



Department  
for Transport

# Traffic Commissioner Function Review

April 2023

Department for Transport  
Great Minster House  
33 Horseferry Road  
London SW1P 4DR



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## **1. Ministerial Foreword**

I am delighted to publish this report on the 2021/22 Review of the Traffic Commissioner Function, including the outcome of the public consultation and recommendations. Commissioned to the Ministry of Justice's ALB Centre of Expertise, this review sought to produce a robust assessment of the function and align it wherever possible to Cabinet's Office direction on Public Bodies reviews.

Traffic Commissioners undertake an important function on behalf of the Department for Transport. They – and the individuals who support them – contribute directly to our strategic priorities; improving transport for the user by promoting the safe operation of heavy vehicles and buses on our roads and growing our economy by supporting transport operators to keep goods and passengers moving.

I welcome the review's finding that the Traffic Commissioner function generally operates effectively and can meet the standards of service for the transport industry. Responses to the public consultation and interviews with stakeholders show industry support for the Office of the Traffic Commissioner (OTC) and the Traffic Commissioners. Industry has confidence in the work of Traffic Commissioners, who with the staff of the OTC played a key role in supporting the transport industry during the pandemic. They took decisive action to mitigate impacts on service delivery and adopted flexible, innovative practices to effectively support businesses during this very challenging period. I am grateful to all those involved.

The review found that substantial improvement to the TC function would require fee reform and legislative change. My department will review its high-level implementation plan for fee changes with Ministers this year and once agreed, will work collaboratively with Traffic Commissioners and stakeholders to bring forward fee reform. This will provide better alignment with Managing Public Money expectations and enable us to consider new approaches to operator licence fees; with the potential to provide efficiency savings, better value for money and support the transition to low emission technologies, as well as offering a better service to operators.

Legislative change will need to be carefully considered alongside other Government priorities, as Parliamentary time allows. In the meantime, much can be achieved through working collaboratively and making better use of the powers already provided in legislation. I look forward to working with the Senior Traffic Commissioner in this regard.

I want to commend the Traffic Commissioners, the staff in the OTC, and DVSA for the work already done to strengthen governance and better support Traffic Commissioners, as well as for the willingness to continue to upskill and improve outcomes for the industry and the public.

My ambition is to ensure that a safe, fair, and reliable passenger and goods transport continues to thrive through the invaluable work of the Traffic Commissioners and DVSA who I commend for their dedicated work.

**Richard Holden**

**Parliamentary Under Secretary of State, Department for Transport**

## 2. Executive Summary

- 2.1. It is understood under 'Article 6(1) European Convention on Human Rights', that the relevant test in cases of alleged bias is whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased as set out in *Porter v Magill* [2001] UKHL 67; [2002] 2 AC 357. Nothing in this report is intended to undermine the perception of independence of the Traffic Commissioners as clearly stated in the Transport Tribunal case of '*Nolan Transport Ltd, T/2011/60*'.
- 2.2. The purpose of this review is to provide robust assessment, challenge and assurance on the health and effectiveness of the Traffic Commissioner (TC) function<sup>1</sup>. It has looked at whether the functions it provides are still required, should continue to be carried out by TCs, and whether the setup of the TC function allows them to be delivered effectively. It has also looked at whether the existing governance and accountability arrangements are effective and appropriate, particularly for what is, at its core, a judicial organisation.
- 2.3. The review has found that the TC function generally operates effectively. Responses to the public consultation and interviews with stakeholders have shown a strong level of support from the industry for the continuation of the functions which the TCs – supported by the Office of the Traffic Commissioner (OTC) – carry out and a desire for those functions to continue to be delivered by TCs.
- 2.4. The review has found confidence that, despite a slowing down of the service during the pandemic, the whole TC function (Commissioners and OTC staff), played a key role in supporting the transport industry during this very challenging period. The TCs took decisive actions to mitigate impacts on service delivery and adopted flexible, innovative practices to effectively support businesses.
- 2.5. Traffic Commissioners and OTC staff are well-versed in the parts of the process that can be improved and areas that can work better, and there is a strong commitment, including within DVSA, to beating the KPIs rather than just meeting them. The review team has seen first-hand the efforts that everyone is putting in to upskill and improve results, and the function should be commended for the progress it made before the pandemic and the way it has responded to limit impacts further in the past 18 months and continue to do so.
- 2.6. The review found that TCs can meet the standards of service for the industry that have been set for it, although consideration should be given to how these standards are set. While not insurmountable, there are several obstacles to making improvements to the efficiency and effectiveness of both the TCs and OTC, such as a capacity limit resulting largely from the statutory setup of the function (specifically the fact that the TCs are eight

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<sup>1</sup> For the purposes of this review, the 'Traffic Commissioner function' is taken to be the operation of the Traffic Commissioners as a whole, which includes the work of each Traffic Commissioner, the Deputy Traffic Commissioners and the support functions provided by the Office of the Traffic Commissioners

independent statutory appointees), and a restrictive legislative framework that has, in some areas, failed to keep pace with shifts within the industry.

- 2.7. This review makes a clear set of **recommendations** that are summarised below. The review is realistic about the timeframe in which this could be achieved, due to resource and legislative challenges. In sequencing the implementation of the recommendations, the relative timing will be critical particularly for any which increase costs as the Traffic Commissioner function currently generates a financial deficit. It is recognised that it will be for Ministers to decide how to prioritise this review's recommendations against other departmental priorities.

### 3. Table of Recommendations

Recommendation and Desired Outcome	Anticipated Timescales
<p><b>Recommendation 1:</b> DfT led by the TC sponsor, to work with the TCs and engagement with the local transport policy forum, to define the Department’s current and future priorities for the TCs and how these strategically align to departmental priorities and DfT’s Outcome Delivery Plan.</p> <p><b>Outcome:</b> The articulation of a strategic vision for the function, including how it aligns with other government functions, will allow for meaningful consideration to be given to possible legislative reform as well as operational improvements. It will also increase policy alignment across the TC function, DfT and DVSA delivering better outcomes for service users.</p>	Short-term
<p><b>Recommendation 2:</b> The DfT transport policy forum established during this review and presently led by the Public Bodies Centre of Expertise should continue. It should have a defined lead and clear terms of reference, and link to the outcomes of the work in Recommendation 1 (defining the Department’s current and future priorities for the TCs).</p> <p><b>Outcome:</b> The DfT transport policy forum brings together all areas of policy related to the Traffic Commissioner function. Input from the DfT transport policy forum will initially assist in shaping the recommendations of this review. In the long term it will facilitate meaningful discussions around how existing, new and emerging policy might impact the TC function, better join up policy making, advise on how the TC function might benefit policy implementation and delivery, and understand how the TC function itself might be impacted by changes elsewhere.</p>	Medium-term
<p><b>Recommendation 3:</b> In order to streamline the efficiency of statutory functions and release TC capacity, DfT should give consideration - at pace - to which of the TCs’ 36 options for legislative change should be implemented.</p> <p><b>Outcome:</b> Implementing selected legislative changes offers significant potential to streamline and strengthen delivery of TC functions. Selecting changes through collaboration with the TC function and utilising analysis already undertaken, would create benefits for the function and its relationship with the Department.</p>	Longer-term
<p><b>Recommendation 4:</b> DfT should proceed with the change to allow the TCs to make tribunal rules, which should include cost orders.</p> <p><b>Outcome:</b> With increased powers, the TCs would be better able to manage their hearings which should make them both more effective and more efficient in the longer term. Further, these powers would also demonstrate the independence of the function and bring it more in line with other tribunal jurisdictions.</p>	Longer-term



<p><b>Recommendation 5:</b> The TCs should be consolidated into one independent tribunal body rather than sit as eight individual tribunals.</p> <p><b>Outcome:</b> This will provide better governance structures, as well as tribunal rules. Removing eight individual and independent office holders makes managing the organisation less complex and removes duplication and an unnecessary complexity in reforming policies and processes. This change could be done without undermining the independence of TC decision-making as is the case in other tribunals.</p>	<p>Longer-term</p>
<p><b>Recommendation 6:</b> There should be a statutory President role established to head up the single tribunal body in Recommendation 5.</p> <p><b>Outcome:</b> This would replace the role of the Senior Traffic Commissioner and allow for improvements to governance arrangements, as well as clarifying lines of accountability. Such a change would make the function more like other tribunals which have a chamber president.</p>	<p>Longer-term</p>
<p><b>Recommendation 7:</b> There should be a decision-making body within the TC function that allows for both executive and independent non-executive input at appropriate times, including when positions are taken that may affect finances (while assuring judicial independence of TCs maintained).</p> <p><b>Outcome:</b> This will strengthen governance structures within the function, and between the TC function, DVSA, and DfT, be an independent advocate for the Traffic Commissioner Function with stakeholders, providing challenge, and align with best practice. Such a change would, in a proportionate and cost-effective way, standardise governance arrangements, making them like those in other ALBs, as well as reducing the amount of time individual TCs are spending focused on corporate issues at the expense of their core functions.</p>	<p>Medium-term</p>
<p><b>Recommendation 8:</b> Good corporate governance expects a level of executive authority, support, and challenge, therefore the TC Function should have a dedicated senior Chief Operating Officer (COO), or equivalent, as a dedicated resource managing the OTC staff, and to engage across a wide range of stakeholders including the devolved administrations of Scotland and Wales, a diverse range of DfT transport policy teams, acting as an advocate for the TCF with DVSA and DfT Sponsor. This will ensure improved policy change and integration of work within the TCF. This increased cost will be dependent on delivery of fee reform to fund (see Recommendation 10c).</p> <p><b>Outcome:</b> The DVSA Director of Enforcement presently manages OTC staff, however this relationship whereby they oversee the staff of the OTC enhances a perception and inherent legal risk, that the TC function is 'managed' by DVSA Enforcement, despite being a party to its hearings. In the medium term a COO will remove this perception and risk and improve stakeholder engagement across the devolved administrations of Scotland and Wales, as well the number of policy areas reflected within the DfT Policy Forum. This will ensure the TCs statutory functions are properly considered in policy developments, whilst independently representing the TCF with the DVSA and DfT Sponsor. Longer term following reforms to the TC structure, the COO will minimise the time the Senior Traffic Commissioner needs to be involved in administrative matters, so they may focus on their role as both a Chamber President</p>	<p>Medium-term</p>

<p>and a Traffic Commissioner, and easing some of their capacity issues, and they will manage and develop OTC staff in delivering the enhanced services following reforms.</p>	
<p><b>Recommendation 9:</b> DfT should provide a more robust and appropriately resourced sponsorship function. Enhanced sponsorship should be anchored in a new framework document setting out the governance relationship between the TCs and DfT, separate from DVSA. These activities should align with the CO's minimum expectations for ALB sponsorship, particularly in terms of relationship management, agreeing strategy, and ensuring full compliance with the requirements set out in Managing Public Money.</p> <p><b>Outcome:</b> Enhanced sponsorship would ensure that the organisation is better aligned to, and compliant with, central guidance like Managing Public Money and the Corporate Governance Code, as well as ensuring that risks are managed from an earlier point. Further, the team would also act as an advocate for the TC function within DfT whilst also challenging them and holding them to account for their financial performance. To note, this <u>must not</u> involve the Department seeking to influence individual decisions or otherwise encroaching on the judicial aspects of the function's work.</p>	Short-term
<p><b>Recommendation 10a:</b> DfT TC function sponsor, should work collectively with DVSA and the TCs to determine and agree reasonable and fair current and future operating costs, unrelated to current fee levels and based on DfT's strategic vision for the TC function (see recommendation 1).</p> <p><b>Outcome:</b> This should ensure an understanding of what it costs to run the function effectively, including what apportionment of shared expenses represents fair usage, and it will facilitate the development of a new and equitable fee structure for all TC function users.</p>	Short-term
<p><b>Recommendation 10b:</b> The future operating cost for the function should be set so that it captures any changes in staffing structure that are required to better aid recruitment and retention.</p> <p><b>Outcome:</b> This should address concerns raised about the current grading of OTC staff and issues this was causing with recruitment and retention, particularly when pay was compared with comparable organisations. Previous reviews have recommended a review of staff grading and structures, the outputs of which should be factored into the agreed operating costs of the function.</p>	Longer-term
<p><b>Recommendation 10c:</b> The fee structure should be reformed in accordance with central guidance and remove the current operating deficit. The TC function should be fully funded through the fees it charges for the services provided, without making a profit and without requiring subsidy from elsewhere, to properly cover the agreed costs coming from Recommendation 10a, and then kept under regular review.</p> <p><b>Outcome:</b> Changing the fee structure will remove the financial deficit currently funded by the taxpayer back to the user and facilitate further improvements to the service if the need to cut costs is mitigated. However, the need to deliver value for money to the user is</p>	Longer-term

<p>also a Managing Public Money requirement and increasing fees should not result in financial waste or inefficiency. The fee structure should adopt a graduated approach for operators in line with evidence from the consultation.</p>	
<p><b>Recommendation 11:</b> Following the move to establish the TCs as a single body (Recommendation 6), DfT, DVSA and the Traffic Commissioner Function should reconsider data governance arrangements, with a view to both clarifying, simplifying, and strengthening them. Concerns were raised about data governance arrangements, and the complexity that having eight data controllers created.</p> <p><b>Outcome:</b> The creation of a single chamber creates an opportunity to streamline and strengthen these arrangements going forward. This would further enhance the independence and objectivity of the function and improve the assurance of the current data governance arrangements. This would be a positive way of demonstrating the independence and confidentiality of TC data.</p>	<p>Medium-term</p>
<p><b>Recommendation 12:</b> As part of the longer-term structural reforms of the function, consideration should be given to whether its current name accurately reflects the organisation’s judicial functions. Feedback from the public consultation suggested this could be much clearer.</p> <p><b>Outcome:</b> Changing the name of the TC function to better reflect what their role entails should increase public understanding of the TC function as well as more clearly demonstrating its judicial nature.</p>	<p>Longer-term</p>
<p><b>Recommendation 13:</b> In future appointment exercises, the appointing authority should consider how the diversity of the TCs might be made more representative, whilst ensuring that all positions continue to be filled on merit.</p> <p><b>Outcome:</b> TCs are representative of the public they serve.</p>	<p>Short-term</p>

## 4. Introduction to The Traffic Commissioner Function

- 4.1. The core aim of the Traffic Commissioners (TCs) is to champion safe, fair, and reliable passenger and goods transport. TCs were originally established by the Road Traffic Act 1930<sup>2</sup>, to consider applications for road service licences for buses and coaches (Public Service Vehicles or PSVs), and to conduct public inquiries into applicants and licence holders. This remit was extended to include Heavy Goods Vehicles (HGVs) in 1934<sup>3</sup>.
- 4.2. Since their establishment, the TCs have acquired several additional responsibilities, reflecting the evolution of the transport sector. Their further statutory functions include the registration of local bus services (outside London) and assessing the environmental suitability of planning proposals for HGV parking locations. They have also acquired a significant role in promoting compliance and best practice across the HGV and PSV sectors, engaging with operators and regulatory bodies to do so.
- 4.3. TCs are appointed by the Secretary of State for Transport (SoS), under section 4 of the Public Passenger Vehicles Act 1981<sup>4</sup>. There are eight TCs in total. Each responsible for a designated geographical area, including one TC each for Scotland and Wales, and each is classified as a 'Statutory Office Holder', within a Non-Departmental Public Body (NDPB).<sup>5</sup> The TCs are supported by 11 Deputy Traffic Commissioners (DTCs), whose key role is to deputise at tribunal proceedings when required.
- 4.4. Since 2008, one Traffic Commissioner has been appointed Senior Traffic Commissioner (STC) by the Secretary of State. The STC's main statutory function is to issue practice guidance and directions to their fellow Traffic Commissioners, which are also made publicly available, to assist industry. The STC and TCs also carry out non-statutory functions such as education and outreach to the sector, as well as contributing to policy development.
- 4.5. The TCs are supported in their work by the Office of Traffic Commissioner (OTC), which consists of 168 staff (as of 31 July 2021), employed, and provided by DVSA, to carry out the administrative, processing, and other tasks to enable the TCs to discharge their duties. DVSA also supply all estates and corporate back-office provision for the TC function.

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<sup>2</sup> <https://www.legislation.gov.uk/ukpga/Geo5/20-21/43>

<sup>3</sup> <https://www.legislation.gov.uk/ukpga/Geo5/24-25/50/contents/enacted>

<sup>4</sup> <https://www.legislation.gov.uk/ukpga/1981/14/contents>

<sup>5</sup> Section 7.3:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/690946/Public\\_Bodies\\_-\\_a\\_guide\\_for\\_departments\\_-\\_chapter\\_2.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/690946/Public_Bodies_-_a_guide_for_departments_-_chapter_2.pdf)

4.6. The TC function is funded in the main by operator licensing fees, paid to DVSA and consolidated into DVSA accounts for licensing services. Licensing services income in 2020/21 was £13,035k. Its expenditure for the same year was recorded as £17,751k, of which just under £7,000k related to staff costs, c.£3,300k related to the Vehicle Operator Licencing (VOL) digital licensing system, and c.£4,000k related to other centrally controlled costs (accommodation, IT, etc.)

4.7. The whole TC function (Commissioners and OTC staff together) should be commended for their efforts throughout the COVID-19 pandemic (and the recovery period), to ensure continued service delivery and effective, flexible support for business. They have:

- taken decisive actions which ensured that any impact on service delivery during the pandemic was mitigated and that a return to business as usual could be achieved as quickly as possible. These included the use of virtual hearings, including a centralised virtual tribunal.
- supported businesses they regulate to comply and grow. TCs have effectively targeted their communication and educational resources at service users, particularly those who need assistance with compliance. A key achievement was an improvement in the accessibility/user friendliness of guidance for operators; TCs ran a successful campaign with a high level of engagement in the lead up to leaving the EU and during the COVID-19 pandemic.
- taken a flexible approach to support industry. TCs have worked with public and private organisations to inform the decision-making process, whilst maintaining a heavy emphasis on road safety. This includes the issue of exemptions, processing of applications, maintaining vehicle safety, enforcing regulatory action and local bus service registration. This work showcased the TCs' ability to innovate, which bodes well for new and improved ways of working in the future.

4.8. The structure and setup of the TC function can be broadly visualised in Figure 1, below:

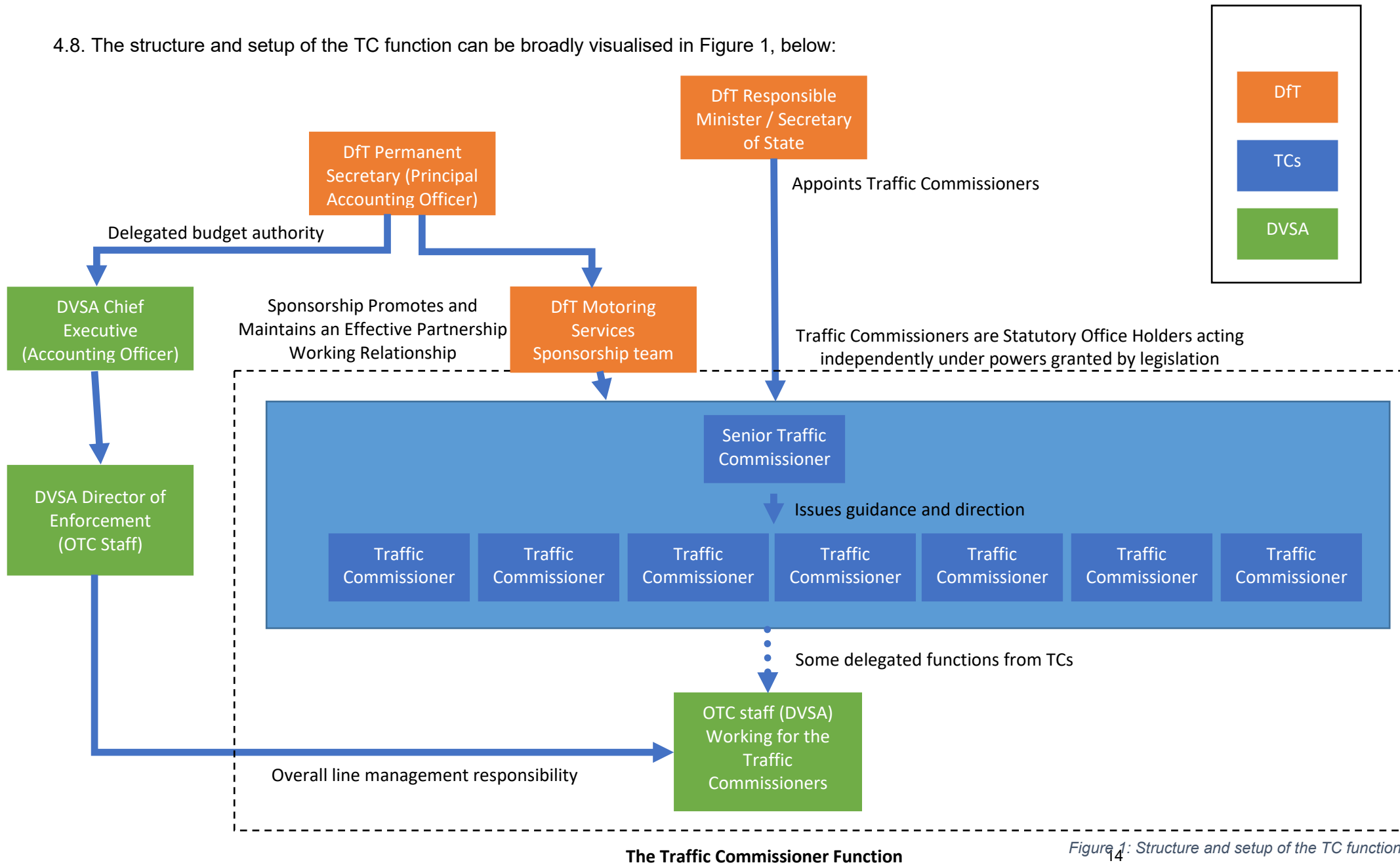


Figure 1: Structure and setup of the TC function

## 5. Review Context and Methodology

- 5.1. The HM Treasury and Cabinet Office's *Corporate Governance in Central Government Departments: Code of Good Practice*<sup>6</sup> (the 'Corporate Governance code') sets an expectation that all government departments review their ALBs on a regular basis. In recent years, the government's approach to public bodies reform, set by the Cabinet Office, has driven the strategy of ALB reviews. Between 2010-2015, reviews were carried out under a triennial review programme, and a review of the TCs was published under this banner in March 2015. Between 2015-2020, reviews were carried out under a new programme of tailored reviews but during that time, the TCs were not included. DfT considered a periodic review to be preferable.
- 5.2. This current review was commissioned as a departmental review rather than one under the formal tailored review programme. It refers, where appropriate, to the relevant *Cabinet Office Guidance on reviews of Public Bodies*<sup>7</sup> and is aligned wherever possible to the emerging Cabinet Office direction on public body reviews.
- 5.3. In addition to the triennial review, the TC function has been the subject of other ad hoc reviews. Most notably these have included one by PA Consulting in 2019, commissioned by DVSA, and an Efficiency Review undertaken in 2020 by Tony Poulter, a non-executive member of the DfT Board. It is worth noting that during stakeholder engagement for this review, there was a strong theme of opinion that the triennial and PA Consulting reviews did not lead to expected action by the Department to make significant change. Many of those interviewed both within the TC function and beyond, including industry, expressed disappointment that the outcomes of those reviews were not implemented. This review provides an opportunity for the Department to consider meaningful change, much of which due to a lack of legislative opportunity, has not taken place in the nearly seven years since the triennial review.
- 5.4. Specifically, this review was commissioned to look at:
- whether the functions that are provided by and in the name of TCs are required, and continue to contribute to the core objectives of DfT;
  - whether the TCs are carrying out their functions effectively and efficiently;
  - whether the support provided by DVSA and specifically OTC allows TCs to do so;
  - whether the current OTC DVSA-provided support and TC arrangements best support the delivery of these functions;

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<sup>6</sup> <https://www.gov.uk/government/publications/corporate-governance-code-for-central-government-departments-2017>

<sup>7</sup>

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/802961/Tailored\\_Review\\_Guidance\\_on\\_public\\_bodies\\_-May-2019.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/802961/Tailored_Review_Guidance_on_public_bodies_-May-2019.pdf)

- whether OTC support should continue to be provided by DVSA, or would be more effective if separated, given DVSA's enforcement functions and the TC role as independent regulators;
- the effectiveness and appropriateness of existing governance, accountability, assurance, and intelligence sharing arrangements; and
- the appropriateness of delivering additional functions.

5.5. DfT commissioned the Ministry of Justice's ALB Centre of Expertise to resource this review because of the availability of appropriately experienced review team members and to provide an independent assessment of the TC function from outside the sponsoring department. The review was conducted between June – November 2021.

5.6. The main evidence base for this report has been drawn from:

- 91 responses to a public consultation which ran from August-September 2021 (questions are listed at Annex A). The responses came from a cross-section of interested areas of the industries regulated by the TCs, and 19% of responses came from bodies which represented over 1,000 people each. This gives a conservative estimate of responses representing the views of over 20,000 people.
- Structured interviews with 30 key stakeholders, including all TCs, Deputy TCs, DVSA Chief Executive and officials, the DfT responsible Minister and officials, trade body representatives and representatives from devolved administrations.
- Field visits to the licensing hub and office for the TC North East of England.
- Observations of two public inquiries (in-person and virtual).
- Review and analysis of documentary evidence including:
  - finance and budget information;
  - governance documents and Memoranda of Understanding;
  - HR and recruitment data;
  - performance statistical sets;
  - legal judgments; and
  - previous reviews and conclusions.

5.7. The structure and operation of the TC function has been considered against the relevant areas of good practice which apply to ALBs, as set out in (among others):

- the appropriate sections of the Corporate Governance code;
- Managing Public Money (MPM)<sup>8</sup>;

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<sup>8</sup> <https://www.gov.uk/government/publications/managing-public-money>



- The Orange Book: Management of Risk – Principles and Concepts<sup>9</sup>;
- The Cabinet Office Partnerships between departments and arm’s-length bodies: Code of Good Practice<sup>10</sup>; and
- Emerging and draft Cabinet Office guidance for partnership and reviews of ALBs.

5.8. Each TC is an NDPB Tribunal and the statutory functions they carry out are judicial in nature. The review team has been careful to distinguish the TCs’ roles and obligations as public bodies from those as tribunal decision-makers, where the need to safeguard and secure judicial independence is paramount – TC decisions need to be, and be seen to be, taken independently of any undue influence. Our recommendations are intended to focus on the TCs as public bodies and on how the TC function can best support its judicial role.

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<sup>9</sup> <https://www.gov.uk/government/publications/orange-book>

<sup>10</sup> <https://www.gov.uk/government/publications/partnerships-with-arms-length-bodies-code-of-good-practice>

## 6. Form and Functions

### Summary of Recommendations: Form and Functions

**Recommendation 1 (short term):** DfT led by the TC sponsor, to work with the TCs and engagement with the local transport policy forum, to define the Department's current and future priorities for the TCs and how these strategically align to departmental priorities and DfT's Outcome Delivery Plan.

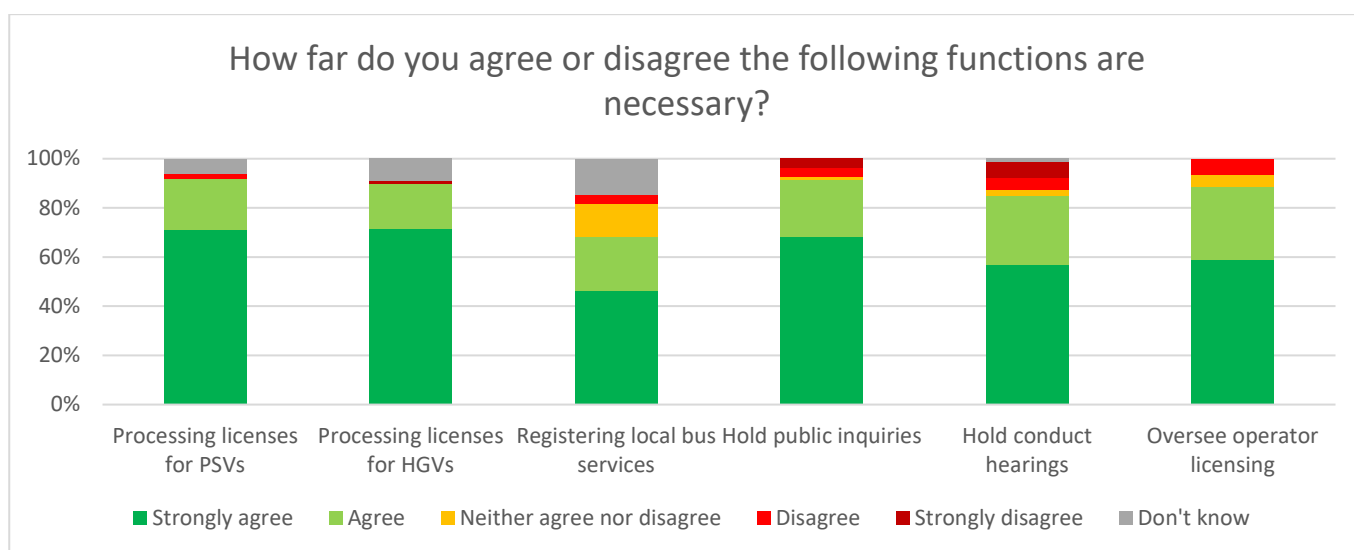
**Outcome:** The articulation of a strategic vision for the organisation, including how it aligns with other government functions, will allow for meaningful consideration to be given to possible legislative reform as well as operational improvements. It will also increase policy alignment across the TC function, DfT and DVSA delivering better outcomes for service users.

**Recommendation 2 (medium term):** The DfT transport policy forum established during this review and presently led by the Public Bodies Centre of Expertise should continue. It should have a defined lead and clear terms of reference, and link to the outcomes of the work in Recommendation 1 (defining the Department's current and future priorities for the TCs).

**Outcome:** Given the broad nature of TC functions, its policy is not owned by a single team with the DfT and engagement with the DfT transport policy forum will initially assist in shaping the recommendations of this review and long term will facilitate meaningful discussions around how existing, new and emerging policy might impact the TC function, better join up policy making, and understand how the TC function itself might be impacted by changes elsewhere or how the TC function can benefit policy implementation and delivery.

## Requirement of functions

- 6.1. The goods and passenger vehicle industries are an integral part of the economy and a huge element of the national infrastructure. In 2020, 176 billion tonne-kilometres of domestic freight was moved within the UK, of which 77% was by road<sup>11</sup>. In 2019/20, there were 4.5 billion journeys on local bus services<sup>12</sup>. There is clearly a significant public interest in ensuring the industries are well-regulated, and a need for DfT to ensure that there are effective regimes of licensing and compliance for those who operate vehicles. In DfT's 2021/22 Outcome Delivery Plan, the priority outcome to 'increase our global impact' notes that a "well-functioning freight and logistics services remain fundamental to the UK's global trade".
- 6.2. Against this background, it is unsurprising that the review has found compelling evidence that the functions carried out by TCs are still required. This is clear from the industry and public responses to the consultation, in which – taking an average over each of the six main statutory responsibility areas – only 5.41% of respondents disagreed or strongly disagreed they were still required<sup>13</sup>. The breakdown of responses against each function is shown below.



- 6.3. This strength of opinion was reinforced during our stakeholder interviews and when reviewing the comments associated with these responses. Operating HGVs and PSVs safely and lawfully is a complex undertaking with potentially fatal consequences if it is not carried out properly. There is a clear rationale for having a licensing system provided for in

<sup>11</sup> Transport Statistics Great Britain 2021: <https://www.gov.uk/government/statistics/transport-statistics-great-britain-2021/transport-statistics-great-britain-2021>

<sup>12</sup> Transport Statistics Great Britain 2020: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/945829/tsgb-2020.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/945829/tsgb-2020.pdf)

<sup>13</sup> The function to register local bus services (outside London) is a slight outlier which has the potential to increase efficiency if it were removed. Views on this function are provided in section 6.

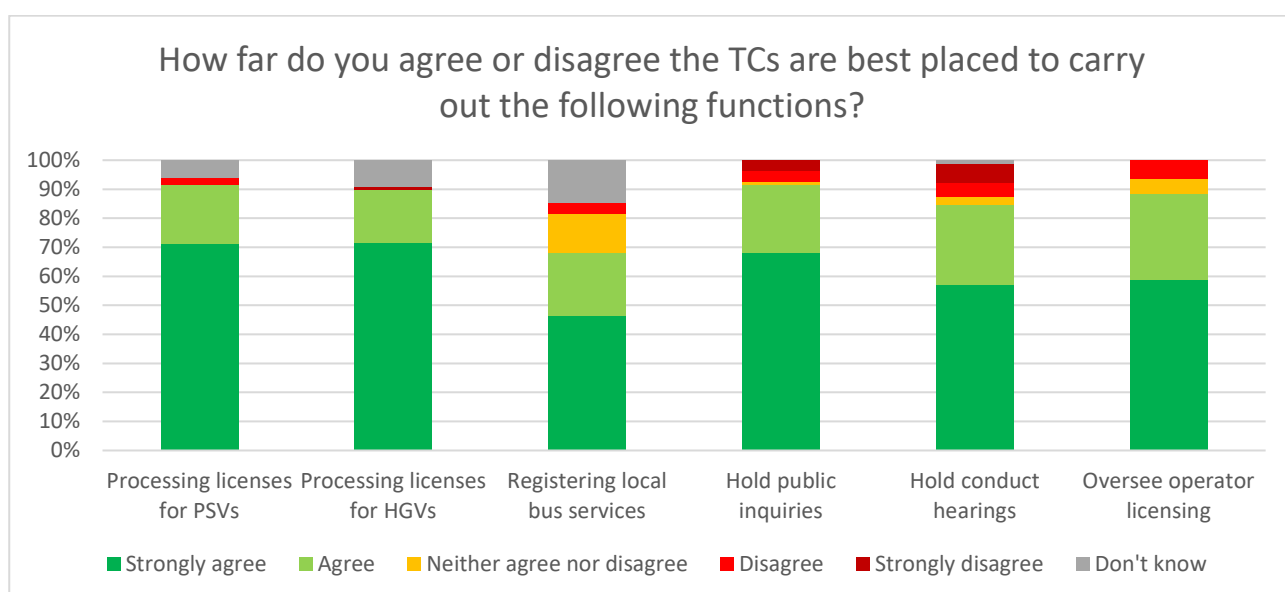
legislation. No evidence has suggested an argument that not having a licensing regime for both HGV and PSV operators is a change worth consideration.

6.4. Similar arguments apply to the compliance functions carried out by TCs. If there are to be licenses issued, there must naturally be a process for challenge when the conditions on which they were given are breached. It was recognised overwhelmingly that something akin to the TC's current tribunal functions is necessary to achieving this. Without compromising the right to a fair trial under Article 6 of the Human Rights Act 1998, it is difficult to see how it would be possible (or desirable) to remove the current system where a judicial determination is made on a decision that has an impact upon a civil right or obligation. Again, no serious arguments against the existence of these functions in something like their status were seen during the review.

6.5. Only six responses to the public consultation suggested giving additional functions to TCs, with no common themes. Given the capacity challenges that will be discussed later in this report, proposals to give additional functions have not been considered.

## Analysis of delivery of functions

6.6. Having concluded that the current core functions should continue, the review looked at whether the TCs are the best option for delivery. The clear consensus provided by respondents to the public consultation was broadly affirmative. On average, over each of the six main statutory responsibility areas, 80% of respondents either strongly agreed or agreed that TCs were best placed to carry out those functions. Only 12% either strongly disagreed or disagreed. The breakdown of responses against each function is shown below.



6.7. While consultation responses should not be the only basis on which policy is formed, the views of the industry under regulation are crucial factors as the ultimate end users and fee payers for the system. Proposing radical changes against such a consensus view would

require robust evidence that an alternative delivery model would work better, or offer much better value for money, than the current TC function.

- 6.8. The most common and significant reason given in support of TCs was the value placed on their independence from central government. They are seen as experts in their field who make impartial decisions on applications and cases without being part of the enforcement setup. Whether discussing licensing or compliance, there was a strong opinion that HGV and PSV operators found it worthwhile to have the flexibility and proportional judgement that judicial consideration brings compared to an administrative process. This is more than the opinion of industry; a DfT stakeholder's view on the TC function was that its "*structure is of assistance to good quality work*". The review has seen first-hand the evidence of TC's commitment to making – and having OTC staff make – high quality decisions following robust standards of judicial consideration. This extends to the licensing function where there is an emphasis on achieving a remarkably high standard of decision-making for every application (although TCs would make the point they are applying the standard as required by statute).
- 6.9. The review also saw evidence of the wider work done by TCs beyond their core statutory functions to assist, educate and inform the industry of matters that affect it. The twin challenges of exiting the EU followed by the Covid-19 pandemic have showed the advantage of having a well-respected and engaged regulatory function which can use targeted messaging to reach specific groups of users in local areas. DfT stakeholders see the adaptability inherent in the current model as being beneficial over the past 18 months. Other Departmental respondents characterised the TCs as being "*open and willing to get involved to support DfT policy work,*" for example being involved in a cross-government project regarding transport safety. Their ability to use targeted messaging was seen specifically in response to a Ministerial request to engage with industry after high-profile instances of bridge strikes.
- 6.10. Industry representatives have also given specific examples of where they feel the TC model adds value. At the start of the Covid-19 pandemic, trade bodies were able to contact TCs directly, explain what direction they required and receive a response with the updated guidance very quickly. This speed was welcomed during such a challenging time, and stakeholders have made the point that a government department or agency would have been unlikely to have provided updated guidance as promptly – TCs have the advantage of having direct control of their function in a way that officials do not. TCs are spoken of, overall, as being open and approachable to discussing questions with operators before they become issues. One trade body representative shared the view of members that "[they] *know they'll have a genuine conversation*" with the TCs who will use the opportunity to attempt to inform and educate before it comes to the point of taking regulatory action.
- 6.11. However, there are also some areas where the current model has clear drawbacks. Only a TC has the power to grant licenses or act against an existing licensee. While there is a scheme of delegation which sets out what functions can be delegated to OTC staff, these are in no way automatic and what is delegated is at the discretion of the individual TC. Under the current legislative framework, Parliament has given TCs acting in a judicial capacity their functions and, rightly, the TCs decide the limited circumstances in which these can be delegated. OTC staff cannot take any decision which might be deemed to be

judicial in nature and which should properly be taken by the commissioner, nor any decision which might negatively affect an operator or other person's rights.

- 6.12. In practice, this creates an inherent issue with TC capacity as only eight individuals are responsible for the whole of Great Britain. This natural bottleneck can, at times, cause delays when submissions for decisions need to be put to TCs for their determination, particularly where there are multiple complex or contentious issues. This appears to affect some TC areas more than others, but in some regions the fact that the TC needs to be personally involved means they are working at, or well beyond, capacity. Hearings, which can be several hours long and are not flexible, occupy TCs' time for large chunks of the day and licensing and other work is managed around them. While there is regional variation, TCs reported regularly working above their notional hours, and a number reported working at weekends and on public holidays. Some TCs had worked considerable extra hours at the time of the review and reported difficulties taking leave. How TCs use time on their judicial functions is outside the scope of this review, but this workload accords with the evidence seen on the volume and complexity of work during field visits.
- 6.13. Having Deputy TCs (DTCs) does relieve this pressure, and the flexibility of being able to deploy deputies for targeted numbers of days across the range of TC work is generally seen as positive. However, there is clear regional variation in how much DTCs are used for this purpose. In some areas this is due to the practical availability of DTCs. Some TCs noted that the flexibility which makes them a useful resource can also be a disadvantage; being suitably qualified often means they have other commitments and cannot be expected to work when it may be most convenient for particular TCs. In some cases, it can be a difficult balance for DTCs to be able to work regularly to keep them operating at maximum effectiveness. How and when DTCs can be deployed is, again, a judicial function that cannot be mandated.
- 6.14. TCs adopted the five principles of better regulation in 2005 and have regard to the government's *Regulators' Code*<sup>14</sup> when determining any general policy or principles about the exercise of regulatory (non-judicial) functions or setting standards or giving general guidance about other regulatory functions. The review has seen that this adds complexity and additional obligations onto TCs wider regulatory work which put them in line with other industry regulators (of which very few, if any, have the same range of responsibilities of TCs).
- 6.15. The TCs for Scotland and Wales have particular functions involving connections to and work with the devolved administrations. These range from some completely novel powers compared to English TCs, to more consultation with the Welsh and Scottish Governments, to taking leadership roles in relation to particular areas of policy. For these TCs, the problem of capacity can be even more acute, with a raft of extra work in addition to the core statutory functions. There is again a limit to how much of this work can be done by the OTC (even if the complement of staff in those offices were at full strength which, as discussed later in the report, is not the case), and the responsibilities of the Scottish and Welsh TCs do not seem to have been developed with the workload of one statutory office

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<sup>14</sup> <https://www.gov.uk/government/publications/regulators-code>

holder in mind. In Wales, some but not all this work is funded by the Welsh Government, though this does not inherently create more TC capacity in Wales. No additional funding is provided by the Scottish Government.

- 6.16. In other organisations where licenses and compliance issues are non-judicial functions, this problem could be solved by scaling up the level of the organisation at which capacity for decisions was needed; the review has seen that this is not a solution in the current TC model where delegations are not controlled centrally. OTC staff cannot directly take the pressure off TCs, although of course having an adequately sized, staffed, and remunerated support function can help make the process of getting those determinations quicker. Having more TCs would appear to be a disproportionately costly solution and it is doubtful whether adding more variation and potential ways of working into the cohort would help.
- 6.17. It should be noted that when the TCs were established, it could not have been envisioned that they would acquire the range of responsibilities and expectations of being a modern regulator for industries of the current size. It is unsurprising that eight statutory office holders, at times, struggle to balance the workload of licensing, compliance, education, and industry engagement, all the while aligning its activities to the principles of better regulation. The OTC, while working hard to support the TCs carry out their duties, can only provide so much assistance. Alternative delivery models are considered below, however these risk watering down the strong positive work that the unique TC model brings to the industry. Recommendations which are more likely to be able to free up TC capacity, while not radically altering the current form or potentially losing its advantages, are proposed in Section 6 on efficiency and effectiveness. A golden thread of this review is the need to target a very finite TC resource at the areas where they can truly add most value, considering their unique position in the industry and the skill sets for which they are appointed.
- 6.18. It is a DfT policy decision whether the benefits of the current form identified are considered important enough to be retained for the industry. If so, it should be recognised that the current deficits in the setup are partly a result of a lack of strategic vision for the TCs over an extended period. There appears to be an absence of clarity around how TCs fit into DfT's overall strategy for the industry (beyond, of course, carrying out their core functions which, as has been identified, should not be seen as the whole of their contribution). This view is shared by at least a section of the industry; one stakeholder who has an otherwise deep understanding of the landscape, has admitted the industry is not always clear for what the distinction between the remit of DfT, DVSA or the TC function is or who has lead responsibility for which areas beyond operational delivery.
- 6.19. TC's functions have, in the past, been added or changed without reference to an overarching plan or vision for how they fit in the policy landscape (or the reality of the TC capacity limitations). DfT and TCs would benefit from a full and shared understanding of how the TCs statutory and non-statutory functions fit into the Department's vision for the industries, and where there is duplication or opportunities for more effective and planned collaboration. This should be done with reference to what is achievable given the finite resource of TCs, and factoring in the additional functions of the Welsh and Scottish TCs. This exercise will require some dedicated attention and resource on the TC function but

will better ensure that the Department is getting maximum value from TCs, and that their activities are best aligned to Ministerial priorities.

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**Recommendation 1 (short term):** *DfT led by the TC sponsor, to work with the TCs and engagement with the local transport policy forum, to define the Department's current and future priorities for the TCs and how these strategically align to departmental priorities and DfT's Outcome Delivery Plan.*

**Outcome:** *The articulation of a strategic vision for the organisation, including how it aligns with other government functions, will allow for meaningful consideration to be given to possible legislative reform as well as operational improvements. It will also increase policy alignment across the TC function, DfT and DVSA delivering better outcomes for service users.*

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6.20. There is a particular concern around considering future additional TC functions. The review has heard various policy initiatives which are considering giving additional roles to the TCs or changing parts of functions, for example around autonomous vehicle licensing. The review also heard that some policy teams were not clear of the Departments local transport strategy and where decisions are planning to be handed over to regional, mayoral, or other local government bodies consistently, or where the TCs can add value. There has not been enough joined-up work with and across the Departments' transport policy and sponsorship teams to analyse the impact of these potential changes. There have been instances where TCs have not been consulted on statutory changes that have added additional powers to their roles. Given a context where capacity is already an issue, there is a real risk that adding more functions without reference to a clear and realistic plan for the TCs will cause the function to be overwhelmed. A DfT transport policy forum was established by the DfT Public Body Centre of Expertise that assisted the review team engage with the wide transport policy community of practice in DfT and this should be maintained to begin to resolve this, on which the TC and OTC is represented. Early engagement with the TCs and OTC on policy issues which may affect the function now and into the future is clearly essential.

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**Recommendation 2 (medium term):** *The DfT transport policy forum established during this review and presently led by the Public Bodies Centre of Expertise should continue. It should have a defined lead and clear terms of reference, and link to the outcomes of the work in Recommendation 1 (defining the Department's current and future priorities for the TCs).*



*Outcome: Given the broad nature of TC functions, its policy is not owned by a single team with the DfT and engagement with the DfT transport policy forum will initially assist in shaping the recommendations of this review and long term will facilitate meaningful discussions around how existing, new and emerging policy might impact the TC function, better join up policy making, and understand how the TC function itself might be impacted by changes elsewhere or how the TC function can benefit policy implementation and delivery*

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## Alternative delivery models

### Option One – Move the whole function to another body

6.21. There are feasible alternative models to deliver both the licensing and compliance functions, although ‘lifting and shifting’ them together in their current form to another body would seem to create little advantage. The requirement for something akin to a tribunal to exercise the compliance role constrains what form that other body could realistically take and there is no reason to believe it would not experience the same kinds of drawbacks identified in 5.11-5.12. On that basis, this option was not explored in more depth as the review team concluded that it moved rather than resolved problems.

### Option Two – Split the function

6.22. The issue of whether it is positive to have the licensing authority co-located with the compliance function appears to often polarise opinion, even within the TC cohort. On one hand there is a logic to having the authority for deciding when standards by license-holders have not been met be the same as the one deciding whether entrants to the system can meet those standards. “Fronting” (using another entity’s operator license to conceal the fact that one is not held) and “phoenixing” (where assets of one company are moved to another entity without the obligation to pay its debts) are problems in the industry which would seem better handled by new applications coming to the same authority which may have taken regulatory action on the same issue in the past. One industry stakeholder summarised the issue by noting:

*“Oversight of operator licencing by the Traffic Commissioners facilitates a one-stop process: the entire lifetime of a licence, from application to termination is overseen by one regulator, applying uniform principles with Statutory Directions and Statutory Guidance issued by the Senior Traffic Commissioner for all licences.”*

6.23. On the other hand, there was evidence that licenses could be issued more efficiently (that is not to say better) by a separate authority. A parallel was drawn between how MOT testers are certified, on behalf of the SoS, by officials using an administrative mechanism. DVSA officials apply one national standard to all applications using what is a quick and efficient process. A system like this, if applied to operator licensing, would be in stark contrast to the current setup where local TCs are responsible for making a judicial determination on an application and the consequent impact on processing routes and timescales. It is easy to see how this could lead to a more streamlined, standardised, and faster application system. The more pertinent question is whether it would lead to any

degradation in the quality of applicants being granted licenses, and consequently the safety of our roads, and if so, whether this is an acceptable trade-off for faster processing times.

6.24. Some stakeholders involved in licensing believed the same people would end up with licenses granted and refused even with a more administrative system. While MOT testing is different from licensing operators of HGVs and PSVs, those who advocate for the change make the point that granting MOT testing certificates to those unfit also comes with dire consequences for road safety. It is impossible to compare a hypothetical system with the current process and to say with any level of assurance what areas of concern in applications are currently picked up and refused by TCs that may slip through the net of a national, standardised, and administrative system. If there is appetite for analysing this difference, that would need to be included in the decisions around future vision for the TCs in Recommendation 1. It is understood that a change to make licensing an administrative process would require the fundamental underpinning legislation to be reformed. It has been established that there would at some point need to be a judicial appeals mechanism, so cases which are appealed (the more contentious applications which would be the ones which currently occupy more TC time anyway) would need to be looked at by somebody in a TC role or via another judicial route. This risk would need to be carefully mitigated to avoid introducing another layer of decision-making which would increase duplication and rework and diminish the returns.

6.25. A recent case<sup>15</sup> at the Upper Tribunal against a decision of the Head of the Transport Regulation Unit in Northern Ireland (the equivalent of a TC in Great Britain) highlights another risk of having the work of TCs done by administrative staff. In its judgment, the Tribunal noted that in such a system the Department (in this case, the Department of the Environment in Northern Ireland) must suffer the consequences if the seniority of the decision-maker means it is not able to undertake its functions at the required level. Having judicial TCs reduces the risk to DfT of similar criticism.

6.26. If the licensing function were to be hived off to a non-judicial body, the TCs would lose their role as direct gatekeeper to the industry and reduce the detailed end-to-end oversight of the sector which, as we have set out, is seen by industry and policymakers as one of its current benefits. They could remain with just a compliance function, as many regulators do, although most other regulators are not also tribunals. With the loss of link with the operational function of granting licenses, and without the full benefits of gatekeeper, it would be more difficult to argue that TCs are distinct enough to retain as an NDPB rather than to be integrated with the unified tribunal system. This review has found there are good arguments for keeping and improving the current form, but it is recognised that there are reasons for removing the current licensing function if that is a desirable policy option.

## Conclusion

6.27. Based on the considerations outlined above, the review team concluded that the best option for the TC function was to improve the current delivery model in accordance with

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<sup>15</sup> Trevor Cathers and Trevor Cathers Ltd: [2021] UKUT 302 (AAC)

the recommendations of this review, continuing the co-locating of administrative and judicial functions in the same organisation. However, that is not to say that the other delivery models discussed here could not be made to work were there a preference to do so, but a recognition that there was no consensus in support of shifting and/or separating the judicial and licensing functions and that such reforms alone would be unlikely to resolve operational issues within the function.

- 6.28. If there was a desire to split the administrative and judicial functions of the TC function, then the rationale for retaining the TCs as a standalone organisation would be severely diminished and it would be necessary to give real and meaningful consideration to deliver the judicial functions from within the governments unified tribunal system.

## 7. Efficiency and Effectiveness

### Summary of Recommendations: Efficiency and Effectiveness

**Recommendation 3 (longer term):** In order to streamline the efficiency of statutory functions and release TC capacity, DfT should give consideration - at pace - to which of the TCs' 36 options for legislative change should be implemented.

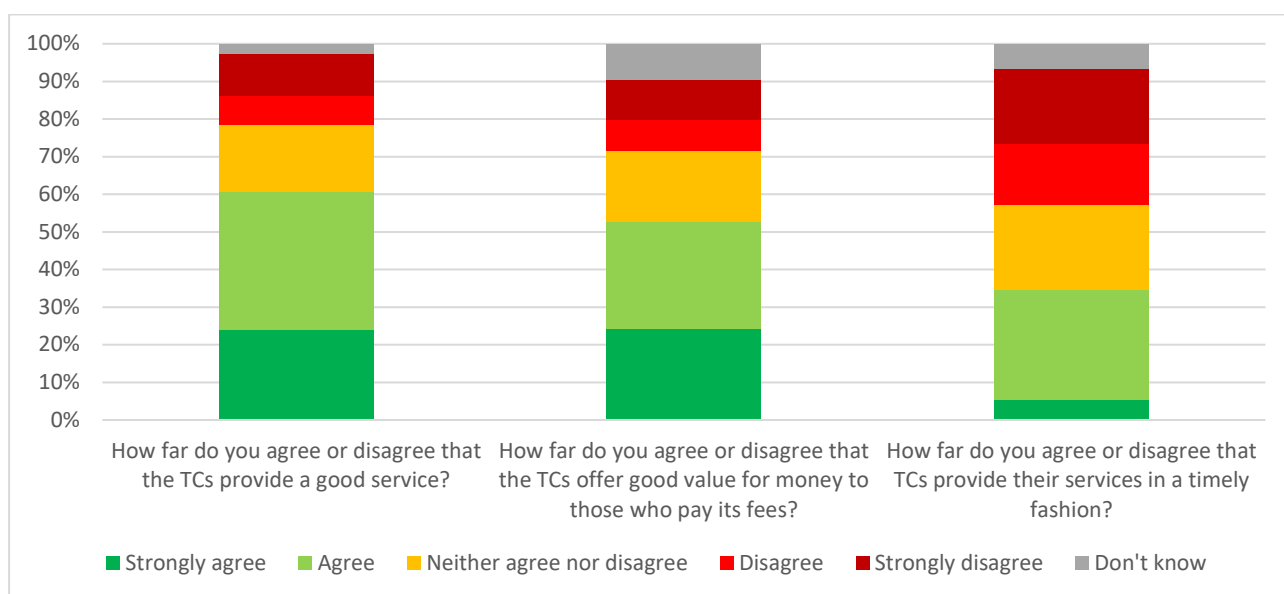
**Outcome:** This would minimise the risk of duplication and would ensure that changes are arrived at collaboratively and via consensus where possible and in advance of this work, the TCs had already given a great deal of consideration to issues that would be best resolved through legislative reform and the Department should consider this when considering potential future reforms.

**Recommendation 4:** DfT should proceed with the change to allow the TCs to make tribunal rules, which should include cost orders.

**Outcome:** With increased powers, the TCs would be better able to manage their hearings which should make them both more effective and more efficient in the longer term. Further, these powers would also demonstrate the independence of the function and bring it more in line with other tribunal jurisdictions.

## Efficiency and Effectiveness

Evidence of how efficiently and effectively the TC function operates was assessed from three main sources: industry/public views, performance metrics, and analysis of the processes as seen on field visits and through stakeholder questioning. The public consultation asked whether the TC function provided a good service; whether it was value for money for those who pay its fees and whether the service is provided in a timely manner. The results are shown below:



## Overall level of service

7.1. 60.76% of respondents either agreed or strongly agreed the TC's provide a good service, compared to 18.99% who disagreed or strongly disagreed. Some caution must be taken with the weighting of this result – individual responses made up two thirds of those who disagreed or strongly disagreed, whereas only one of the 17 respondents representing over 1,000 people fell into that category. Care has been taken not to disregard the comments or opinions of members of the public responding as individuals, but they are, likely to have a smaller sample of experience with the TC function to draw on compared to organisations which interact more regularly.

## Value for money

7.2. Roughly the same percentage of people as above strongly disagreed or disagreed that the TCs offer fair value for money (18.92%) with 52.7% strongly agreeing or agreeing. Whether the TCs offer this can often depend how they are viewed: some stakeholders can see the TCs a simply a license processing function, in which case it can naturally appear expensive. In 2020/21, TCs issued 5,064 new licenses and 7,023 publishable variations at a cost of £17,751k. This would appear to make a high unit cost, but there are no particularly useful comparators, even within the road licensing sector, because no other

body has responsibility to work within the unique requirements of the HGV and PSV licensing regime.

- 7.3. In any case, taking this view ignores the compliance and wider regulatory work done by the TCs which is of equal importance to many in the industry, and to policy makers within DfT. The passenger and goods vehicles industries (which directly employ more than half a million people)<sup>16</sup> receive the benefit of a licensing authority, first-tier tribunal, and general regulator for the cost of the TC function. The Office for Rail and Road (ORR), which issues train operator certificates, cost double (£32,325k) in 2020/21<sup>17</sup>. Naturally, the ORR's functions are not comparable to the TCs,' and they also do not operate a first-tier tribunal service for their regulated industries.
- 7.4. A better way to establish value for money is to look at the fees paid by operators for licenses. The cost for an operator is an application fee of £257 and a fee payable on issue of £401. This will cover a new license for five years, after which a continuation fee of £401 is payable to continue the license. While these fees may not be insignificant for a sole trader or small company, particularly in the current economic climate, for a business of any scale they are negligible compared to the costs of operating vehicles. The fees are variously compared to half a tank of diesel for an HGV or the cost of one tyre. Even adjusting for the fact that the fees do not currently cover the whole cost of the function (see section 8), operators receiving the current range of services and the apparent levels of satisfaction for such a small outlay appears to equate to good value for money for most of the industry and gives no cause to doubt the value for money satisfaction results of the public consultation.

## Timelines and efficiency

- 7.5. The question on timeliness had the most negative responses, with 35.53% disagreeing or strongly disagreeing that TCs provide services in a timely fashion compared to 34.21% who agree or strongly disagree. Analysing the negative views of timeliness further, there appear to be three main contributing factors: an impression that the OTC is under-resourced (which is considered in section 7 of this report); specific frustrations with the delays brought on by the Covid-19 pandemic and views that the whole licensing framework should operate quicker.
- 7.6. Concerns around timeliness are well understood within the function and, until recently, the OTC was making good progress in reducing processing times for licenses and listing hearings. However, the impacts of the Covid-19 pandemic, particularly on slowing down the time taken for communication, have had a severe impact on these timescales. The TC function is by no means alone in government departments and agencies suffering delays because of the impacts of the pandemic, and this was exacerbated by a higher-than-

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<sup>16</sup> This includes only those employed direct roles in ONS's Employment by industry (Labour Force Survey), with the whole Transport and Storage sector employing around 1.5 million people. Vastly more people are indirectly affected by the TC's regulatory work as road users.

<sup>17</sup> <https://www.orr.gov.uk/sites/default/files/2021-06/orr-annual-report-and-accounts-2020-21-web.pdf>

average number of applications for a sustained period in 2020 (a total of 16,206 applications for the year against an average of 13,863.) Pre- and post-Covid statistics are illustrated below:

	<b>Target</b>	<b>April 2018 – March 2019 (average)<sup>18</sup></b>	<b>March 2019 – April 2020 (average)<sup>19</sup></b>	<b>April 2020 - September 2021 (average)<sup>20</sup></b>
<b>Average processing time to determine applications for goods vehicle operator licences where a Public Inquiries (PI) is not held</b>	35 days	40.79 days	36.45 days	49.3 days
<b>Average processing time to determine applications for PSV operator licences where a PI is not held</b>	35 days	70.7 days	50.1 days	53.3 days
<b>PIs listed within 12 weeks of the TC decision to call</b>	95%	89.3%	98.2%	85%

7.7. The Service Level Agreement between the Traffic Commissioners and DVSA sets the target for license processing time at 35 days and percentage of PIs listed within 12 weeks at 95%. HGV license processing times had approached this target, pre-Covid, and work was on-going to bring down PSV license processing down times (and had already reduced them by almost 30%). PSV license statistics are complicated by applications for restricted licences taking significantly longer than for standard operators, due to additional checks required, which is reflected in the higher average figure.

7.8. Pre-Covid figures give confidence that the current model can achieve required targets, despite the complexities of the OTC interaction with a judicial function, and difficulties with recruitment which will be explored in section 7. Listing most cases within 12 weeks compares favourably to other tribunals – Immigration Tribunals are understood to have a

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<sup>18</sup> Traffic Commissioners Annual Report 2019/20:  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/904386/200727\\_Annual\\_Report\\_Final.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/904386/200727_Annual_Report_Final.pdf)

<sup>19</sup> Traffic Commissioners Annual Report 2020/21:  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1036434/Traffic\\_Commissioners\\_for\\_GB\\_Annual\\_report\\_2020-2021.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1036434/Traffic_Commissioners_for_GB_Annual_report_2020-2021.pdf)

<sup>20</sup> As per in-year MI data

43 week wait to hear cases and Employment Tribunals are reporting six-month delays, both suffering from the same challenges the pandemic has brought.

- 7.9. This is not to say that further improvements cannot be made, even after KPIs have recovered from the effects of the pandemic. OTC staff and the TCs are well-versed in the parts of the process that can be improved and areas that can work better, and there is a strong commitment, including within DVSA, to beating the KPIs rather than just meeting them. The review team has seen first-hand the efforts that OTC and DVSA staff, with the TCs, are putting in to upskill staff and improve results, and the function should be commended for the progress it made before the pandemic and the way it has responded to limit impacts further in the past 18 months.
- 7.10. The immediacy of some stakeholders' frustrations with the recent slowdowns has undoubtedly weighed down satisfaction, but there is a more fundamental feeling that some parts of the statutory framework underpinning the TC function have become out of step with the expectations of a modern regulator. What can appear to the end user to be bureaucratic slowness or inefficiency can often be traced back to requirements of legislation or procedure that was developed in the 1980s and 1990s. Paper operator discs are still required to be issued, at a time when electronic databases and advances such as automatic number-plate recognition are being used by other agencies to better effect. There is no ability for TCs to issue GB-wide licenses so operators must apply for new licenses when moving into various parts of the country.
- 7.11. TCs have identified 36 such opportunities for legislative change that could streamline or strengthen the law governing their functions. The triennial review also made some of these recommendations. While it will require policy work to analyse the impacts of each and decide whether or how far they should be implemented, on face value there appear to be a number of suggestions which could increase efficiency and link well with the findings in this review. These changes can be planned in light of the work to think more strategically about the TC function in Recommendations 1 and 2 and have the potential to relieve some of the capacity issues on TCs, by ensuring they are not applying legislation that is out of date or unnecessary.

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**Recommendation 3 (longer term):** *To streamline the efficiency of statutory functions and release TC capacity, DfT should give consideration - at pace - to which of the TCs' 36 options for legislative change should be implemented.*

**Outcome:** *Implementing selected legislative changes offers significant potential to streamline and strengthen delivery of TC functions. Selecting changes through collaboration with the TC function and utilising analysis already undertaken, would create benefits for the function and its relationship with the Department.*

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- 7.12. Two of these opportunities for change relate to removal of specific functions of the TCs – registering local bus services and assessing the environmental suitability of centres designated as parking locations for HGVs. There is already DfT policy work underway to



consider the former, and the latter was a recommendation from the triennial review which still stands. The review found little evidence that TCs considering environmental impacts adds significant value compared to it being considered elsewhere in the planning process; most stakeholders agreed it was an unnecessary call on resources, and anecdotally it was reported that local residents often found the powers of the TCs to be unsatisfactory in addressing their concerns, and that this function created an unrealistic expectation of what the TCs were able to do.

- 7.13. A significant gap in TCs powers appears to be their lack of ability to make binding rules to regulate the procedure before them, to ensure the smooth running of their tribunal function. This was proposed by the triennial review and a consultation exercise was held in 2019 to assess industry views. In its response<sup>21</sup>, DfT committed to considering the opportunities for *“introducing formal tribunal rules, which will be beneficial to the Traffic Commissioners’ tribunal functions. DfT would like to see all the options listed in the consultation covered in formal tribunal rules and will also consider the other suggestions from respondents when drafting the updated rules.”*
- 7.14. For the sake of completeness, this review continues to find that tribunal rules would be beneficial for the efficiency of the TC function, to help smooth the operation of cases before them. It would be particularly beneficial to stopping the late submission of documents or submissions on the day that can impact on the time taken to run hearings. It is also likely that cost orders, as are used in other tribunal settings, would deter unmeritorious applicants from proceeding with a tenuous or unsound case, helping to focus TCs’ time on cases with real merit. The introduction of rules provides an opportunity to introduce a statutory “Chamber President” role in line with other tribunals, which will be discussed in section 7.

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**Recommendation 4 (longer term):** *DfT should proceed with the change to allow the TCs to make tribunal rules, which should include cost orders.*

**Outcome:** *With increased powers, the TCs would be better able to manage their hearings which should make them both more effective and more efficient in the longer term. Further, these powers would also demonstrate the independence of the function and bring it more in line with other tribunal jurisdictions.*

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- 7.15. Finally, to avoid duplication, this review has not re-considered the options for efficiencies that were set out in the PA Consulting review in 2019. The issues in that review are likely to have remained unchanged in the brief time since and are presumed to still be relevant if DfT and DVSA intend to consider its recommendations.

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<sup>21</sup> <https://www.gov.uk/government/consultations/public-service-vehicle-operator-licensing-and-tribunal-rules-legislative-changes/outcome/consultation-on-making-legislative-changes-to-the-psv-operator-licensing-system-summary-of-responses-and-outcome>

## 8. Governance and Accountability

### Summary of Recommendations: Governance and Accountability

**Recommendation 5 (longer term):** The TCs should be consolidated into one independent tribunal body with a statutory President rather than sit as eight individual tribunals.

**Outcome:** This will provide better governance structures, as well as tribunal rules. Removing eight individual and independent office holders makes managing the organisation less complex and removes duplication and an unnecessary complexity in reforming policies and processes. This change could be done without undermining the independence of TC decision-making as is the case in other tribunals.

**Recommendation 6 (longer term):** There should be a statutory President role established to head up the single tribunal body in Recommendation 5.

**Outcome:** This would replace the role of the Senior Traffic Commissioner and allow for improvements to governance arrangements, as well as clarifying lines of accountability. Such a change would make the function more like other tribunals which have a chamber president.

**Recommendation 7 (medium term):** There should be a decision-making body within the TC function that allows for both executive and independent non-executive input at appropriate times, including when positions are taken that may affect finances (while assuring judicial independence is maintained).

**Outcome:** This will strengthen governance structures within the function, and between the TC function, DVSA and DfT, and align with best practice. Such a change would, in a proportionate and cost-effective way, standardise governance arrangements, making them like those in other ALBs, as well as reducing the amount of time individual TCs are spending focused on corporate issues at the expense of their core functions.

**Recommendation 8 (medium term):** Good corporate governance expects a level of executive authority, support, and challenge, therefore the TC Function should have a dedicated senior Chief Operating Officer (COO), or equivalent, as a dedicated resource managing the OTC staff, and to engage across a wide range of stakeholders including the devolved administrations of Scotland and Wales, a diverse range of DfT transport policy teams, acting as an advocate for the TCF with DVSA and DfT Sponsor. This will ensure improved policy change and integration of work within the TCF. This increased cost will be dependent on delivery of fee reform to fund. (see Recommendation 10c).

**Outcome:** The DVSA Director of Enforcement presently manages OTC staff, however this relationship whereby they oversee the staff of the OTC enhances a perception and inherent legal risk, that the TC function is 'managed' by DVSA Enforcement, despite being a party to its hearings. In the medium term a COO will remove this perception and risk and improve stakeholder engagement across the devolved administrations of Scotland and Wales, as well the number of policy areas reflected within the DfT Policy Forum. This will ensure the TCs statutory

functions are properly considered in policy developments, whilst independently representing the TCF with the DVSA and DfT Sponsor. Longer term following reforms to the TC structure, the COO will minimise the time the Senior Traffic Commissioner needs to be involved in administrative matters, so they may focus on their role as both a Chamber President and a Traffic Commissioner, and easing some of their capacity issues, and they will manage and develop OTC staff in delivering the enhanced services following reforms.

**Recommendation 9 (short term):** DfT should provide a more robust and appropriately resourced sponsorship function. Enhanced sponsorship should be anchored in a new framework document setting out the governance relationship between the TCs and DfT, separate from DVSA. These activities should align with the CO's minimum expectations for ALB sponsorship, particularly in terms of relationship management and agreeing strategy and ensuring full compliance with the requirements set out in Managing Public Money.

**Outcome:** Enhanced sponsorship would ensure that the organisation is better aligned to, and compliant with, central guidance like Managing Public Money and the Corporate Governance Code, as well as ensuring that risks are managed from an earlier point. Further, the team would also act as an advocate for the TC function within DfT whilst also challenging them and holding them to account for their financial performance. To note, this should not involve the Department seeking to influence individual decisions or otherwise encroaching on the judicial aspects of the function's work.

- 8.1. The TC function has gradually evolved over time, without necessarily aligning to a longer-term strategic vision of a clear policy delivery framework. As such, its organisational structure and governance and sponsorship arrangements are relatively unique with no exact equivalent across government, representing a significant divergence from centrally produced guidance and recognised best practice. The review has assessed the reasons for this, the impacts that has on operations and whether there is sufficient justification to maintain these bespoke arrangements where they depart from recognised principles of good governance.
- 8.2. The DVSA Chief Executive is Accounting Officer (AO) for the TC function, with the Head of OTC reporting on a delegated budget through the DVSA Director of Enforcement, a member of the DVSA senior management team. Most formal governance, therefore, particularly around finance, is overseen, assured, and agreed through DVSA structures as most of the function's costs relate to the running of the OTC. Relevant OTC staff appear to be integrated into budget and corporate management structures which report up to the DVSA Board. This review has not assessed DVSA's reporting and governance structures, which are likely to be subjected to review under Cabinet Office's new Public Bodies Programme, but there is no reason to believe these do not conform to the standards expected in MPM and the HMT/Cabinet Office Corporate Governance code. This arrangement seems to satisfy the requirement in MPM that *"the accounting officer of a sponsor department should make arrangements to satisfy himself or herself that that the ALB has systems adequate to meet the standards in box 3.1 [standards expected of the accounting officer's organisation]."*
- 8.3. Sensitivities and difficulties arise because DVSA, through the OTC, provides the essential support (staff, estates, IT etc.) for the TCs to fulfil their statutory and judicial functions. This is not in itself a particularly novel arrangement: many government departments (including the MoJ) have ALBs staffed by civil servants employed by the sponsoring department who act as an executive function to a Board or group of Commissioners. HM Courts and Tribunal Service (HMCTS) is a neat parallel, where an Executive Agency services a group of judicial appointees (the difference being the judiciary is not an NDPB but has a unique constitutional role and relationship with ministers).
- 8.4. Problems with current arrangements become more evident when TCs expect to have a voice when decisions around how the OTC operates, and how public money is spent in relation to it. This expectation is entirely legitimate, as the OTC exists to enable the TCs to carry out their functions. However, as a group of office holders appointed by DfT ministers, there is no formal role for the TCs to influence how the DVSA AO – or those with authority delegated from her – discharge their responsibilities in relation to decisions around spending public money. Instead, a Service Level Agreement (SLA) was agreed in March 2021 which formalises the agreed level of service and the role of TCs in decisions around budgets and issues relating to the OTC.
- 8.5. This SLA, while only relatively recently formalised, is a positive step in setting out the roles and responsibilities of each party in operational decisions, and it has been suggested it is so far working well in this regard. However, a particular concern is that the SLA is largely silent on what happens when either the TCs or DVSA disagree on a particular interpretation, or – in cases where TCs are to be consulted on an issue – what happens when a decision is reached which contradicts the TCs' views. There is a specific route of

escalation to DfT for issues of office layout, and a general escalation route to terminate or amend the SLA if agreement cannot be found. This is more than a theoretical problem – during the review, several examples of TCs and DVSA holding differing views on parts of corporate or operational provision were explored, which ranged from estates to staffing, data protection and budget issues. While most appear to be resolved, it creates polarised attitudes, impacts on trust, and takes up valuable DVSA, OTC and TC time to come to closure. It should be said that there is no suggestion that DVSA officials or TCs will not use their best endeavours to find a pragmatic solution in the event of disagreement. Nevertheless, this does represent a governance risk that should be mitigated so as not to rely on good will.

- 8.6. The core issue is that in practice TCs' views play more than a small role in decisions around directing public money. However, TCs are not finance or corporate experts; they are chosen for their unique skills in carrying out complex and specific statutory and judicial duties. They also have no requirement as part of their roles to consider the wider public finance angle of their positions as it relates to DVSA and are not held to account for the spending of public monies. This is at odds with a key principle of MPM that “*every ALB [which would include the TCs] needs effective internal controls so that it can live within its budget allocation and deliver its objectives.*” This is further complicated by the fact that, at present, fee levels are insufficient to allow the service to cover its own costs, as was originally intended, and any real attempt by the TCs to deliver within the budget allocation assigned to the TC function would likely result in a severe degradation of operational delivery and a general atrophy of the function. The fee structure is covered in more detail at section 8.

## Reforming governance structures

- 8.7. There is a non-statutory TC Board which includes all the TCs and is designed to come to agreed positions on issues which affect the group. The Board has an Audit and Risk Sub-Committee, which reviews risk processes and management response to audit issues. These governance groups are themselves an incredibly positive advance and a commendable way of bringing corporate structure to independent NDPB tribunal office holders and should be recognised as such. The whole function would now benefit from this Board moving towards being constituted more in line with the composition expected in the Corporate Governance code and HMT's specimen framework document for ALBs. Specifically, having a balance of executive and non-executive input with a variety of experiences – including independent non-executives drawn from within the DfT boundary, wider government or outside the public sector. A formally constituted board of this nature should assume a responsibility, on behalf of the Traffic Commissioners, for observing central government guidance and standards (e.g., Managing Public Money), including delivering value for money and efficiencies.
- 8.8. Allowing tribunal rules to be made (see 6.14-6.15) will necessitate forming the TCs into one tribunal chamber rather than the current setup of eight individual tribunals. It is likely this would require primary legislation to achieve but brings opportunities to better balance the benefits of the local TC model with the tribunal chamber model present in most other jurisdictions. TCs would still be deployed by the Senior Traffic Commissioner to local areas, and each would have the independence and autonomy expected from a tribunal

judge, but there would be a national set of rules regulating the procedure with which parties to a hearing would be expected to comply.

- 8.9. The alternative of having separate rules for each TC, would be unworkable from a point of view of consistency across areas and meeting the expectations of a standard of service from the industry. Further, it would complicate the drafting, agreeing and application of these new rules which would seem to minimise the benefits that such a change would bring. As such, the review team considers that the establishment of a single chamber and the creation of tribunal rules would deliver maximum value if both recommendations were adopted in parallel.

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**Recommendation 5 (longer term):** *The TCs should be consolidated into one independent tribunal body with a statutory President rather than sit as eight individual tribunals.*

**Outcome:** *This will provide better governance structures, as well as tribunal rules. Removing eight individual and independent office holders makes managing the organisation less complex and removes duplication and an unnecessary complexity in reforming policies and processes. This change could be done without undermining the independence of TC decision-making as is the case in other tribunals.*

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- 8.10. These changes create the opportunity to have a formal tribunal President role with the responsibility for the day-to-day judicial administration of the TCs, akin to the heads of other tribunal jurisdictions. The current STC role, while a step forward in terms of being able to interpret the law and issue guidance to other TCs, does not currently bring the benefits of having a formal 'Chamber President'. As well as having one person responsible for jurisprudential consistency, a President role would also be able to have oversight and better regulate the workload and direction of resources of TCs, helping them focus as a group on where they can add most value as a tribunal. Further, it seems logical that the creation of a single chamber would necessitate a more formal leadership role, otherwise there would still be a need for consensus positions to be formed with the TCs which would perpetuate some of the problems of the current TC structure.

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**Recommendation 6 (longer term):** *There should be a statutory President role established to head up the single tribunal body in Recommendation 5.*

**Outcome:** *This would replace the role of the Senior Traffic Commissioner and allow for improvements to governance arrangements, as well as clarifying lines of accountability. Such a change would make the function more like other tribunals which have a chamber president.*

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- 8.11. A President role has a synergy with creating a more streamlined Board, and the President (plus a small number of nominated TCs, for example from Scotland and Wales) could represent the TCs' judicial point of view when decisions are being made that affect the group. This would have the advantage of being a smaller, more agile structure to bring focus and balance to discussion of corporate issues. Importantly, it would help mitigate the problem of TC capacity by routing corporate decisions through a smaller number of TCs. The current form of TCs as eight separate bodies (as well as creating capacity issues) means less ability to act 'as one' under a guiding sense of purpose, which a President role would help resolve.
- 8.12. It is not the intention that any non-judicial members should have a say on positions or decisions which affect only judicial matters – that is clearly the purview of TCs only, and the independence of judicial decision-making is sacrosanct. The Terms of Reference of the Board would have to clearly delineate corporate issues (and make sure even those still have the appropriate judicial input on any impacts on statutory functions), and there should be a separate forum for TCs to discuss only matters around their judicial role and decision-making functions. This could, in part, act as the tribunal procedure committee, to keep the tribunal rules under review and relevant as legislation or other factors change, supporting the President to issue practice directions as required.

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***Recommendation 7 (medium term):** There should be a decision-making body within the TC function that allows for both executive and independent non-executive input at appropriate times, including when positions are taken that may affect finances (while assuring judicial independence is maintained).*

***Outcome:** This will strengthen governance structures within the function, and between the TC function, DVSA and DfT, and align with best practice. Such a change would, in a proportionate and cost-effective way, standardise governance arrangements, making them like those in other ALBs, as well as reducing the amount of time individual TCs are spending focused on corporate issues at the expense of their core functions.*

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- 8.13. In addition to better following good practice for governance of public functions, such a change would have several advantages: as well as bringing the requisite corporate and operational expertise to TCs' positions, it would add weight to these positions for the DVSA AO to know they have been appropriately challenged by independent non-executives. If used properly, it would increase the capacity of the TCs by allowing them to focus more on the delivery of their statutory and judicial functions and being less involved in the minutiae of operating a corporate body. The skillsets necessary to do both are not the same, and the TCs are appointed to do the former. Having a specific body to take the lead on TC-related corporate affairs should even out decision-making, of which the majority currently falls to the STC.
- 8.14. This change also helps to future-proof the TC function – as noted previously there are policy initiatives that are considering giving more responsibilities to the TC and OTC. This

may result in a stage where the amount of public money routed through the function means it requires its own AO delegation, in which case the function will have appropriate corporate governance structures to be scaled up to manage this. Further, any increase in TC functions would need to be matched by an increase in capacity. On that basis, TCs should focus on areas where they add the most value and where their unique and highly valuable skillset is best deployed, and governance structures should support this.

- 8.15. The detail of how the Board is constituted would be best decided in a tri-partite TC/DVSA/DfT forum. It is important that whatever format is chosen is proportionate to the current size of the TC function, with suitable options for scalability. In the current framework, where TCs are taking positions which affect DVSA provision rather than directly making decisions, it is clearly not proportionate to over-engineer this solution by creating structures that are costly or unwieldy. The important principle is that there should be a move to include more well-rounded contributions which include executive and independent non-executive views.
- 8.16. Without these changes, the function would continue to deviate from central guidance and best practice which may lead to increased pressure from central government to restructure the organisation more in line with other NDPBs. As discussed below, the current hybrid model delivers an effective and efficient service to system-users and wholesale reform is unlikely to deliver additional benefits. As such, it would seem preferable to make some minor changes to internal governance structures to avoid the need to make more significant, and potentially more disruptive, ones in future.

## Senior executive leadership

- 8.17. Good corporate governance includes an expectation that there is an appropriate level of executive authority within the decision-making structure. The current Head of OTC is a Grade 7 who reports into a DVSA Director. The post-holder does a challenging task well, balancing the requirements of TCs against operational pressures facing the OTC and the normal challenges that come with managing budgets and staff. However, the OTC would benefit from a Chief Operating Officer (or equivalent) role which would take the executive lead like a Chief Executive in a traditional ALB. Some of this is currently done by the DVSA Director, who sits outside the day-to-day TC function. This creates a governance gap between TCs and the Head of OTC of several grades, and means the latter is less able to provide that level of oversight and challenge. The current relationship, and the disparity in grades, is not without its challenges - it enhances the perception (and the legal risk inherent in that) that the TC function is "managed" by DVSA, despite being a party to its hearings. Whilst the review team did not see evidence of undue influence, the perception and possibility of this is concerning and is covered further in section 8. In improving current governance arrangements and aligning them more to best practice examples, there should be a role within the OTC which is able to fulfil this oversight and challenge function with the appropriate accountability.
- 8.18. There is a compelling argument, looking across roles which have similar responsibilities in other ALB functions of a comparable size, that this should be an SCS/Deputy Director equivalent. This would have the added benefit that separate senior civil servants would have responsibility for the OTC and enforcement directorate. The exact grading would



need to fit into DVSA's structure, and factored into any changes to the fee structure, and is more appropriately a matter for its Chief Executive to decide, in consultation with DfT on behalf of the Principal Accounting Officer. However, it is recognised that it will be dependent on delivery of fee reform and revising the fee structure to finance new costs.

- 8.19. The perpetuation of the current situation is likely to continue to blur the lines of responsibility of the STC. Currently, this role represents a blend of responsibilities which in more standard ALBs would ordinarily relate to an ALB Chair and Chief Executive, and a tribunal judge and a Chamber President. Alongside other changes, this removes the Chief Executive responsibilities and better clarifies the role of the STC, streamlining his responsibilities and allowing him to focus on judicial issues more closely where he adds most value.

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***Recommendation 8 (medium term):** Good corporate governance expects a level of executive authority, support, and challenge, therefore the TC Function should have a dedicated senior Chief Operating Officer (COO), or equivalent, as a dedicated resource managing the OTC staff, and to engage across a wide range of stakeholders including the devolved administrations of Scotland and Wales, a diverse range of DfT transport policy teams, acting as an advocate for the TCF with DVSA and DfT Sponsor. This will ensure improved policy change and integration of work within the TCF. This increased cost will be dependent on delivery of fee reform to fund (see Recommendation 10c)*

***Outcome:** The DVSA Director of Enforcement presently manages OTC staff, however this relationship whereby they oversee the staff of the OTC enhances a perception and inherent legal risk, that the TC function is 'managed' by DVSA Enforcement, despite being a party to its hearings. In the medium term a COO will remove this perception and risk and improve stakeholder engagement across the devolved administrations of Scotland and Wales, as well the number of policy areas reflected within the DfT Policy Forum. This will ensure the TCs statutory functions are properly considered in policy developments, whilst independently representing the TCF with the DVSA and DfT Sponsor. Longer term following reforms to the TC structure, the COO will minimise the time the Senior Traffic Commissioner needs to be involved in administrative matters, so they may focus on their role as both a Chamber President and a Traffic Commissioner, and easing some of their capacity issues, and they will manage and develop OTC staff in delivering the enhanced services following reforms.*

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## Departmental sponsorship

- 8.20. During the review, responsibility for sponsorship of the TCs moved from the Freight, Operator Licensing and Roadworthiness (policy) team to the Motoring Services Agency Sponsorship team within the Motoring and Freight Directorate. Stakeholders interviewed were complementary about the skills, experience, and breadth of knowledge of the industry that the previous team brought. However, as a team focused on a particular area of traditional policy development and oversight, it understandably did not have the required capacity to provide the level of proactive and dedicated support from which an unusual function would benefit. The move from a decentralised sponsorship model to a centralised one is a positive step. The Cabinet Office's emerging (draft) Sponsorship Code notes that:

*[A decentralised] model facilitates a greater degree of transparency about the varying interests of different departmental stakeholders in sponsoring the ALB. By separating the two sponsorship functions, this model facilitates three-way conversations that help to manifest tensions, for example between the interest of the policy sponsor in asking the ALB to deliver more and that of the corporate sponsor in asking the ALB to find efficiencies.*

- 8.21. The move to the sponsorship team is new and the team is still familiarising itself with the requirements of sponsoring the TCs. Some areas of TC sponsorship require a dedicated focus over the medium term (12-18 months) to bring them up to the standards expected in the *Partnerships between departments and arm's-length bodies: Code of Good Practice* and, eventually, the new draft Sponsorship Code. This should begin with an analysis of how sponsorship is currently carried out against these guidance documents. The review's opinion of where activities would add most value against the sponsorship capabilities in the draft Sponsorship Code is summarised below:

### Relationship management

- 8.22. Engagement with the TCs has, in the past, seemed ad hoc and limited to when an issue has become serious enough to need to be resolved. There should be a regular pattern of departmental engagement set up at all levels, with the purpose of the engagement appropriate to the level. Ministerial meetings with the STC do happen, and these should continue at an appropriate frequency (at least annually) with a focus on the highest-level strategic connections between the work of the Department and deliver of TCs' functions. There should be sufficient opportunities for TCs to meet with officials from Director-General and Director level down, as required, to raise and resolve operational issues at the most appropriate level of seniority. The goal should be a thorough two-way understanding of risks, opportunities, ministerial priorities, and the TCs' operating context.
- 8.23. More engagement with the Department will also benefit a better understanding of the TCs' purpose within DfT. As identified in 5.19, there is not always enough involvement with TCs early in policy development and communicating the TCs' functions (both statutory and non-statutory) will help them be better seen as a partner within DfT and draw on their expertise when required. Section 8 of this report deals with the perception risks associated with DVSA enforcement staff being provided to support TCs. To help mitigate this risk, the

sponsorship team could promote the distinction between DVSA, OTC and TCs when communicating the work of the TCs within and outside the Department.

8.24. The sponsorship team would benefit from fully understanding and appreciating the additional functions carried out by the Scottish and Welsh TCs. This would help not only to ensure that any internal departmental changes which impact on TC sponsorship are made with them in mind, but also to that current and future policy work which the Department is considering has properly taken into account the whole GB context. While some of this responsibility will rest with the relevant policy team, the sponsorship team could make these teams aware of the differences in Scotland and Wales.

8.25. The TC function is a unique structure that needs a deep knowledge of the work and an understanding of the nuances associated with sponsoring a body with judicial functions. The TCs are the only tribunals sponsored by DfT and there will be opportunities to learn from how other bodies with judicial functions are partnered with in other Departments (such as MoJ/HMCTS/the judiciary), and other tribunals. Best practice from these should be sought out and built into how the sponsorship team works with the TCs. It is likely there will also be practical advice and links available on issues such as how complaints against TCs should be handled, and how employment and HR-related matters relating to TCs should be managed.

#### Agreeing strategy and setting objectives

8.26. HMT's specimen framework document expects the sponsoring department to provide guidance and direction to ensure the strategic aims and objectives of ALBs are consistent with those of the department and government. The department should take an active role in collaborating on how the TCs' Strategic Plan and objectives fit with DfT's ODP and identifying opportunities for these to be linked, as well as assuring the senior sponsor that there are mechanisms in place for TCs to contribute and respond to departmental priorities. This work can fulfil part of Recommendation 1 in this review, and then set up an annual cycle of objective setting so that it can be sustained for future years.

#### Outcome assurance / risk management

8.27. Linked to the above, moving the TC Board towards being a more regular corporate entity (Recommendation 8) gives the Department the opportunity to link in with, observe and contribute to how the work of the TCs and the OTC is being carried out and an opportunity to meaningfully interrogate the MI produced relating to the function. It also provides a forum for the Department to have visibility of the risks associated with the TC function, and how those risks may impact DfT. This happens now through a tri-partite arrangement, but a relationship at a Board level will provide a more joined up and formal way of potential issues affecting outcome assurance being tackled together. There should be an appropriate route where TC-related risks can be raised from the Board up to the Department, as necessary.

#### Framework document

8.28. The most recent published framework document between the TCs and the Department is dated 2012 and needs updating so that it accurately sets out arrangements

for monitoring the TCs' strategy, performance, and delivery. This should align with the new HMT template and be developed in parallel to the implementation of recommendations in this report, so that it is ready to be signed as soon as any future governance and structural changes are decided.

- 8.29. In a letter from Lord Agnew, then HMT and Cabinet Office Minister of State, to all Permanent Secretaries in February 2021 set out that governance and oversight of ALBs must be improved. In particular, he highlighted “*out of date documentation, sub-optimal board structures and variable oversight from the sponsor department.*” The case for improvements in this area aligns with these priorities for the centre, and Lord Agnew's comments that “*it is vital that departments ensure adequate and sufficiently senior resourcing in the teams that interface with ALBs*” should be considered when thinking about implementation.

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***Recommendation 9 (short term):*** *DfT should provide a more robust and appropriately resourced sponsorship function. Enhanced sponsorship should be anchored in a new framework document setting out the governance relationship between the TCs and DfT, separate from DVSA. These activities should align with the CO's minimum expectations for ALB sponsorship, particularly in terms of relationship management and agreeing strategy and ensuring full compliance with the requirements set out in Managing Public Money.*

***Outcome:*** *Enhanced sponsorship would ensure that the organisation is better aligned to, and compliant with, central guidance like Managing Public Money and the Corporate Governance Code, as well as ensuring that risks are managed from an earlier point. Further, the team would also act as an advocate for the TC function within DfT whilst also challenging them and holding them to account for their financial performance. To note, this should not involve the Department seeking to influence individual decisions or otherwise encroaching on the judicial aspects of the function's work.*

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## 9. Finance and Corporate Support

### Summary of Recommendations: Finance and Corporate Support

**Recommendation 10a (short term):** DfT TC function sponsor, should work collectively with DVSA and the TCs to determine and agree reasonable and fair current and future operating costs, unrelated to current fee levels and based on DfT's strategic vision for the TC function (see recommendation 1).

**Outcome:** This should ensure an understanding of what it costs to run the function effectively, including what apportionment of shared expenses represents fair usage, and it will facilitate the development of a new and equitable fee structure for all TC function users.

**Recommendation 10b (longer term):** The future operating cost for the function should be set so that it captures any changes in staffing structure that are required to better aid recruitment and retention.

**Outcome:** This should address concerns raised about the current grading of OTC staff and issues this was causing with recruitment and retention, particularly when pay was compared with comparable organisations. Previous reviews have recommended a review of staff grading and structures, the outputs of which should be factored into the agreed operating costs of the function.

**Recommendation 10c (longer term):** The fee structure should be reformed in accordance with central guidance and remove the current operating deficit. The TC function should be fully funded through the fees it charges for the services provided, without making a profit and without requiring subsidy from elsewhere, to properly cover the agreed costs coming from Recommendation 10a, and then kept under regular review.

**Outcome:** Changing the fee structure will remove the financial deficit currently funded by the taxpayer back to the user and facilitate further improvements to the service if the need to cut costs is mitigated. However, the need to deliver value for money to the user is also a Managing Public Money requirement and increasing fees should not result in financial waste or inefficiency. The fee structure should adopt a graduated approach for operators in line with evidence from the consultation.

**Recommendation 11 (medium term):** Following the move to establish the TCs as a single body (Recommendation 6), DfT, DVSA and the Traffic Commissioner Function should reconsider data governance arrangements, with a view to both clarifying, simplifying, and strengthening them. Concerns were raised about data governance arrangements, and the complexity that having eight data controllers created.

**Outcome:** The creation of a single chamber creates an opportunity to streamline and strengthen these arrangements going forward. This would further enhance the independence and objectivity of the function and improve the assurance of the current data governance arrangements. This would be a positive way of demonstrating the independence and confidentiality of TC data.

## Finance

- 9.1. As outlined in Figure 1 on page 9, current arrangements mean that the budget for both the TCs, and the OTC, are essentially managed by DVSA with the relevant AO status being delegated to the DVSA Chief Executive. However, it was understood that the TC function should be self-funding through the collection and distribution of the fees it charges industry. In theory, this should mean that whilst DVSA is responsible for financial oversight and assurance, in line with the relevant controls outlined in MPM, it should not itself provide any direct funding to the TC function. Similarly, it was expected that DVSA would re-charge the TCs for the provision of OTC staff and for other corporate support such as IT and estates, etc.
- 9.2. This relationship is further complicated by the fact that both the Goods Vehicles (Licensing of Operators) Act 1995 and the Public Passenger Vehicles Act 1981 are clear in their statement that fees “*shall be charged by a traffic commissioner*” in respect of their statutory functions. However, due to the way that corporate support and back-office functions operate, DVSA is responsible for the collection and management of those fees. Combined, these arrangements mean that whilst it is the TCs that charge the fees, they are collected and spent by DVSA which provides notice of how and where. In the past this has caused some tension as the granularity and frequency of reporting was deemed to be insufficient, although the review team notes that this now appears to be much better.
- 9.3. At present, the TC function operates with a significant financial deficit: licensing services income in 2020/21 was £13,035k whilst its expenditure was £17,751k creating a £4,716k budgetary pressure that DVSA is expected to absorb. Projected deficits for the next 6 years (per draft results for 2021/22 and DVSA’s medium term financial plan) average £7.5m or 56% of licensing income. The impact of introducing LGV operator licencing however worsens the deficit to in the order of 63% as anticipated income is significantly below the projected expenditure on people, systems, and other costs. Several of the measures in the OTC review will mean additional costs, putting further pressure on fees and/or departmental funding. Historically, and particularly prior to DVSA employing a new Chief Executive, this has had a detrimental impact on the relationship between DVSA and the TCs. To date, there has been an unhelpful focus on reducing that deficit through the introduction of cost-cutting measures and the delivery of financial efficiencies. However, as outlined by the Poulter Review, MPM prescribes that the basic principle for fee funded ALBs is to “set charges to recover full costs” on the basis that government “*neither profits at the expense of consumers nor makes a loss for taxpayers to subsidise.*” However, MPM also makes clear that public sector organisations have a duty to control their costs so that public money is used efficiently and effectively.
- 9.4. On that basis, the *exclusive* focus on financial efficiencies ignores the fact that fundamentally the current fee structure is flawed and any attempt to balance income and expenditure, without bringing in more money, is simply not a viable solution. Evidence collected during the course of the review suggests that the TC function is relatively lean, operating at (and in some cases beyond) capacity and, as evidenced through the consultation, represents good value for money to consumers. Whilst there are opportunities for further standardisation and refined processes, which in turn might facilitate an expansion of the organisation’s digitalisation and reduce costs, there does not

seem to be any real prospect of reducing expenditure to bring it in line with the fees currently collected.

- 9.5. Further, there is a significant issue of principle and fairness with the current fee structure. At present, the price of a license is not based on the cost to the TC function of issuing, managing and assuring that same license. This flat-rate structure means that a single vehicle operator pays the same fee as a multi-national corporation that may operate a fleet of hundreds of vehicles. As the former license is far easier to issue and then manage, the cost to the TCs is much lower than for the latter. In essence, this means that small operators are, in effect, subsidising the operations of larger organisations.
- 9.6. To both better comply with MPM, and to deliver a fairer service to customers, the current fee structure needs fundamental reform, beyond the consultation that closed in January 2021. To do this, DfT, working closely with the TCs and DVSA, needs to determine precisely what the form and future functions of the TC function should be and then introduce a mutually agreed fee regime that covers the agreed operating costs of this new model. This clearly links with Recommendation 1 of this review. It is important that work done on behalf of or especially for the devolved administrations is clearly captured and considered so that the function can properly fund the time needed for it.
- 9.7. In doing this, consideration should be given to ensuring this new regime appropriately considers the varying levels of cost derived from operators of different sizes and appropriately factors this into any new fees. This should further remove some of the tension from the relationship between DVSA and the TC function as there will be less focus on which party pays for what services given that the new fee structure will mean that all costs are met by industry. There will, however, need to be a keen focus by both DVSA and DfT to ensure that costs remain *as low as possible*, and that any savings are passed back to the public.
- 9.8. It should be noted that 50% of the respondents to the consultation said they were highly likely or likely to support an increase in fees if it meant TCs could perform a better service, compared to 20% who said they were unlikely or very unlikely to support such an increase.

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**Recommendation 10a (short term):** *DfT TC function sponsor, should work collectively with DVSA and the TCs to determine and agree reasonable and fair current and future operating costs, unrelated to current fee levels and based on DfT's strategic vision for the TC function (see recommendation 1).*

**Outcome:** *This should ensure an understanding of what it costs to run the function effectively, including what apportionment of shared expenses represents fair usage, and it will facilitate the development of a new and equitable fee structure for all TC function users.*

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**Recommendation 10b (longer term):** *The future operating cost for the function should be set so that it captures any changes in staffing structure that are required to better aid recruitment and retention.*

**Outcome:** *This should address concerns raised about the current grading of OTC staff and issues this was causing with recruitment and retention, particularly when pay was compared with comparable organisations. Previous reviews have recommended a review of staff grading and structures, the outputs of which should be factored into the agreed operating costs of the function.*

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**Recommendation 10c (longer term):** *The fee structure should be reformed in accordance with central guidance to remove the current operating deficit. The TC function should be fully funded through the fees it charges for the services provided, without making a profit and without requiring subsidy from elsewhere, to properly cover the agreed costs coming from Recommendation 10a, and then kept under regular review.*

**Outcome:** *Changing the fee structure will remove the financial deficit currently funded by the taxpayer back to the user and facilitate further improvements to the service if the need to cut costs is mitigated. However, the need to deliver value for money to the user is also a Managing Public Money requirement and increasing fees should not result in financial waste or inefficiency. The fee structure should adopt a graduated approach for operators in line with evidence from the consultation.*

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## Staff Governance

9.9. Section 7 makes reference to one of the more problematic consequences of the current tripartite relationship between DVSA, the TCs and DfT. At present, the staff of the OTC, whilst responsible for supporting the statutorily independent TCs, are provided by DVSA. This means that whilst staff are task managed from within the OTC (including, at times, by the TCs themselves) they are employed by DVSA and are ultimately accountable to them. Of particular concern is the fact that these staff are line managed through DVSA's Director of Enforcement, the section of DVSA which is mostly like to be involved in TC hearings. As a judicial organisation, the TCs need to be, and be seen to be, free from any undue influence from both the executive and other interested parties.

9.10. Whilst the review team found no evidence of any inappropriate pressure by DVSA regarding individual decisions, this arrangement does certainly impact the perception of independence and gives the potential for a conflict of interest to arise. While some stakeholders do see this as a major consideration, it should be put into perspective given that only 23% of respondents to the public consultation considered that the provision of



DVSA staff to the OTC reduces the independence of the TC function. 59% considered that it either had no affect or increased the independence of the TC function.

- 9.11. Whilst ultimately it is for the Department to consider both the probability that this arrangement is challenged legally, and the likelihood of that challenge being successful, there does seem to be an inherent legal risk here. Although not identical, there are some similarities with the *Brooke*<sup>22</sup> judgment which criticised the previous sponsorship relationship between the Parole Board (itself an ALB with judicial-like functions) and the National Offender Management Service (NOMS), finding that “*the close working relationship between the Board and the unit acting as its sponsor has tended to blur the distinction between the executive role of the former and the judicial role of the latter.*” Like the TCs, NOMS were a party to the Parole Board’s hearings whilst also fulfilling the role of sponsor. Although not the sponsor of the TCs, DVSA’s provision of staff and other facilities, creates a similarly conflicting relationship particularly with regard to financial delegations and control.
- 9.12. Recognising the need to be proportionate and have consideration to public money, any attempt at rebalancing this relationship and severing the link with the DVSA Enforcement directorate would need to be considered carefully. Whilst notionally the OTC could be employed from anywhere within the DfT departmental boundary, i.e., by any ALB or the Department itself, wholesale changes to organisation designs and structures will inevitably have an impact on operational delivery and run the risk of overburdening a system already managing the complexities of Covid-19 and significant changes to legislation. As such, a more measured approach is recommended in the first instance, and it would seem logical to attempt to reform the status quo before considering bigger changes.
- 9.13. There are some examples in government of where similar arrangements work. For example, within the Department for Business, Energy and Industrial Strategy the Competition Service (CS), itself an NDPB, exists to provide the ancillary support services required by the Competition Appeals Tribunal (CAT). However, the key distinction under this model is that the CS is not a party to CAT hearings and does not undertake any additional functions that could impact the perceived independence of CAT. Therefore, in theory, whilst DVSA could continue to provide staff and other corporate support to the TCs, the legal risk of the status quo would need to be acknowledged, accepted, and owned, or there would need to be, as a minimum, further separation between the TCs and DVSA’s Enforcement directorate.
- 9.14. Ultimately, it is not within the review’s purview to determine internal structures of DVSA but moving the OTC away from the Enforcement directorate seems like a logical first step to mitigating *some* of the legal risk outlined in para 8.11. The introduction of a COO role provides an opportunity to consider the management structures and reporting lines of the OTC into DVSA, and to sever the link with Enforcement.

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<sup>22</sup> R (Brooke) v Parole Board [2008] EWCA Civ 29

- 9.15. However, if the status quo cannot be amended to adequately satisfy the needs of all stakeholders, including the TCs, then serious consideration should be given to alternative options.

### Option One – Relocate OTC Staff

- 9.16. OTC staff and structures could be brought into the Department, as was the case previously, or alternatively transferred to another ALB with a less conflicting relationship with the TC function. Whilst this would partially mitigate the risk of successful legal challenge, it is likely to be operationally disruptive and could create additional challenges. Overall, the review team did not consider that this was a proportionate or cost-effective solution. Further, MPM is explicit when it states that ALBs should be used in “*separating implementation from policy making; demonstrating the integrity of independent assessment; [and] establishing a specialist identity for a professional skill*” - all of which seem relevant to the TC Function’s licensing and judicial functions. Similarly, Cabinet Office public bodies classification guidance also suggests that fee-funded bodies should operate at arm’s length from government. Consequently, it would therefore seem preferable, in the first instance, to keep the OTC at arm’s length from the Department.

### Option Two – TC Function Employs its Own Staff

- 9.17. The creation of the recommended COO role would allow for the function to be given its own Accounting Officer and employing staff directly and independently. This would entirely remove the risk of legal challenge and would significantly increase the perception of TC independence from both the Department and DVSA. To note, whilst this would provide a solution, evidence gathered in the review suggests that any new arrangements should stop short of the TCs (combined with OTC) being formally established as their own ALB and then directly employing their own staff. This was considered to be disproportionate in terms of resource, cost and possible impacts on operational performance, and there was little appetite for such a significant change within the Department.

## 10. Conclusion

- 10.1. A reformed status quo, with increased separation between the TCs and DVSA Enforcement, seems to represent the most proportionate and cost-effective way of demonstrating the independence of the TC function. As such, the review team is recommending that these reforms be taken forward in the first instance but notes that if these new arrangements cannot be made to work for all involved parties, the Department should consider the alternative arrangements outlined above. Should neither alternative option be adopted, separation of the licensing and tribunal functions should be considered. Whilst this separation is not recommended as a preferred solution, it may be preferable to maintaining an unreformed status quo.

## Other Staffing Issues

- 10.2. Mention must be made of the serious impacts that OTC retention difficulties and staff turnover cause to the TC function. Roles at all grades appear to be relatively specialist and require a thorough understanding of the voluminous statutory documents, operating instructions and TCs' expectations to be able to perform their duties effectively. A conservative estimate of six months from start to competence was given by those involved in management, training, and induction. Recruitment can take six months, meaning it can take one year until a competent candidate is in post. Any significant amount of turnover represents a risk to the effectiveness of the whole function.
- 10.3. These challenges have been noted by both the Triennial Review and the PA Consulting Report, which made recommendations around staffing structures and deployment. The issue is already well-known and DVSA, including OTC staff and its HR support, are working to address the problems. In some areas, salaries offered are reported as not competitive enough to attract the right calibre of candidates. In addition to continuing the efforts to streamline the amount of time it takes to onboard new starters, there would be benefit in ensuring that there is confidence every role is graded appropriately. If it is proving difficult to find candidates with the right skills at AO and EO level, and to keep those who do join, it may be suggestive that the expectations of some roles do not match the grading level.
- 10.4. There are nuances in civil servants working to statutory office holders with judicial functions that add to the complexity of both the licensing and compliance functions, compared to if they were delivered purely administratively. There can be wide disparities when staff at relatively junior grades are providing submissions to be considered by SCS-equivalent TCs. The grading of roles should capture the impact on levels of decision-making this demands and be reflected appropriately. If this results in the need for a higher proportion of higher-graded staff, there is an opportunity to make this cost-neutral by building it into the agreed operating costs which will feed into the reformed fee structure (Recommendation 11b).

## Estates

- 10.5. A particular issue that was frequently raised throughout the review was that of estates and location particularly with regard to public inquiry rooms and ensuring that they meet the needs of the TCs. As an independent, judicial organisation, the TCs do need to be seen to be operating at arm's length from both DfT and DVSA, and a cohesive and coherent location strategy provides an opportunity to do that. Further, this is of increased importance due to the regional structure of the TCs and the need to have a significant and material presence across Great Britain, particularly in accessible areas, with good transport links and close to the industries they serve. Specifically, this means there should be a clear distinction between what is DVSA estate and what is a TC hearing room which could be achieved through the use of branded signage and crests. Further, as members of the judiciary in direct, face-to-face contact with the industry it regulates, consideration does need to be given to the safety of the TCs in the same way that it would be given to other judges, tribunal members or judicial figures.

- 10.6. However, the review team has not found a principled reason that would mean that the TCs, DfT and DVSA could not be co-located, as is already the case with staff from the Ministry of Justice and HMCTS in some situations, as long as the independence of TCs' decision-making was assured. Further, whilst there is of course the need to ensure that the estate which TCs are provided adequately reflects the gravity and seriousness of a public hearing, this does not necessarily mean that existing DVSA or other government estate could not be repurposed. As an example, the use of informal settings for HMCTS's nightingale courts has not severely undermined the status or independence of the judiciary.
- 10.7. On that basis, the review team is recommending that DVSA and the TCs build on and continue to use the work already done to determine objective requirements for the necessary locations, specifications and safety measures that TC hearing rooms need to meet. With the support of DfT, and potentially the Government Property Agency, appropriate real estate, with supporting IT infrastructure, should be secured on this basis. The cost of this estate should be factored into the agreed operating costs of the organisation and be met through the revised fee's structure proposed in recommendations 11a-c. However, as required by MPM, value for money should be always delivered and costs should be kept as low as possible.

## Data Governance

- 10.8. Another consequence of DVSA providing the TCs with corporate support, and that each TC is technically its own ALB, is the complexity this causes around data governance. Whilst the independence and security of data is important for all ALBs, it is especially the case for the TCs as a judicial function. Under the current arrangements, each TC is its own data controller with DVSA acting as the data processor. There are two areas of concern with this model – firstly, they are unnecessarily complex and hard to manage, and secondly, there is an *absolute* need for data separation and privacy between the TCs and DVSA, given that the latter is a party to the former's hearings. Even the perception of a conflict or of shared ownership would undermine the TCs' judicial independence and increase the likelihood of the current model being successfully challenged legally.
- 10.9. Dealing with these two issues in order, the current arrangements are complex to manage and result in the need for all eight TCs to agree to any changes to data governance arrangements. Whilst there is a Memorandum of Understanding (MoU) and an SLA around data sharing and processing in place, the process for creating and managing these documents would be quicker and more streamlined if the TCs were brought closer together as a single corporate entity (although maintaining their judicial independence) as was outlined in Section 7. This would then alleviate the need to have eight data controllers and would instead mean that only one is required. As such, changes to the governance underpinning data processing arrangements would be less arduous to make and much easier to agree. Further, such a change would have the potential of increasing TC capacity by removing a low-value function that the TCs are currently accountable for, allowing them to focus more on the core functions for which they were appointed and to which they add most value.
- 10.10. The second issue is arguably the most important – as a judicial organisation the TCs' data should remain confidential and should not be routinely shared with a party to its hearings.

Following conversations with DfT officials the review team were assured that whilst TC data is held by DVSA, it remains confidential and DVSA officials do not have free access to it. DVSA may act as the data processor for the TCs, but they are doing this under their instruction and on their behalf and ultimately, TCs retain control. These arrangements are captured under the SLA which is fully compliant with GDPR requirements. This document, alongside the MoU, clearly sets out what access DVSA has to what data and for what legal purpose. In and of itself, this arrangement is not unique or unusual and, if implemented appropriately, is no worse than having data processed by a third-party. There was a suggestion from DfT officials that the Data Protection Officer for these arrangements could sit within the central department in future, as is the case with other ALBs. This would further enhance the independence and objectivity of the function and improve the assurance of the current data governance arrangements. Such a move would be welcomed by the review team as a positive way of demonstrating the independence and confidentiality of TC data.

- 10.11. It should be noted that whilst the current arrangements are sub-optimal and could be further improved, the review team did not find evidence that they are causing significant, acute issues, although they did note that current arrangements further the perception of a lack of independence.

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**Recommendation 11 (medium term):** *Following the move to establish the TCs as a single body (Recommendation 6), DfT, DVSA and the Traffic Commissioner Function should reconsider data governance arrangements, with a view to both clarifying, simplifying, and strengthening them. Concerns were raised about data governance arrangements, and the complexity that having eight data controllers created.*

**Outcome:** *The creation of a single chamber creates an opportunity to streamline and strengthen these arrangements going forward. This would further enhance the independence and objectivity of the function and improve the assurance of the current data governance arrangements. This would be a positive way of demonstrating the independence and confidentiality of TC data.*

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## 11. Modernisation and Commissioner Status

### Summary of Recommendations: Modernisation and Commissioner Status

**Recommendation 12 (longer term):** As part of the longer-term structural reforms of the function, consideration should be given to whether its current name accurately reflects the organisation's judicial functions. Feedback from the public consultation suggested this could be much clearer.

**Outcome:** Changing the name of the TC function to better reflect what their role entails should increase public understanding of the TC function as well as more clearly demonstrating its judicial nature.

**Recommendation 13 (short term):** In future appointment exercises, the appointing authority should consider how the diversity of the TCs might be made more representative, whilst ensuring that all positions continue to be filled on merit.

**Outcome:** that the TCs are representative of the public they serve.

## Modernisation

- 11.1. Whilst the legislation underpinning the TCs does, in places, feel out of date, the TCs, OTC and DVSA should be commended for the introduction of digital services, including VOL, and the way in which technology was used to ensure the continuation of TC services during the pandemic. Focusing particularly on the latter point, the TC function was able to very quickly pivot to the delivery of hearings and inquiries using digital methods which minimised disruption to the provision of their services. Where other organisations have seen a significant degradation or slowing down of services, leading to backlogs and additional resourcing pressures, the TCs have coped remarkably well due in no small part to their hard work and dedication, and of that of the DTCs and the staff of the OTC.
- 11.2. Almost universally there is agreement that there is scope for these digital methods of delivery to continue in some form, through the conducting of remote or hybrid hearings. This allows for productivity savings (note, not financial efficiencies) to both DVSA staff and for the regulated industries. By holding some hearings digitally, or by allowing witnesses to attend remotely, there is a reduced need for them to travel and attend in person, meaning that they spend less time at hearings and reducing the need for, and time spent on, travelling.
- 11.3. However, some challenges were raised regarding these new ways of working, not least with the quality and reliability of IT infrastructure, not just for the TCs but also on other attendees at hearings. The review observed first-hand the practical difficulties of multiple people dialling in from their own devices, with varying quality of audio and video, especially when extra facilities such as translation or interpretation are required. Holding some hearings virtually actually reduces efficiency because of the additional time needed to understand evidence over poor-quality connections. As such, for more complicated or challenging cases, there will always be a need to offer a fully in-person hearing. The review team is of the opinion that the TCs themselves are best placed to determine which cases are suited to remote or hybrid hearings and should be given the freedom to continue doing so as this relates to their judicial functions.
- 11.4. Some concerns were also raised regarding the lack of tribunal rules which has meant that the TCs have no legal capacity to mandate the timely provision of evidence in a specified format. As such, and particularly during the pandemic, TCs were often faced with parties or witnesses providing large amounts of written evidence (whether paper or digital) on the day of the hearing which the TCs technically have a legal obligation to consider. This causes delays and could impact the quality of their decision-making if they are not given adequate time to consider and respond to the evidence before them. As referenced at 6.14 there is a clear need for the TCs to be given the powers to make tribunal rules like other comparable jurisdictions.
- 11.5. The introduction of VOL should also be commended as an example of the function, and DVSA, aligning themselves with wider government's digital by default strategy. The digitalisation of the service and the reduction, albeit not the total removal, of paper-based processes is a welcome step toward modernisation. Whilst during the review there was some criticism that this had not gone far enough, some stakeholders did note that a fully digital and online service could quickly become out of step with industry which is itself taking a more measured approach to digitalisation. Further, the review team has

concluded that whilst more standardisation and digitalisation is to be encouraged, this should not become an aim in and of itself but should support wider improvements to the service provided to customers. Ultimately, the TCs were established to make roads safer and this needs to remain their core function. Whilst there is obviously a need, and in fact an MPM requirement, to deliver a good quality, value for money service to industry, the safety of road users is of paramount importance.

- 11.6. It should also be noted that, whilst commendable, the introduction of VOL was not without its challenges and there remains some uncertainty around its future. In particular, there has, to date, been a lack of clarity around the apportionment of its cost which has exacerbated tensions around the TC deficit. As part of the work to reform current fee structures, an agreed apportionment of the system's running costs will need to be arrived at and then factored into the revised costs of licenses.

## Commissioner Status and Diversity

- 11.7. The review team was asked to consider the backgrounds of the TCs, both regarding the mix of professional experience, as well as alignment with wider-government commitments on improving diversity and inclusion. Concerns were also raised about the lack of certainty around the TC's status and whether they are public appointees, statutory office holders or judicial figures.
- 11.8. There is a particular and perplexing lack of clarity around the status of the TCs who presently seem to operate both as judicial figures and public appointees, with the mix of the benefits and issues that this causes. At present the TCs are included in the Order in Council which means that the regulation and process for their appointment falls within the remit of the Commissioner for Public Appointments. The Transport Act 1985 does implement a mandatory retirement age which is more akin to a judicial appointment than a public appointment. Whilst this may appear to be a minor administrative issue, it does have a real impact on the terms of appointment for the TCs, including regarding their tenure and employment status. The review team is pleased to note that, following our initial enquiries, DfT are now seeking legal advice to clarify this issue and will then need to work through the solution with the TCs and the Commissioner for Public Appointments. On that basis, the review team has taken a neutral position on this issue, recognising there is a strong rationale for the TCs to be classified as *either* judicial or public appointments but not both as seems to be the current position.
- 11.9. The review team was asked to consider the diversity of the TCs both regarding professional backgrounds and protected characteristics. Regarding the former, some stakeholders raised concerns that too many of the TCs came from a legal background and that a greater diversity of thought and experience might be beneficial. However, whilst the majority of TCs are legally qualified that is not the limit of their experience. Notably, there are TCs with engineering and military backgrounds in addition to lawyers and, overall, there was found to be a depth of experience in and knowledge of the industries they regulate. Fundamentally, the role of a TC is judicial, and a degree of legal knowledge and experience is required. As such, the review team has concluded that the current mix of backgrounds is helpful with the TCs, as a cohort, having the breadth and depth of experience needed to do the role well.



- 11.10. Regarding protected characteristics the picture is slightly less positive. Of the eight TCs, three are female and five are male. Whilst not precisely aligned with the demographics of the country, this is a small sample size and one person either way represents a significant statistical shift. Further, for the industries they regulate, a slight preponderance of men is to be expected. Where TC diversity is less evident is regarding ethnic background. Again, given the industry and sample size, this is not unexpected (although in some traffic areas with large urban centres there should be more of an expectation of an appointment from an ethnic minority background). In future appointment exercises, the appointing authority should consider how the diversity of the TCs might be made more representative, whilst of course ensuring that all positions continue to be filled on merit.
- 11.11. Finally, throughout the course of the review, several stakeholders cited the unhelpful naming of “Traffic Commissioners” as an issue regarding demonstrating the function’s purpose, independence, and judicial status. The word “commissioner” carries with its connotations of administrative, rather than judicial, functions and at present the TCs have no statutory functions relating to traffic. As such, the current name seems unhelpful in increasing understanding of their role and a missed opportunity to further demonstrate their judicial independence. As and when primary legislation is taken forward to implement the recommendations of this report, real and meaningful consideration should be given as to whether a more suitable name could be found.

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**Recommendation 12 (longer term):** *As part of the longer-term structural reforms of the function, consideration should be given to whether its current name accurately reflects the organisation’s judicial functions. Feedback from the public consultation suggested this could be much clearer.*

**Outcome:** *Changing the name of the TC function to better reflect what their role entails should increase public understanding of the TC function as well as more clearly demonstrating its judicial nature.*

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**Recommendation 13 (short term):** *In future appointment exercises, the appointing authority should consider how the diversity of the TCs might be made more representative, whilst ensuring that all positions continue to be filled on merit.*

**Outcome:** *TCs are representative of the public they serve.*

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## 10 Implementation

- 11.12. The ease of the implementation of the recommendations outlined in Section Two varies with some requiring additional funding, others requiring legislative reform (either primary and secondary) and some already possible within the current fiscal and legislative constraints. Paragraphs 1.7 to 1.10, combined with the table in Section 2, provides a rationale for the sequencing of implementation.
- 11.13. The evidence collected during the review makes a compelling case for all these recommendations to be implemented as quickly as possible. On that basis, those that do not require significant new resources, funding, or changes to primary legislation should be taken forward immediately. Where primary legislation is required to implement recommended reforms DfT policy teams should look to identify a suitable legislative vehicle as swiftly as is practical, recognising that some recommendations from the 2015 Triennial Review are still outstanding seven years later.
- 11.14. Similarly, where additional resourcing is required, DfT should work with key stakeholders to understand how many additional staff might be required, at what grade, and how any new roles would be funded. Whilst the review team has highlighted where recommendations might create resourcing pressures, without in-depth knowledge of DfT staffing structures and grading, they are unable to provide any helpful analysis of precisely what resourcing would be required. However, in his letters to government departments, Lord Agnew did make clear that departments should ensure that their current levels of resourcing in their sponsorship functions will be sufficient to implement and contribute to the ambitious programme of public bodies reform that Cabinet Office has planned.

## Annex A – Public consultation survey questions

### You

1. Your (used for contact purposes only):

name?

email address?

2. Are you responding: \*

as an individual?

on behalf of an organisation? (Go to 'Organisational details')

### Your details

3. Do you work in an industry regulated by the TCs?

Yes

No

Don't know

[After answering go to 'Your interaction']

### Organisation details

4. Your organisation's name is?

5. How many people does your organisation represent?

- 0 people
- 1 to 10 people
- 11 to 50 people
- 51 to 100 people
- 101 to 1,000 people
- Above 1,000 people

6. Is your organisation in an industry regulated by the TCs?

- Yes
- No
- Don't know

Your interaction

7. Have you at any time had interaction with the TC's or Office for Traffic Commissioners?

- Yes
- No (Go to 'Proposals')
- Don't know (Go to 'Proposals')

Interaction

8. What interaction?

- PSV licence processing
- HGV licence processing
- Registration of local bus services (outside London)
- Party to a public inquiry
- Party to a conduct hearing
- Another type of interaction:

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

- Strongly agree
- Agree
- Neither agree nor disagree (Go to 'Vehicle licences for HGVs')
- Disagree (Go to 'Vehicle licences for PSVs reasoning')
- Strongly disagree (Go to 'Vehicle licences for PSVs reasoning')
- Don't know (Go to 'Vehicle licences for HGVs')

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

- Strongly agree (Go to 'Vehicle licences for PSVs reasoning')
- Agree (Go to 'Vehicle licences for PSVs reasoning')
- Neither agree nor disagree (Go to 'Vehicle licences for HGVs')
- Disagree
- Strongly disagree
- Don't know (Go to 'Vehicle licences for HGVs')

11. Your reasons are?

12. Who would you prefer to process vehicle operator licences for PSVs?

[After answering go to 'Vehicle licences for HGVs']

13. Your reasons are?

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

- Strongly agree
- Agree

Neither agree nor disagree (Go to 'Registering local bus services (outside London)')

Disagree (Go to 'Vehicle licences for HGVs reasoning')

Strongly disagree (Go to 'Vehicle licences for HGVs reasoning')

Don't know (Go to 'Registering local bus services (outside London)')

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

Strongly agree (Go to 'Vehicle licences for HGVs reasoning')

Agree (Go to 'Vehicle licences for HGVs reasoning')

Neither agree nor disagree (Go to 'Registering local bus services (outside London)')

Disagree

Strongly disagree

Don't know (Go to 'Registering local bus services (outside London)')

16. Your reasons are?

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

[After answering go to 'Registering local bus services (outside London)']

18. Your reasons are?

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

- Strongly agree
- Agree
- Neither agree nor disagree (Go to 'Public inquiries and actions')
- Disagree (Go to 'Registering local bus services (outside London) reasoning')
- Strongly disagree (Go to 'Registering local bus services (outside London) reasoning')
- Don't know (Go to 'Public inquiries and actions')

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

- Strongly agree (Go to 'Registering local bus services (outside London) reasoning')
- Agree (Go to 'Registering local bus services (outside London) reasoning')
- Neither agree nor disagree (Go to 'Public inquiries and actions')
- Disagree
- Strongly disagree



Don't know (Go to 'Public inquiries and actions')

21. Your reasons are?

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

[After answering go to 'Public inquiries and actions']

23. Your reasons are?

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

Strongly agree

Agree

Neither agree nor disagree (Go to 'Hold conduct hearings and take action')

Disagree (Go to 'Public inquiries and actions reasoning')

Strongly disagree (Go to 'Public inquiries and actions reasoning')

Don't know (Go to 'Hold conduct hearings and take action')

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

- Strongly agree (Go to 'Public inquiries and actions reasoning')
- Agree (Go to 'Public inquiries and actions reasoning')
- Neither agree nor disagree (Go to 'Hold conduct hearings and take action')
- Disagree
- Strongly disagree
- Don't know (Go to 'Hold conduct hearings and take action')

26. Your reasons are?

27. Who would you prefer to hold public inquiries?

[After answering go to 'Hold conduct hearings and take action']

28. Your reasons are?

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

- Strongly agree

- Agree
- Neither agree nor disagree (Go to 'Oversee operator licensing services')
- Disagree (Go to 'Hold conduct hearings and take action reasoning')
- Strongly disagree (Go to 'Hold conduct hearings and take action reasoning')
- Don't know (Go to 'Oversee operator licensing services')

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

- Strongly agree (Go to 'Hold conduct hearings and take action reasoning')
- Agree (Go to 'Hold conduct hearings and take action reasoning')
- Neither agree nor disagree (Go to 'Oversee operator licensing services')
- Disagree
- Strongly disagree
- Don't know (Go to 'Oversee operator licensing services')

31. Your reasons are?

32. Who would you prefer to hold conduct hearings?

[After answering go to 'Oversee operator licensing services']

33. Your reasons are?

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

- Strongly agree
- Agree
- Neither agree nor disagree (Go to 'Additional functions')
- Disagree (Go to 'Oversee operator licensing services reasoning')
- Strongly disagree (Go to 'Oversee operator licensing services reasoning')
- Don't know (Go to 'Additional functions')

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

- Strongly agree (Go to 'Oversee operator licensing services reasoning')
- Agree (Go to 'Oversee operator licensing services reasoning')
- Neither agree nor disagree (Go to 'Additional functions')
- Disagree

Strongly disagree

Don't know (Go to 'Additional functions')

36. Your reasons are?

37. Who would you prefer to oversee operator licensing services?

[After answering go to 'Additional functions']

38. Your reasons are?

Additional functions

39. Do you think there are additional functions that the TCs should be providing?

Yes

No (Go to 'Independence and staffing')

Don't know (Go to 'Independence and staffing')

40. What other functions?

175 Driver and Vehicle Standards Agency (DVSA) staff are deployed to work for the OTC in centralised licensing and regional compliance teams.

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

- Strong agree
- Agree
- Neither agrees nor disagree
- Disagree
- Strongly disagree
- Don't know

Comments:

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

- It increases the independence of the Traffic Commissioner function
- It reduces the independence of the Traffic Commissioner function
- It does not affect the independence of the Traffic Commissioner function
- Don't know

Why?

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

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

Don't know

Comments:

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

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

Don't know

Comments:

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

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

Don't know

Comments:

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

Strongly agree



- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree
- Don't know

Comments:

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

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree
- Don't know

Comments:

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

- Strongly agree (Go to 'Agreeing current level fee')
- Agree (Go to 'Agreeing current level fee')
- Neither agree nor disagree
- Disagree
- Strongly disagree
- Don't know (Go to 'Service priorities for Traffic Commssioners')

Current fee levels

49. You think the current fee levels are:

- too high?
- too low?

Why?

[After answering go to 'Service priorities for Traffic Commssioners']

50. Your reasons are?

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

- To process operator vehicle licences for PSVs?
- To process operator vehicle licences for HGVs?
- To register local bus services (outside of London)?
- To hold public inquiries?
- To hold conduct hearings?
- To oversee licensing services?

Future service improvement

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

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

- Highly likely
- Likely

Neither likely nor unlikely (Go to 'Final comments')

Unlikely

Highly unlikely

Don't know (Go to 'Final comments')

54. Your reasons are?

55. Any other comments?