.³⁶

Sanctions

- 38.** The power to impose a penalty only arises where the traffic commissioner is satisfied that the operator has operated non-compliantly, ‘without reasonable excuse’. In other words, the existence of a reasonable excuse will prevent the traffic commissioner from imposing a penalty. The traffic commissioner is given discretion as to whether or not to impose a penalty.³⁷
- 39.** The object of imposing penalties is to focus minds so as to achieve the statutory purpose.³⁸ Penalties are only directed at failures to comply with registered services.³⁹ Traffic commissioners should continue to impose sanctions on those who seriously fail the travelling public.⁴⁰
- 40.** Case law identifies two factors to be taken into account in deciding whether to impose a penalty under Section 155:
- traffic commissioners must make an assessment of the individual case based on the facts as found, including the proper consideration of any reasonable excuse;⁴¹
 - traffic commissioners should set out fully reasoned decisions as to why a penalty has been imposed.
- 41.** Parliament has decided that the maximum penalty must be calculated by reference to the total number of vehicles which the operator is licensed to use and the penalty brackets indicated have been approved of on appeal.⁴² Large penalties may be necessary to ensure that the statutory objectives are

³⁵ [2012/015 First Manchester Ltd](#)

³⁶ [2012/015 First Manchester Ltd](#)

³⁷ [2012/015 First Manchester Ltd](#)

³⁸ [2003/300, 2003/301 and 2003/302 Andrews \(Sheffield\) Ltd, Yorkshire Traction Company Ltd and Barnsley & District Traction Company Ltd](#)

³⁹ [2008/151 Tuc Tuc Ltd](#)

⁴⁰ [Ribble Motor Services Ltd v Traffic Commissioner for the North West Traffic Area \[2001\] EWCA Civ 267](#)

⁴¹ [2008/151 Tuc Tuc Ltd](#)

⁴² [2012/015 First Manchester Ltd](#)

achieved.⁴³ However, traffic commissioners should take care to hear all relevant evidence when determining the level of any penalty.⁴⁴

⁴³ [2007/318 Eurotaxi Ltd](#)

⁴⁴ [2012/015 First Manchester Ltd](#)

DIRECTIONS

42. The Senior Traffic Commissioner for Great Britain issues the following Directions to traffic commissioners in England and Wales under section 4C(1) of the Public Passenger Vehicles Act 1981 (as amended) and by reference to section 1(2) of the Goods Vehicles (Licensing of Operators) Act 1995. These Directions are addressed to the traffic commissioners in respect of the approach to be taken by staff acting on behalf of individual traffic commissioners and dictate the operation of delegated functions in relation to local bus services in England (outside London) and Wales.

Standards

43. The relevant enforcement agency and third party monitors will record departure times from registered principal timing points except at final destination points where they will only check against late arrival times.

Timetabled services

44. Bus operation is complex and susceptible to external factors (such as road works and congestion). A degree of flexibility ('window of tolerance') has therefore been set when determining if services run on time. Buses should not depart from starting points and registered principal timing points more than 1 minute early or more than 5 minutes late, or arrive at the final destination point more than 5 minutes late. In general, 95% of buses should meet this standard.
45. It is acceptable for buses to arrive early at their final destination, but the traffic commissioners do not expect to find undue recovery time inserted in the timetable towards the end of a journey. If there is any suggestion that a request to surrender the licence under section 15 of the 1981 Act is being used as a means of avoiding the registered timetable then this must be referred to a traffic commissioner for consideration of action under section 17 of the 1981 Act.

Frequent services

46. Where the service interval is 10 minutes or less, 6 or more buses should depart within any period of 60 minutes and the interval between consecutive buses should not exceed 15 minutes. In general, 95% of buses should meet this standard.

Principal timing points

47. In the interests of passengers, traffic commissioners have previously not accepted principal timing points more than 15 minutes apart (except where the next stop is more than 15 minutes running time from the preceding stop). However, in some cases these restrictions have led to defensive registrations and do nothing to promote efficient and punctual journeys or good experiences for the passengers. Greater flexibility is therefore required and the 15 minutes is now to be regarded as a starting point.
48. However, members of staff are directed to look for the registration of the following principal timing points in order to facilitate the monitoring of punctuality:

- key interchanges with other bus routes;
- railway stations;
- at least one bus stop in every town and village along the route with a population of more than 2,000 people;
- at least one bus stop on each different section of route where alternative routes between a common destination are contained in one registration.

Service amendment notice

- 49.** Staff are encouraged to ensure that they do not adopt an overly prescriptive approach regarding service amendment notices. For example, where failings are identified it may be helpful for staff to recommend to the traffic commissioner to grant short notice of an application or variation designed to achieve compliance.

Complaints

- 50.** As the designated national enforcement authority under Regulation (EU) No 181/2011 the Traffic Commissioners for Great Britain may be referred complaints which have not been resolved within three months from London TravelWatch or Bus Users UK. The complaint should be referred promptly by the specified body, failing this the complainant may refer the complaint to the relevant Office of the Traffic Commissioner. Staff at the Office of the Traffic Commissioner shall maintain a file regarding the matter and all contacts with the specified body and all parties should be recorded and kept on that file.
- 51.** Any complaint should make clear which rule it is alleged the operator has breached with any supporting evidence. An operator is expected to provide an explanation in response to any legitimate complaint whilst setting out the steps they have taken to prevent any future recurrence. This will assist the traffic commissioner in deciding what action should be taken.

Public Inquiry

- 52.** The value of hearing all the relevant evidence and submissions at public inquiry is long established and traffic commissioners are careful to ensure that each case is dealt with on its own facts. A case that may appear to be very serious from an initial reading of the submission can in fact turn out not to require severe regulatory action once all the evidence has been heard. Conversely, a case that initially appears not to be serious can then in fact require severe regulatory action.
- 53.** Public inquiries are part of a range of tools available to traffic commissioners to ensure compliance and include the ability to prepare a report recommending the implementation of remedial measures to be taken by the operator and/or the local traffic authority. Preliminary hearings can be useful in determining whether to take regulatory action.⁴⁵

⁴⁵ See Statutory Guidance and Statutory Directions on Case Management

- 54.** When considering whether to convene a public inquiry, and at the hearing itself, the traffic commissioner will need to take account of any relevant previous history.
- 55.** The traffic commissioner must make a finding on whether the operator has a reasonable excuse for the failures. A reasonable excuse could include, but is not limited to:
- the impact of breakdowns, accidents and road closures and roadworks;
 - obstruction at bus stops;
 - severe weather conditions; and
 - the changing or closure of the road infrastructure without prior consultation.
- 56.** It may be necessary for the traffic commissioner to examine the operator's contingency planning to determine what is reasonably foreseeable and to consider the resources available to the operator.
- 57.** The traffic commissioner will also wish to consider whether the operator has proactively managed registered services with the objective of achieving appropriate levels of reliability and punctuality, in particular:
- whether the registration has been regularly reviewed in the light of known road conditions and the resources available to the operator;
 - whether the control strategies are appropriate and adequate;
 - whether adequate resources are provided.
- 58.** There are a number of circumstances under which a public inquiry is likely to be called. These include:
- where the operator and/or local authority has failed to co-operate with the relevant enforcement agency investigation;
 - where a complaint, for example about poor punctuality, has been received;
 - where a partnership exists but one or more of the partners is deliberately departing from the agreed action plans; and
 - where a partnership is working together but the proposed actions have failed to deliver any improvements and subsequent reviews are still failing to deliver any improvements.
- 59.** At the public inquiry the traffic commissioner can hear full and detailed evidence of all relevant issues and of the steps taken by the operator and the local traffic authority to improve compliance. The traffic commissioner can obtain a structured and timed action plan to improve compliance and where appropriate this can be put into the public domain. The onus is on the operator and local traffic authority to provide regular updates to the traffic commissioner who can then ascertain if

the plan is working. In such cases it will always be open to the traffic commissioner to convene a further public inquiry.

Starting points

- 60.** Where the compliance rate is below 80% a public inquiry is likely to be called.
- 61.** Where punctuality is between 80% and 95% the case is likely to be referred to the traffic commissioner. In such cases the traffic commissioner may give the operator time to resolve punctuality issues and demonstrate a programme for continuous improvement. The traffic commissioner may request the relevant enforcement agency and/or the operator to provide update reports at 6 months and 12 months.
- 62.** In some cases it may be appropriate to attach a condition in view of the danger to the public involved in the operator's conduct or the frequency of conduct. As per the legislation, this conduct includes:
 - intentional interference with the operation of a local service provided by another operator;
 - operation of a local service in a manner dangerous to the public; and
 - being guilty of serious misconduct in relation to the operation of a local service.
- 63.** When deciding whether to impose a penalty a traffic commissioner should take account of any partnership arrangements and how effectively the operator and local authority have worked together as well as performance levels. The traffic commissioner should also consider what steps the operator has taken to ensure compliance.
- 64.** Whilst penalties can be used to focus the mind of operators, they:
 - provide limited benefits to those passengers affected by the poor performance;
 - do not guarantee improvements; and
 - do not reflect the role that a local traffic authority might have played.
- 65.** Where passengers have suffered sustained poor performance and where an operator is failing to take prompt and appropriate remedial action it may be beneficial to order compensation to passengers.
- 66.** The application of a penalty (financial or otherwise) is likely to be most appropriate where an operator makes little or no effort to run reliable and punctual services, or shows a flagrant disregard for compliance or fair competition.

- 67.** In the interests of consistency, the Senior Traffic Commissioner directs that the following starting points are used when using powers to impose a penalty (financial or otherwise) under section 155 of the TA 2000:
- under 95% compliance – up to £100 per authorised vehicle;
 - under 90% compliance – £100 - £250 per authorised vehicle;
 - under 85% compliance – £250 - £400 per authorised vehicle;
 - under 80% compliance – £400 - £550 per authorised vehicle.
- 68.** However, traffic commissioners can exercise discretion where they are satisfied that a different standard would be more appropriate. Traffic commissioners will also follow the principle of proportionality when considering the amount of penalty to impose taking care to ensure that the amount of the penalty reflects the scale of the failure/s. Traffic commissioners should therefore take care to hear all relevant evidence regarding the effect of any intended penalty orders.

Data & Information

- 69.** All operators have a positive duty to co-operate with the relevant enforcement agency.⁴⁶ Traffic commissioners and their staff can therefore expect to have access to sufficient data and information in order to undertake their duties. Failure to provide sufficient data may, in certain circumstances, have an impact upon that operator's repute.
- 70.** It is not reasonable to require that operators keep a 100% record of their services as this may create an unnecessary burden. As a general principle, operators are expected to ensure compliance with the registered particulars.
- 71.** Monitoring needs to vary according to the reliability and punctuality of the route as well as service frequency. The less reliable the route the more monitoring and remedial action will be required. Conversely where a service is achieving high compliance then less monitoring will be required. The method of monitoring will vary according to the type and size of operator and the type of equipment and facilities that it has available.

⁴⁶ [2010/064 JWF\(UK\) Ltd](#)

ANNEX TO GUIDANCE - EXAMPLES OF A GOOD OPERATION

This Annex is presented in accordance with the Regulators' Code⁴⁷ to ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply, and that the approach to regulatory activities is transparent.

Presented below is a checklist of some of the activities that the Senior Traffic Commissioner would expect to see in a good bus operation. It is important to emphasise that all operators have a positive duty to co-operate with the relevant enforcement agency and the traffic commissioner in the provision of information and data.

Operators

Registration of service/s

- ensure that clear and accurate registrations are made, kept up to date and cancelled in line with regulations;
- ensure that the timetable is properly calculated, realistic and achievable;
- take advantage, where possible, of the electronic bus service registration process (EBSR);

Monitoring

- keep records of compliance with the registered particulars (including using real time information (RTI) and Automatic Vehicle Location (AVL) systems where available);
- undertake monitoring on the route itself (including the use of daily logs), whether by way of regular feedback from the driver or by the placement of roadside monitors;
- analyse the data collected and establish the compliance percentage levels on each service;
- after analysis, set achievable and realistic but stretching compliance targets;
- keep a record of any matters that affect the reliability of services and details of the remedial action to try and mitigate the impact;
- regularly review registered timetables and submit timely variations where appropriate;
- keep sufficient records to demonstrate that there is proper monitoring (which can vary according to the reliability and punctuality of the route as well as service frequency) of all services;
- publish punctuality targets and associated compliance so that performance can be reviewed and tracked;
- share performance data information with local traffic authorities to better understand highway performance;
- establish a full and regular dialogue with local authorities and other relevant parties (such as utility companies) to ensure that advance notice of potential disruption to services (such as road works) is received;
- where a partnership is in place, notify and provide up to date details to the traffic commissioner and/or relevant enforcement agency and share reports on the levels of punctuality / reliability;

⁴⁷ <https://www.gov.uk/government/publications/regulators-code>

- collate evidence of partnership working with the relevant local authority on reliability and punctuality;
- where partnership working is not in place have the necessary evidence to show the steps taken to initiate this;

Systems / Resource

- have dedicated resource for service performance management;
- have processes and sufficient resources in place (taking account of peak vehicle requirements) to ensure that services can be operated in accordance with the registered particulars;
- have systems in place for addressing any issues found (including punctuality and reliability issues);
- consult local traffic authorities on any proposals to change routes or timetables in advance of the registration application;
- have proper systems in place for managing and diverting resources such as having cover for driver illness, vehicle breakdown and the like;
- have a visible, transparent and easy to use compliant handling procedure for all passengers (covering all areas of possible complaint, and guidance on appeals procedures);
- consult with passengers to understand preferences between simplicity, speed and punctuality.

Local authorities

It is for each local traffic authority to decide how they will undertake their duties, including the management of the road network. However, activities to ensure a good operation are likely to include:

- monitoring and managing traffic flow;
- managing traffic signals;
- coordinating and managing road and street works effectively;
- managing individual incidents as and when they occur;
- controlling parking, including bus lane enforcement;
- requiring operators to monitor the performance of services and inform the authority of any difficulty in maintaining timetables;
- providing operators with detailed, frequent, clear and advance information about emergency and programmed works on the highway (both highway and statutory undertaker works and Traffic Management Act pre-notice requirements when these apply);
- undertaking effective and regular dialogue with operators, including on major infrastructure changes and resulting impacts on services.