



SENIOR TRAFFIC COMMISSIONER

Statutory Document No. 8

DELEGATION OF AUTHORITY

(THE DELEGATION OF FUNCTIONS TO STAFF,
ARRANGEMENTS FOR MULTIPLE LICENCE
HOLDERS & LEAD TRAFFIC COMMISSIONERS)

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

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R Turfitt
Senior Traffic Commissioner

GUIDANCE

1. The Senior Traffic Commissioner for Great Britain issues the following guidance under section 4C(1) of the Public Passenger Vehicles Act 1981 (as amended) to provide information as to the way in which the Senior Traffic Commissioner believes that traffic commissioners should interpret the law in relation to the delegation of their functions.
2. Operator licences are issued by the traffic commissioner for the geographical traffic area but traffic commissioners do, as a matter of practice, delegate certain routine decisions to members of staff acting on behalf of the individual commissioner. Traffic commissioners might also delegate some of their functions to one of their deputy traffic commissioner colleagues. Which functions are delegated to a deputy traffic commissioner is ultimately a matter for the Senior Traffic Commissioner.¹

Delegation

3. The Deregulation and Contracting Out Act 1994 allows the delegation of functions by traffic commissioners² to *any person in the civil service of the Crown who has been assigned or appointed to assist... in the exercise of his [her] functions.*³ The traffic commissioner may authorise an officer to exercise any function of theirs which is conferred by or under any enactment and to that extent will be treated as if the function had been carried out by the traffic commissioner in question.
4. The Secretary of State has delegated his functions in appointing the Driver and Vehicle Standards Agency (DVSA) to act as *officers and servants of a traffic commissioner.*⁴
5. The Human Rights Act 1998 guarantees the rights of individuals. Those rights cannot be interfered with, without the proper process of law. It is therefore important that all decisions, however minor they may seem, are considered against this background and any doubts must be referred to the traffic commissioner. Notwithstanding the provisions of sections 69 and 74 of the Deregulation and Contracting Out Act 1994, members of staff acting on behalf of traffic commissioners are not permitted to take any decision which might be deemed to be judicial in nature and which should properly be taken by the commissioner exercising his or her power as a tribunal, nor any decision which might affect a person's rights and the limitations set out in section 71(1)(a) and 71(1)(b) of the Human Rights Act 1998 apply.
6. The power of delegation is a long accepted principle of public law:

"In the administration of government in this country the functions which are given to [office holders]...are functions so multifarious that no [office holder]

¹ Public Passenger Vehicles Act 1981, Section 4B and Schedule 2. The traffic commissioner deployed to a traffic area determines the purposes for which, and the way in which, personal data is processed outside the tribunal room. Deputy traffic commissioners are delegated individual submissions and must take account of Statutory Guidance and follow Statutory Directions.

² Section 74(4)

³ Section 79

⁴ Paragraph 7 of Schedule 2 to the Public Passenger Vehicles Act 1981.

could ever attend to them... It cannot be supposed that this regulation meant that, in each case, the [office holder] in person should direct his mind to the matter. The duties imposed on [office holders] and the powers given to [office holders] are normally exercised under the authority of the [the office holder] by responsible officials... Public business could not be carried on if that were not the case. Constitutionally, a decision of such an official is, of course, the decision of the [the office holder]. The [office holder] is responsible. It is he who must answer... for anything that his officials have done under his authority, and, if for an important matter he selected an official of such junior standing that he could not be expected competently to perform the work, the [office holder] would have to answer".⁵

7. The legal principle which permits delegation in this way is predicated on the proposition that the traffic commissioner is responsible for things done under their authority. The exercise of the delegation is dependent on two things:
 - the conferment of power must be permitted under legislation (see above); and
 - the existence of a person to whom the traffic commissioner can delegate without parting with ultimate responsibility.⁶
8. Traffic commissioners are deployed to a traffic area⁷ and, like a Chief Constable who is not the employer of officers under their command, may be legally answerable for allocated staff. The Carltona principle appears to apply readily in such a situation, with two well-established qualifications. One is that some functions are such that they cannot be delegated at all⁸ and the other is that any delegation has to be to somebody suitable. As Carltona demonstrates, who is suitable is for the office-holder to decide.
9. Parliament has conferred powers directly on a traffic commissioner because of the personal qualifications of the individual holder but allows the traffic commissioner to delegate those other functions for which qualifications are not required in their position at the apex of the hierarchical structure put in place to support them. Those functions relying on personal qualifications can only be delegated to equivalent office-holders. Whilst a member of staff may be described in an instrument of delegation as a proper and appropriate agent; that person does not become the proper and appropriate person⁹ as their actions under a delegation are those of the individual traffic commissioner. Delegations will need to be updated with each new post holder.
10. Section 4C(1)(a) of the Public Passenger Vehicles Act 1981 (as amended) provides the Senior Traffic Commissioner with a power to issue guidance, and section 4C(1)(b), the power to issue general directions. These are separate powers, but both are directed at the traffic commissioners. Section 4(4) requires that traffic commissioners act under general directions of the Senior Traffic Commissioner and shall have regard to any guidance issued by the holder of that office. The terms are not specifically defined and therefore reference must be made to the following subsections: (2) provides a non-exhaustive list of what

⁵ Carltona Ltd v. Commissioners of Works [1943] 2 All ER 560, as Lord Greene MR

⁶ [R \(on the application of the Chief Constable of the West Midlands\) v Birmingham Justices & Others \[2002\] EWHC 1087 \(Admin\)](#)

⁷ Section 4B Public Passenger Vehicles Act 1981

⁸ R. v Chief Constable of Greater Manchester, ex parte Lainton [2000] 3 WLUK 788

⁹ [R \(on the application of the National Association of Health Stores & Another\) v Department of Health \[2005\] EWCA Civ 154](#)

might be the subject of guidance and (3) provides a non-exhaustive list of what might be covered by general directions. Those lists are not exhaustive but the intention of Parliament is that those matters covered by subsection (2) should not be the subject of directions and vice versa for those matters listed in subsection (3).

11. Directions cannot be used to dictate the meaning and operation of any enactment or instrument as this might suborn the responsibility of the judiciary¹⁰ and would risk inconsistency with case law.¹¹ The Statutory Directions issued under section 4C(1)(b) regarding the manner in which members of staff will carry out functions on behalf of individual traffic commissioners are subject to these legal principles. The delegation to an individual member of staff (described in the attached annexes) exist at the discretion of the relevant traffic commissioner whose functions are exercised under the delegation. The Department for Transport has guaranteed the independence of traffic commissioners. Another body cannot dictate how the statutory functions of traffic commissioners are discharged. If any function is to be delegated then the traffic commissioner must be able to ensure that the member of staff carries out those functions in a manner which is satisfactory to the traffic commissioner and in accordance with section 4C of the Public Passenger Vehicles Act 1981. To achieve this, the traffic commissioner must be able to tell that member of staff what must be done and how and when it is to be completed. The traffic commissioner must be able to control the manner in which the staff assist him or her to properly discharge those functions. In summary no other body can lawfully impose requirements on the traffic commissioners as to the discharge of their functions. It is only on that basis that it is possible for staff to be employed by another body, whilst the traffic commissioner determines whether authority can be conferred on the individual member of staff.¹²

12. The effect of a delegation is that the authorised member of staff may take decisions under the delegated powers. Annex 3 provides suggested levels of delegation. Automatic responses generated via the self-service function administered by DVSA cannot be taken to be the actions of the traffic commissioner. Delegations must be explicit and specific. Whilst the Upper Tribunal has suggested that there is no general principle preventing staff in the Office of the Traffic Commissioner from deciding to take no further action in respect of a matter reported to them, unless there is some clear restriction imposed on them¹³, this does not fully reflect the public law and the different approach advocated by Transport Tribunal has not been distinguished.¹⁴ In any event the Upper Tribunal was not asked to and so did not consider the relevant case law on delegation and the doctrine of legitimate expectation.¹⁵ For the

¹⁰ Section 4D(2) of the Public Passenger Vehicle act 1981 and paragraphs 1.11, A7 and B6 of the Secretary of State's Guidance to the STC.

¹¹ [Al-Le Logistics Limited and Others \[2010\] EWHC 134 \(Admin\)](#)

¹² https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/3573/framework-document-traffic-commissioners.pdf

¹³ [2011/043 D A Lewis UPVC Installations Ltd and David Andrew Lewis](#)

¹⁴ [2005/239 JR Williams trading as JRW Services](#)

¹⁵ i.e. where a decision-maker misunderstands the extent of his legal powers and offers to an applicant a benefit for which the applicant is not qualified under statute; a policy or procedure has been operated in such a way in the past so person can presume unless corrected that it will continue in the future; the decision-maker has promised a benefit and it would be unfair to break that promise, even if there are public interest grounds. In those circumstances a court may look at: Were the words or conduct ("promise/representation") which gave rise to the expectation clear and unequivocal? Did the person promising the benefit have legal power to grant it (or *ultra vires*)? Who made the promise and how many people stood to benefit by it? Did the person(s) to whom the promise was made take action in reliance upon it which has prejudiced them?

avoidance of any doubt on the part of applicants, operators, staff acting on behalf of traffic commissioners or others, this document makes it explicitly clear that any delegation must be in writing and not based on a misunderstanding of any custom or practice which might have developed amongst staff in one or more traffic areas.¹⁶ It is open to a traffic commissioner to conclude that what purports to be an operator's licence is in fact *void*.¹⁷

13. If a member of staff exceeds an explicit and clear delegation then their actions are not those of the relevant traffic commissioner and as a matter of public law that traffic commissioner cannot be considered liable for any prejudice/liabilities arising. Where a decision is not listed in the delegation it must be referred to the traffic commissioner. In particular any decision that would have the effect of revoking or suspending or curtailing a licence, whether of an operator or a driver, or limiting the use of a Certificate of Professional Competence by a transport manager, must be referred to the traffic commissioner for consideration but the principle extends to information obtained by individual traffic commissioners as a data controller, which cannot be disclosed to any party without explicit authority. That is not to say that every referral requires a formal written submission. However, there is no authority to delay an explicit instruction from a traffic commissioner, where additional time is required the case must be resubmitted.
14. Traffic commissioners will be aware of the expectation on them to engage in active case management¹⁸ by deciding promptly which issues need a full hearing and disposing summarily of the others. Traffic commissioners recognise the real benefit of applications being considered in a timely manner. It is therefore equally important that staff members acting on their behalf also adopt this approach. The number of applications submitted which are incomplete leads to unnecessary delay and backlogs. It is contrary to the interests of all responsible operators and applicants for staff to engage in unnecessary and protracted correspondence regarding incomplete applications. Once an applicant has been given an opportunity to address the outstanding issues but fails to do so then the application should be submitted to the traffic commissioner. Issues such as minor changes or clarification of relevant legislative provisions should be dealt with by e-mail or in person, with a record of any decision made. Team Leaders and Senior Team Leaders are deemed competent to make amendments by way of clarification, such as ensuring that all matters at issue are covered by the listed legislation.
15. Staff cannot exercise delegated functions unless the individual has been specifically authorised in writing by the relevant traffic commissioner and only to the extent indicated by that instrument. Traffic commissioners only grant delegations to named caseworkers, Team Leaders and Senior Team Leaders and other named staff, who are designated officers for the specified traffic area. As indicated above the traffic commissioners need to be satisfied as to the suitability of a member of staff before delegating functions, taking into account their relevant experience and training. Annex 3 provides the starting point for

¹⁶ See Statutory Guidance and Statutory Directions Introduction including how to use the Statutory Guidance and Statutory Directions and [2015/063 Mr M and Mrs V Smith](#) which appears to contradict the earlier decision in [2012/012 Aluminium Shapes Ltd](#) and allows for the prospect of a licence or condition being treated as *void ab initio*.

¹⁷ [2013/073 Ghulam Qadir Khan](#) illustrates the difficulty in following [2012/012 Aluminium Shapes Ltd](#) – in which the Upper Tribunal expressed an opposite opinion. However it was not asked to consider the application of section 36 of the Goods legislation (the equivalent of section 49A of the PSV legislation) for instance.

¹⁸ See Statutory Guidance on Case Management.

delegations, but individual traffic commissioners may choose to delegate further functions. Traffic commissioners may also remove delegations as they deem appropriate. Where a traffic commissioner departs from Annex 3 the individual traffic commissioner must record their detailed reasons in writing. The Head of the Office of the Traffic Commissioner (OTC) and Licensing is required to keep and maintain a Delegation Register (which is to be updated every six months) and to ensure that the necessary audits take place.

16. Relevant members of staff may suggest draft undertakings and conditions but the decision on whether to impose those restrictions remains with the traffic commissioner. Annexes 4 and 5 provide guidance on the drafting of conditions and undertakings and connected administrative procedures.

Multiple Licence Holders and Lead Traffic Commissioners

17. The eight full-time traffic commissioners, as well as being appointed to geographical traffic areas, may exercise reserved functions (i.e. not devolved), anywhere in Great Britain for the relevant traffic area. Traffic commissioners can and do delegate functions from a particular traffic area to another traffic commissioner. The delegation of functions to other traffic commissioners does not require written authority because the qualifications of the individual holder are already known as the basis of appointment to the post of traffic commissioner. The arrangements for multiple licence holders (MLH) were introduced on the initiative of the traffic commissioners in post at the time and exist by the agreement of the current occupiers of the relevant posts. Annex 1 describes how that agreement works.
18. The legislation enables an operator's licence to be subject to revocation, suspension or curtailment (or in the case of PSV operators, a reduction in the number of authorised vehicles). In deciding what action is appropriate the presiding traffic commissioner must have regard to the nature and circumstances of each case in deciding what action is proportionate. Any decision must relate only to those operator's licences which are the subject of the consideration on the papers or at a public inquiry.
19. When determining matters at public inquiry for a MLH the presiding traffic commissioner, having regard to the evidence produced, may decide to make a direction in respect of one or more of the licences. Even if all of a MLH's operator licences are before a traffic commissioner at a single hearing, the traffic commissioner may decide that it is proportionate to make a direction against one or more rather than all of the licences.¹⁹ For example a MLH might hold licences in three traffic areas. The lead traffic commissioner for their licence is based in the area where the MLH has its headquarters and the majority of its operating centres. There might be a compliance record suggesting maintenance issues in all the relevant traffic areas and a public inquiry may be called for the lead traffic commissioner to determine whether any action should be taken against any, or all of the MLH's licences. This is within the discretion of the presiding traffic commissioner.²⁰ On the evidence before the public inquiry the lead traffic commissioner might decide to make a direction for instance under section 26 of the Goods Vehicles (Licensing of Operators) Act 1995 in respect of one or more

¹⁹ See Statutory Guidance and Statutory Directions on Case Management

²⁰ As above

of the licences but decides that all the relevant facts suggest that it is proportionate to remove only the operator's licence in one traffic area.

DIRECTIONS

20. The Senior Traffic Commissioner for Great Britain issues the following Directions to traffic commissioners under section 4C(1) of the Public Passenger Vehicles Act 1981 (as amended). These Directions are addressed to the traffic commissioners in respect of the approach to be taken by staff acting on behalf of individual traffic commissioners and dictate the operation of all delegated functions.

Deployment

21. Section 4 of the Public Passenger Vehicles Act 1981 allows the Secretary of State to appoint any number of commissioners for England and Wales as the Secretary of State considers appropriate; and to appoint a single commissioner for the Scottish traffic area. The appointment processes for Wales and Scotland may be the subject of additional protocols with the respective devolved Governments. That section allows for a traffic commissioner to be responsible for issuing operator licences and for other functions under the relevant legislation.
22. A traffic commissioner for England and Wales may exercise the functions of a traffic commissioner in any traffic area in England and Wales; and may exercise any reserved matters²¹ in the Scottish Traffic Area. The Scottish traffic commissioner may exercise the same functions of a traffic commissioner in relation to the Scottish Traffic Area, and England and Wales, in addition to which the Scottish traffic commissioner may exercise devolved functions allocated under devolved legislation.
23. The Senior Traffic Commissioner has power to deploy traffic commissioners and deputy traffic commissioners in England and Wales; and the Scottish traffic commissioner, in respect of any reserved matters, throughout the jurisdiction. The Senior Traffic Commissioner may require any traffic commissioner to carry out such of the reserved functions of traffic commissioner as the Senior Traffic Commissioner may determine and at any place in the jurisdiction. The Senior Traffic Commissioner may similarly determine the extent to which a deputy traffic commissioner will carry out those functions, and where. Section 4(4) provides that any traffic commissioner must act under the Statutory Directions of and have regard to any Statutory Guidance given by, the Senior Traffic Commissioner.²²

Deputy Traffic Commissioners

24. The Senior Traffic Commissioner has deployed individual traffic commissioners to take responsibility for respective traffic areas in England and Wales. The Scottish traffic commissioner similarly has responsibility for reserved matters in the Scottish Traffic Area. Those responsibilities include assuming the position as controller for the relevant data arising from the exercise of the statutory functions. Deputy traffic commissioners act as data controllers in a very limited sense, and only during the exercise of tribunal functions. They have not been deployed to take responsibility for a specified traffic area.²³ They have no role in the delegation of functions to members of support staff. An individual deputy traffic commissioner can be engaged to undertake such reserved functions as may be delegated by the traffic commissioner

²¹ Scotland Act 1998

²² See Statutory Guidance and Statutory Directions Introduction, subject to the provisions of Scotland Act 1998 and the Government of Wales Act 2006

²³ but have been allocated an office for administrative purposes

for the relevant traffic area and, whilst acting under the same Statutory Guidance and Statutory Directions as the traffic commissioner may be subject to general direction by the traffic commissioner deployed to that traffic area. For instance, a deputy traffic commissioner may receive directions relating to the use of time and resources in application of the overriding principle.²⁴

Delegation to OTC Staff

- 25.** Only a traffic commissioner has the power to grant licences and/or to take action against an existing licence. Operator licences are issued by the traffic commissioner for the geographical traffic area, who is deployed to hear regulatory cases. Some functions cannot be delegated at all. For the avoidance of doubt no delegations exist so as to permit direction via an automated system. Delegations must be explicit and specific. In the absence of an explicit delegation there is no authority for OTC staff to take action, for instance there is no explicit authority to destroy licensing documentation.
- 26.** As the above Statutory Guidance acknowledges, traffic commissioners enjoy some discretion as to which functions to delegate to individual members of staff. As with any discretionary power it must be exercised in accordance with public law principles and in a manner, which is consistent with the intentions of Parliament. Delegation is the action by which a traffic commissioner assigns part of his or her authority commensurate with the assigned task to a member of staff. Annex 3 forms part of these Directions and lists the relevant starting points. As long as the member of staff acts within the specified parameters the traffic commissioner will retain responsibility for those actions. The Department for Transport has acknowledged that delegation is a matter for the traffic commissioner and this cannot be dictated by DVSA.
- 27.** The Human Rights Act 1998 guarantees the rights of operators holding a licence. Those rights cannot be interfered with, without the proper process of law. It is therefore important that all decisions, however minor they may seem, are considered against this background and any doubts must be referred to the traffic commissioner. Members of staff are not permitted to 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. It is for the traffic commissioner to decide whether the individual staff member is suitable to exercise a specified delegated function. A lawful delegation depends on two things:
- the delegation must be permitted under legislation; and
 - whilst a name individual might exercise a limited function on behalf of the traffic commissioner, it is the traffic commissioner who retains ultimate responsibility.
- 28.** The Senior Traffic Commissioner directs that members of staff must be clear as to the parameters of any delegation before taking a decision on behalf of a traffic commissioner and the delegation must be recorded in writing. As the traffic commissioner is responsible for ensuring that the appropriate level of task will be carried out within specified circumstances, by an identified person, under correct instructions and subject to the appropriate level of supervision, the attached

²⁴ See Statutory Guidance and Statutory Directions on Case Management

Annexes set out starting points for delegations by traffic commissioners. The Annexes clearly define which tasks can be delegated, specify the level of staff member who should be capable of carrying out the task and how that member of staff will be supported and monitored. Once a Public Inquiry has commenced then all decisions must be referred to the presiding commissioner. As with any Statutory Guidance, where a traffic commissioner finds legal grounds not to follow them that individual traffic commissioner must record their detailed reasons.

29. Any action by a member of staff which exceeds their delegated authority must be treated as a serious concern. A traffic commissioner remains accountable for a delegated decision taken within the written parameters. For this reason, any delegation of the institution of other proceedings must be approved by the Senior Traffic Commissioner. It is the responsibility of the Head of the Office of the Traffic Commissioner to ensure that any adverse incident is investigated appropriately with the outcome recorded and made available to the traffic commissioner.²⁵
30. The Head of the Office of the Traffic Commissioner is required to keep and maintain a Delegation Register (which is to be updated every six months). For any delegation to be effective it must be recorded in the Delegation Register and confirmed by a signed instrument of delegation from the traffic commissioner for the relevant traffic area setting out the extent and parameters of that delegation.

Recording Decisions

31. The Supreme Court has held that the duty to give reasons may extend beyond the tribunal. A party is entitled to know why an adverse decision has been reached and OTC should be in a position to demonstrate that the appropriate balancing exercise has been undertaken and that the decision has been reached based on relevant factors.²⁶ The courts have indicated that the giving of reasons is intended to:
 - concentrate the decision-maker's mind on the right questions;
 - demonstrate to the recipient that this is so;
 - show that the issues have been properly addressed;
 - and show how the result has been reached or alternatively alert the recipient to a flaw in the process.
32. There is no need to set out every trivial factor or combination which has no influence, but each relevant factor needs to be there and analysed. Submissions need to be accurate and any recommendation must be adequately explained. OTC staff should demonstrate proper regard to the safety of any particular operation and consider whether a particular set of facts risks giving an applicant or operator an unfair commercial advantage over responsible operators.
33. The Secretary of State has directed DVSA to provide the *officers and servants of a traffic commissioner* but it is the traffic commissioner who decides whether to delegate any functions to individual members of staff working within the OTC. In the absence of those delegations, managers and caseworkers have no legal

²⁵ There are existing procedures within the policy on Governance and Internal Reporting so that an exception report must be completed by the relevant STL or their line manager wherever a delegation has been exceeded. The report will record where action was taken outside the permitted parameters and any recommendation for remedial action.

²⁶ See Statutory Guidance and Statutory Directions on Principles of Decision Making

authority to take any action in respect of an application or licence and have no right to access traffic commissioner data.

34. Staff handle a variety of telephone calls from operators and applicants; a case note must be taken of important calls such as those relating to requests for extensions, any disputes and refusal or an inability to provide something that has been requested. The Upper Tribunal has observed the helpfulness of case notes taken to record the gist of conversations but that the obligation is on the operator or applicant to respond to any requests. The Tribunal has also made clear that operators and applicants should not use a telephone call as an alternative to providing a written response to correspondence that requires one.

Access to Data

35. Data relating to the licensing of operators in effect belongs to the relevant traffic commissioner. Traffic commissioners might delegate some of their functions to one of the deputy traffic commissioners, deployed by the Senior Traffic Commissioner. Individual members of staff are allowed access to traffic commissioner data under delegation from the relevant traffic commissioner. That delegation of access is limited to those working within the Office of the Traffic Commissioner as individual staff fulfil the role of a "data processor" in support of a traffic commissioner's statutory functions. As above, a traffic commissioner may remove a delegation as they deem appropriate. All other requests for access to traffic commissioner data will be governed by Memoranda of Understanding, Partnership Access Agreements or will be considered on a case by case basis. Requests for traffic commissioner data should be referred to the Traffic Commissioner Information Access Team as per Annex 6. This also records the delegations to members of the Information Access Team.
36. The traffic commissioners have a Memorandum of Understanding with DVSA to share that data which the traffic commissioners consider necessary to support DVSA's aim of improving the roadworthiness standards of vehicles and ensuring the compliance of operators, transport managers and drivers with road traffic legislation. The continued sharing of data relies on continued resourcing for those services.
37. A traffic commissioner may delegate to an appropriate member of Office of the Traffic Commissioner staff authority to disclose data within these datasets to an individual within DVSA for the purposes of enforcement only. This data is general operator licence details and includes but is not limited to: operator name and date of birth, transport manager name and date of birth, business registered office, vehicle registration marks, operating centre address and restrictions and any previous regulatory action. Should there be any doubt over whether the data can be disclosed this should be referred to the Traffic Commissioner Information Access Team. Data disclosed either: outside of the dataset, for an improper purpose, to someone who should not have access to the data or without a proper justification will lead to a review of that member of staff's delegation and could result in withdrawal of the delegation.

ANNEX 1 - MULTIPLE LICENCE HOLDERS & LEAD TRAFFIC COMMISSIONERS

1. Introduction

- 1.1 This document summarises the agreement between the eight traffic commissioners in Great Britain which allows the holders of operators' licences in more than one traffic area (a multiple licence holder "MLH") to be dealt with by a Lead Traffic Commissioner (LTC).
- 1.2 Holders of operators' licences in more than one traffic area will be allocated to a LTC to whom all applications relating to those licences will be referred.
- 1.3 All matters of non-compliance relating to a multiple licence holder will also be referred to the LTC in the first instance.
- 1.4 The process below sets out how the LTC will be allocated and the basis of the delegation of functions to the LTC from other traffic commissioners in whose area(s) MLHs hold licences.
- 1.5 As bus operators tend to operate as separate companies in each traffic area, this guidance will be more applicable to the holders of goods vehicle operators' licences.
- 1.6 Bus operators whose licences are granted to a group of related companies or which form subsidiaries of a parent company may, however, request that a lead traffic commissioner be appointed to deal with any matters that arise out of their related operator's licences. The only exception relates to Scottish public service vehicle licences, where devolved powers exist in respect of bus punctuality matters.
- 1.7 The procedure is designed to ensure a clear and consistent approach to administration.

2. The lead traffic commissioner and multiple licence holders

- 2.1. The identity of the LTC for an MLH will be determined in accordance with the following criteria:
 - the location of the operator's correspondence address/business head quarters, provided the operator holds an operator's licence in that traffic area; or
 - where that is not applicable the location and number of operating centres and the number of authorised vehicles in a particular traffic area;
- 2.2. The licence holder may make representations to be allocated to a different LTC but the final decision will remain with the traffic commissioners. The appointment of an LTC does not alter the allocation of data handling responsibilities, which follow the deployment of traffic commissioners.²⁷

²⁷ section 4B Public Passenger Vehicles Act 1981 and Traffic Commissioner Information Governance Framework

3. Multiple licence holders and the allocation of business between traffic commissioners

New and variation applications

- 3.1. All applications made by a MLH will be made to the LTC for that operator.
- 3.2. The LTC will decide whether they should deal with the application, or whether to allocate the case to the traffic commissioner in whose traffic area the (proposed) operating centre(s) is/are located.
- 3.3. To ensure that local views are reflected, the LTC will normally allocate cases relating to operating centres to the traffic commissioner presiding over the traffic area in which the operating centre is located.
- 3.4. If necessary, a public inquiry will be held in the traffic area to which the MLH's application relates and will be heard by the local traffic commissioner or a deputy traffic commissioner.
- 3.5. Where the LTC considers applications for a MLH which relate to other traffic areas, the LTC will deal with all applications.

Multiple licence holders and non-compliance

- 3.6. All cases of non-compliance relating to an MLH will be referred to the LTC for that MLH who will then consider what action to take.

4. Process

- 4.1. Operators who hold licences in more than one traffic area have been allocated to a LTC.
- 4.2. The purpose of these directions is to provide a standard procedure for preparing a case submission to the LTCs. These directions should be read alongside all relevant Statutory Guidance and Statutory Directions. There should be sufficient finance to cover all relevant licences.²⁸
- 4.3. The overriding concern in preparing case submissions is relevance. If a traffic commissioner requires additional detail the LTC can request it.
- 4.4. Any case submission in relation to an operator should clearly state that the operator is an MLH and the submission is with the LTC for initial consideration. Unless otherwise directed, if the LTC is unavailable for whatever reason, the submission shall be referred to a nominated traffic commissioner or deputy traffic commissioner.
- 4.5. If the LTC determines the submission should go to any other traffic commissioner, the LTC will e-mail a reply in those terms stating to which traffic commissioner the referral is to be sent and the reason for the referral.

²⁸ See Statutory Guidance and Statutory Directions on Financial Standing

4.6. An MLH case submission should normally include the following:

- details of the licence held in each area where relevant, including the number of vehicles and trailers, the name of the transport manager and details of the operating centres;
- a short compliance history for each licence covering the last five years, with particular emphasis on relevance (e.g. any previous findings for similar breaches), if an application generates a National Intelligence Unit request or if the system shows a relevant compliance history;
- the reason for the current submission (to include the licence to which it refers, if it is not in relation to all licences held);
- an overall summary of the operator across their licences in narrative form. In particular consideration at this stage should be given to any jurisdictional issues; and
- the caseworker and the Team Leader's recommendation.

4.7. It is anticipated that referrals of existing MLHs will operate in the following way: investigations by DVSA will identify whether the operator is a MLH. DVSA staff will carry out an investigation on the local licence in the usual way. If the investigation results in the recommendation to refer to a traffic commissioner OTC will obtain a report on all other linked licences. That report will have a breakdown of the compliance history including references to prohibitions, annual tests and any convictions and will require an overview of the operator's performance. The report will then be passed to the LTC via a submission from the relevant OTC with the usual recommendation. The submission should provide a summary of the 'local' licence where alleged non-compliance has been identified in addition to details of any relevant adverse history on the other linked licences.

5. Decision

5.1. The LTC will decide what action, if any, is to be taken in relation to each of the licences. If the LTC forms a view that only one licence area needs consideration, the LTC will indicate whether the submission should be referred to the traffic commissioner for the area in question to decide what action should be taken. However, in the interests of efficiency it is preferred that the LTC should deal with the matter unless it is so contentious that it requires the local traffic commissioner to deal with it.

5.2. If the LTC determines that licences in more than one area may need action, the LTC shall make the decision on what action should be regarding each licence. If the decision is to hold a public inquiry, the LTC shall state in which area it is to be held and whether they or a different traffic commissioner shall hear the cases. In the case of an operator with a licence in the Scottish Traffic Area, the LTC (and staff when making recommendations) should be alive to jurisdictional issues and whether there should be two public inquiries and in these circumstances which Inquiry should be heard first.

ANNEX 2 - INSTRUMENT OF DELEGATION

From: NAME OF COMMISSIONER
Traffic Commissioner for
Re: TRAFFIC AREA



I hereby confirm that

NAME OF MEMBER OF STAFF

Who, having been nominated further to Paragraph 7 of Schedule 2 of the Public Passenger Vehicles Act 1981 as an officer and servant of the traffic commissioner, as defined in section 79 of the Deregulation and Contracting Out Act 1994, is authorised by me under the provisions of Section 74 of the Deregulation and Contracting Out Act 1994 to act and make decisions in accordance with all Statutory Guidance and Statutory Directions, with particular regard to the Annex on Delegations and Multiple Licence Holders in the Traffic Area as detailed in the OTC Delegations Register until such time as I withdraw all or any part of the delegation.

Signed Date
.....
NAME OF TRAFFIC COMMISSIONER
Traffic Commissioner

ANNEX 3 - SUGGESTED DELEGATIONS

Any delegations must be exercised in accordance with all Statutory Guidance and Statutory Directions.

1.	Matters which will not be delegated		
a.	Disciplinary/regulatory directions and decisions.		
b.	Decision to hold a Public Inquiry.		
c.	Decision to adjourn a Public Inquiry.		
d.	Decisions on stay applications.		
e.	Acceptance of surrender of licences where there are outstanding compliance issues.		
f.	Decisions on impounded vehicles.		
g.	Decision to review an operating centre.		
h.	Grant of any Period of Grace.		
i.	Agreement to early start, variation or cessation of commercial registered bus services.		
j.	Continuation of licence on administration, bankruptcy etc. (Regulation 31 and section 57). ²⁹		
	Matters which can be delegated		
2.	Unopposed Applications	GOODS	PSV
a.	Grant of licence and major (chargeable) applications without objections or representations which meet requirements on finance ³⁰ , professional competence, maintenance and repute and where there are no relevant convictions ³¹ or concerns ³² about the applicant ³³ or the TM and there is no history (i.e. previous representations or objections or complaints) logged against the operating centre, and the applicant does not seek to vary or remove licence conditions.	AO	AO
b.	Grant of licence and major (chargeable) applications where road transport offences have been committed, excluding offences relating to drivers' hours of work or rest, weights or dimensions of commercial vehicles, road or vehicle safety or the protection of the environment, any other offence concerning professional liability; or any corresponding offence.	TL	TL
c.	Grant of interim authority where all the following are satisfied: <ul style="list-style-type: none"> • all mandatory requirements such as repute, financial standing and professional competence are met; • the period for making representations against the proposed operating centre has expired and no representations have been received; • the operating centre is already listed on another licence and there have been no recorded concerns or conditions imposed OR, if the operating centre is a new site, it is located in an established industrial area. 	AO	N/A
d.	Grant of interims where all the following are satisfied: <ul style="list-style-type: none"> • all mandatory requirements such as fitness/repute, availability of finance and professional competence (as applicable) are met: 	TL	N/A

²⁹ See Statutory Guidance and Statutory Directions on Legal Entities

³⁰ See Annex 5

³¹ See Statutory Guidance and Statutory Directions on Good Repute and Fitness with regard to spent convictions by reference for instance to test history, recurring prohibitable defects, offence notices etc.

³³ where an individual has declared a previous bankruptcy but the individual concerned has produced a certificate of discharge and there is no previous licensing or other compliance history.

	<ul style="list-style-type: none"> the period for making representations against the proposed operating centre has not expired but no representations have been received; the operating centre is already listed on another licence and there have been no recorded concerns or conditions imposed OR, if the operating centre is a new site, it is located in an established industrial area. 		
e.	Proposal and subsequent grant of applications subject to conditions and/or undertakings agreed by all relevant parties as deemed appropriate. There must be no attempt to coerce parties into acceptance of proposed conditions or undertakings. If there is any doubt, or if this method does not seem suitable, the case is to be referred to the traffic commissioner as early as possible. ³⁴	TL	TL
3.	Opposed Applications	GOODS	PSV
a.	Proposal and subsequent grant of applications subject to conditions and/or undertakings agreed by all relevant parties as deemed appropriate. There must be no attempt to coerce parties into acceptance of proposed conditions or undertakings. If there is any doubt, or if this method does not seem suitable, the case is to be referred to the traffic commissioner as early as possible. ³⁵	TL	N/A
4.	Other Matters	GOODS	PSV
a.	Refusal of new applications or major variations, which are incomplete. ³⁶	TL	TL
b.	Applications to increase the vehicle/trailer authorisation in line with the vehicle/trailer authorisation across all operating centres or to change operating centre address located in the same established industrial area and using the same means of access/egress, subject to a satisfactory compliance record check, no other compliance issues, the availability of finance requirements and that professional competence can be met.	AO	AO
c.	Agreement that an application shall not be treated as withdrawn when the prescribed payment date falls on a day when the office is closed and the fees are received on the next working day.	TL	N/A
d.	Direction that termination of the licence for non-payment of fees by the fee due date may be disregarded for “exceptional circumstances”, provided the prescribed date falls on a day when the office is closed and when the fee is received on the next working day.	TL	N/A
e.	Continuation of licence on the death of “actual holder” up to a period of 6 months where the licence is not subject to compliance proceedings (e.g. public inquiry or a proposal to revoke) where the request is received within 3 months of the date of death. ³⁷	TL	TL
f.	Propose to revoke licence on liquidation of a company or material change affecting the licence holder. Final revocation to be determined by the traffic commissioner.	TL	TL
g.	Decisions regarding the validity of a certificate of professional competence.	STL	STL

³⁴ See Annex 4

³⁵ See Annex 4

³⁶ See paragraph 14 above

³⁷ For guidance on Regulation 31 and section 57, see Statutory Guidance and Statutory Directions on Legal Entities

h.	Agreement to less than 56 days notice to register, cancel or vary a registered tendered service, supported by compelling reasons and the local authority/ITA supports, where there is no competitive advantage.	-	STL
i.	Acceptance of the surrender of a licence where there is no basis for regulatory consideration. ³⁸	TL	TL
i.	Acceptance of validity of advertisements if the wording is marginally incorrect provided that no person's interests are likely to have been prejudiced.	TL	N/A
k.	Agreement to Schedule 4 transfers provided there are no outstanding compliance issues and no known complaints. There must be full agreement to acceptance by the applicant/operator of any existing conditions and/or undertakings relating to use of the site. ³⁹	TL ⁴⁰	N/A
l.	Propose and accept regulatory undertakings, if deemed appropriate. Removal of a completed undertaking. ⁴¹	TL	TL
m.	Issue of section 19 and 22 permits.	-	TL
6.	Delegations specific to staff in the traffic areas offices of the Office of the Traffic Commissioner (See Annex 5)	GOODS	PSV
a.	Decision to issue a warning letter for a regulatory breach.	TL	TL
b.	Decision to take no further action for a regulatory breach.	TL	TL
c.	Propose and accept regulatory undertakings, if deemed appropriate. Removal of a completed undertaking. ⁴²	TL	TL
d.	Decision to take no further action with respect to holders of vocational driving licences. ⁴³	AO	AO
e.	Decision to issue a warning to holders of vocational driving licences (in accordance with the Statutory Guidance and Statutory Directions on Driver Conduct).	AO	AO
f.	Minor clarification of legal provisions for public inquiry.	TL	TL
g.	Sending a propose to revoke letter on liquidation of a company, bankruptcy of an individual licence holder, dissolution of a partnership or change of entity. Final revocation to be determined by the traffic commissioner.	AO	AO
h.	Impounding – formal letter to DVSA advising that no application for return of the vehicle has been received.	STL	STL
i.	Completion of section 9 and 43 statements within OTC operating instructions.	AO	AO

Key:

STL	Senior Team Leader	Higher Executive Officer	HEO
TL	Team Leader	Executive Office	EO
AO	Case worker or Clerk	Administrative Officer	AO

³⁸ See Annex 5.

³⁹ If there is any doubt as to the currency of the conditions/undertakings then the case must be referred to the traffic commissioner.

⁴⁰ See Statutory Guidance and Statutory Directions on Case Management.

⁴¹ See Annex 4 & 5.

⁴² See Annex 4.

⁴³ See Statutory Guidance and Statutory Directions on Vocational Driver Conduct.

ANNEX 4 - FORMULATION OF CONDITIONS & UNDERTAKINGS

1. Guidance on format of conditions

1.1 Conditions must be:

1.1.1 lawful and reasonable;

1.1.2 unambiguous;

1.1.3 capable of being monitored and enforced.

2. Road safety conditions/undertakings

2.1 Must prevent vehicles authorised to be used under a licence from causing danger to the public:

2.1.1 at any point where vehicles first join or leave the public road when leaving or returning to the operating centre;

2.1.2 on any road (other than a public road) along which vehicles are driven between such a point and the operating centre.

3. Examples of road safety conditions/undertakings

3.1 Authorised vehicles (including trailers) shall leave the operating centre by executing a right turn on to [] Road and shall enter by executing a left turn from that road.

3.2 Authorised vehicles shall enter and leave the operating centre in forward gear.

4. Environmental conditions

4.1 Environmental conditions must prevent or minimise adverse effects on owners or occupiers of land in the vicinity of the place used or to be used as the operating centre.

4.2 Conditions may relate to:

4.2.1 number, type and size of motor vehicles or trailers;

4.2.2 vehicle and trailer parking arrangements at or in the vicinity of any such centre; and

4.2.3 the hours at which operations (including maintenance, loading and unloading) may be carried out.

5. Examples of environmental conditions

- 5.1 Authorised vehicles shall not exceed 7½ tonnes gross vehicle weight.
- 5.2 The engines of authorised vehicles shall not operate for more than 5 minutes before the authorised vehicles leave the operating centre.
- 5.3 There shall be no maintenance at the operating centre.
- 5.4 Authorised vehicles shall be parked within the area hatched on the plan attached to the licence.
- 5.5 The hours of movement of the authorised vehicles at, into or out of the operating centre shall be confined to 0700 to 1900 Mondays to Fridays.

6. Reasons for imposing conditions/undertakings

- 6.1 The reasons for the attachment of licence conditions or acceptance of undertakings must always be clearly stated.

7. Important exception

- 7.1 Where novel forms of conditions or undertakings are agreed between the parties the traffic commissioner should be consulted to confirm the legality and appropriateness of what is proposed.

8. Removal of variation conditions

- 8.1 Conditions or undertakings imposed at public inquiry or by the traffic commissioner personally in-house may only be amended or removed by the traffic commissioner (or a deputy traffic commissioner).
- 8.2 Applications to vary or remove conditions or undertakings which are contested may be determined only by the traffic commissioner (or a deputy traffic commissioner) after the public inquiry as appropriate.
- 8.3 Otherwise conditions or undertakings may be removed or varied subject to either:
 - 8.3.1 written agreement of all parties originally involved;
 - 8.3.2 lack of response to advertisement or Applications and Decisions publication;
 - 8.3.3 change in the circumstances which caused the original imposition of the conditions whether road safety or environmental.

9. Reasons for removing conditions/undertakings

- 9.1 Reasons for deleting or changing undertakings or conditions must always be given.

ANNEX 5 - DECISION MAKING PROCESSES FOR OTC STAFF ACTING UNDER DELEGATIONS

The purpose of this document is to provide a more detailed description of the type of casework, and at what level, the traffic commissioners may agree to delegate administrative decisions. All members of staff working within the OTC must read and fully understand this document and act in accordance with all Statutory Guidance and Statutory Directions.

1. Guidance on exercise of delegations

1.1 Decisions must be:

- 1.1.1 lawful and reasonable;
 - 1.1.2 exercised within strict parameters in accordance with the STC's Statutory Documents and in particular Statutory Guidance on Delegations and Statutory Guidance and Statutory Directions on the Principles of Decision making;
 - 1.1.3 reasoned and recorded;
- 1.2 As indicated above, members of staff are expected to deal with all issues promptly and to avoid unnecessary and protracted correspondence.
- 1.3 Failure to act within these parameters and/or to record appropriate reasons may result in all delegations to that member of staff being withdrawn and may be treated as a performance issue.

2. Guidance on making decisions for regulatory breaches

- 2.1 Staff should be aware of the leading case law and principles. STC Statutory Document No.10 indicates the regulatory starting points. For action to be taken under delegations it must fall within the areas indicated as 'LOW'. However, the leading cases set questions which might be paraphrased as: 'How likely is it that this operator will, in future, operate in compliance with the operator's licensing regime'? The following points offer further direction as to how staff acting under delegations should reach a qualitative assessment:
- 2.1.1 It is not sufficient to simply rely on a recommendation from a Senior Examiner at DVSA as staff members will be expected to justify any decision. If a PI is recommended this must be passed to the traffic commissioner (although the submission may, of course, recommend a different course of action);
 - 2.1.2 The shortcomings must fall outside of the guidance in which a PI case should be considered or where the traffic commissioner is required to consider loss of repute;
 - 2.1.3 The following should be referred to a traffic commissioner:

- i) where several different issues of non compliance are identified;
- ii) the operator/transport manager have been subject to a previous public inquiry;
- iii) previous warning letters have been issued in the last five years;
- iv) any PG9 which involves failings in the braking system, steering, loose wheel nuts or other safety-critical components or one which is 'S' marked;
- v) evidence of fraud, falsification of documents or intentional deception, including the use of magnets.

2.1.4 No power exists to make a decision on any Most Serious Infringement or any conviction not previously notified..

2.1.5 Any notification of an MSI must be placed before the relevant traffic commissioner. Any 'historic' convictions uncovered during the preparation of the submission, which have not previously been considered by a traffic commissioner, must also be referred to them.

2.1.6 The circumstances of non compliance must not present an immediate risk to road safety.

2.1.7 The operator must have provided a full explanation for the incident and a repetition is considered unlikely due to the mitigation given and the steps taken by the operator.

3. Warning Letters

3.1 Warnings might be issued for a variety of reasons and when considering issuing a warning, full consideration must be given to the items detailed below; if there is any question as to the involvement of the transport manager with a standard licence or directors with a restricted licence as to how they allowed any shortcomings to exist, a warning letter is unlikely to be appropriate.

3.2 The case must fall within the regulatory starting points detailed in STC Statutory Document No. 10. The operator/transport manager must not have been subject to a previous public inquiry.

3.3 Where the items of non compliance suggest a level of regulatory action higher than 'LOW' in Statutory Document No. 10, a warning can be considered if accompanied by further undertakings which fully address the identified shortcomings and future management of the transport operation. Any incident to be considered must not present a risk to road safety. The operator must have provided a full explanation for the incident and a repetition is considered unlikely, due to the mitigation given and the steps taken by the operator.

3.4 When considering whether a warning letter should be issued for maintenance issues, the following points offer direction as to how staff acting under delegations should reach a qualitative assessment. If any of the answers to the questions below is 'Yes' a submission to the traffic commissioner is likely to be required;

- 3.4.1 Is the non compliance an immediate risk to road safety?
 - 3.4.2 Has there been a public inquiry in the past 5 years?
 - 3.4.3 Are there concerns that the transport manager is not exercising continuous and affective management over the vehicle operation?
 - 3.4.4 Is the operator's explanation/mitigation incomplete, incoherent and has the operator failed to demonstrate that they have taken positive steps to ensure future compliance?
 - 3.4.5 Have any of the prohibitions been "S" marked?
 - 3.4.6 Is the annual test history across the previous two years below the national pass rate average once "Pass After Rectifications" (PRS) are removed? Consideration should be given to size and type of operator and the nature of the fail items. In certain cases especially where the operator has few vehicles or incidences of test the percentages may be exaggerated so this should be taken into account. Similarly, if the operator fails on items which are minor in nature and could have occurred on the journey to the test centre this should be taken into account. Any decision to disregard annual test history and issue a warning under delegation must be approved by the STL.
 - 3.4.7 Are there outstanding undertakings to be completed?
 - 3.4.8 Are safety inspection intervals exceeding the original agreement by 50% or more?
 - 3.4.9 Is a variation application in progress to increase the number of vehicles?
 - 3.4.10 does the DVSA Examiner and/or Senior Examiner recommend a PI?
 - 3.4.11 Are there any other known concerns (i.e. any financial issues highlighted in reports or from licensing and possible change in entity or ownership noted on reports or from licensing).
- 3.5 When considering whether a warning letter should be issued for parking at sites other than the authorised operating centre the following offer pointers as to how staff acting under delegations should reach a qualitative assessment:
- 3.5.1 On receipt of any complaint regarding parking, all operators must be sent a letter requesting an explanation to the allegation. The request for an explanation is usually made by DVSA and submitted to the Office of the Traffic Commissioner once a reply is received or the deadline has passed. In the absence of a response the case must be submitted to the traffic commissioner.

- 3.5.2 Where the explanation states that the parking took place on a one off occasion or was similarly irregular, formal action under section 26(1)(a) of the 1995 Act would not be appropriate, it is important that operators respect the terms of their licence and understand the concerns of residents.
 - 3.5.3 Where it is a first offence and only if a full explanation has been given with assurances that the vehicles will be parked at the operating centre in the future or that the vehicle was not parked at the place when not in use, a team leader will be authorised to send a formal reminder to the operator of their obligations to park the vehicle(s) in their authorised operating centre when not in use.
 - 3.5.4 The team leader considering the case must always consider whether the definition of operating centre, as stated in both the 1981 Act and 1995 Act, applies to the place referred to in the complaint. Any subsequent reports of failure to use the authorised operating centre must, after investigation, be placed before the traffic commissioner.
 - 3.5.5 If there is evidence or an accusation of persistent and continuous parking of vehicles at an unauthorised operating centre a submission is required to be put to the traffic commissioner and there is no delegation sought.
- 3.6 There is no delegation to issue a warning letter in the following cases and must therefore be referred to a traffic commissioner:
- 3.6.1 immediate prohibitions which represent defects of a road safety critical nature;
 - 3.6.2 multiple historic prohibitions (including delayed) if the defect is reoccurring;
 - 3.6.3 success/fail rate at spot checks and annual test is significantly below the national average;
 - 3.6.4 'S' endorsed PG9s;
 - 3.6.5 unsatisfactory MIGs indicating major systems failure;
 - 3.6.6 examiner and/or senior recommend a public inquiry;
 - 3.6.7 operator response to DVSA disputes their findings;
 - 3.6.8 DVSA reports transport manager is no longer employed;
 - 3.6.9 No records produced and/or no systems in place.
- 3.7 The starting point for any item of non compliance must be the same as for a decision on No Further Action. If there is any question as to the involvement of the transport manager with a standard licence or directors with a restricted licence as to how they allowed any shortcomings to exist, a warning letter on its own may not be appropriate.

- 3.8 For bus complaints the STL/TL must refer to the internal OTC Procedure Manual. The operator must have provided a full response to the complaint which addresses all the points raised and further non compliance is considered unlikely because action has been taken to rectify the problem by the operator or that the matter was exceptional and therefore outside of the operator's control. Matters must be minor in nature, i.e. not road safety related which would require consideration using the process outlined in 1. above. Issues where finance, transport manager control, good reputé, vehicle condition, overcrowding are evidenced are not included in this. Anything that requires further investigation by DVSA will not be dealt with until the full facts are known.

4. Proposal of Undertakings

- 4.1 Whilst the current operator licence undertakings should generally be considered sufficient to ensure operator licence compliance there may be limited cases where it is appropriate to suggest the attachment of extra undertakings on the licence. Consequently, the TL/STL may, as part of the decision making process, also consider whether it is appropriate to request an undertaking from the operator prior to the issue of any warning letter (see Annex 2). Such undertakings should be very specific to the regulatory issue/s being considered and should not place an unnecessary administrative burden on the operator, applicant or staff who act on behalf of the traffic commissioner. They will therefore be likely to relate to specific matters that enhance the existing licence undertakings such as driver or transport manager training or the provision of a third party audit.
- 4.2 An undertaking regarding the provision of financial evidence can also be attached to the licence and if so⁴⁴ will be in the following terms:

“(named operator) to provide financial evidence in the name of the (the operator) covering (identified three month period), to the Central Licensing Office in Leeds by no later than (date – usually 6 months from grant). This must show that the operator has continued to meet the required level of available finance throughout the period by reference to an average balance, dependant on the rates applicable at that time”.

The proposal to accept undertakings must not be forced upon an operator/applicant and must be accepted, in writing, before being attached to a licence. Any refusal to accept will result in a submission being put to the traffic commissioner for all matters under consideration. For the sake of clarity, if an operator refuses to accept an undertaking no warning or NFA letter can be issued under delegation. In the case of an application, grant on the basis of an opening balance rather than a 28 day average is not a right but involves use of the traffic commissioner's discretion and will always require acceptance of a finance condition if grant of an application is to proceed under delegated authority.

- 4.3 It will not be appropriate in all cases for undertakings to be sought but if they are it must take place before any decision is made on the issue of a warning

⁴⁴ See Statutory Guidance and Statutory Directions on Finance.

letter. Where a finance condition is attached there must be no other licensing or regulatory issues and the application must be out of the objection period.

5. No Further Action

- 5.1 The licensing system is intended to address the risks to road safety and fair competition. Accordingly, the decision to take no further action (NFA) for non compliance can be as important as any other regulatory decision to convene a Public Inquiry. NFA must only be taken in those circumstances where the level of non compliance is regarded as so minor that there has been no risk to road safety and no tangible commercial advantage gained from the actions. Staff members should ask themselves the question: 'can I justify taking no action if something goes wrong in the future?'
- 5.2 The starting point for any item of non compliance must be the same as for the issue of a warning letter detailed above. The case must fall outside of the guidance in which a public inquiry or warning letter should be considered and full consideration of the regulatory starting points detailed in Statutory Document 10 or for drivers, Statutory Document 6. The STL/TL must consider the principles of decision making, as detailed in Statutory Document No.10. This includes the requirement to consider whether the non compliant activities of the operator were an attempt to gain a commercial advantage over a compliant competitor. It therefore follows that NFA can only be considered if it fails to meet the criteria set out above regarding warning letters.
- 5.3 To consider NFA, the shortcomings must relate to minor failings and repetition must be considered unlikely, due to the mitigation given and the steps taken by the operator. Prior to deciding upon NFA, the STL/TL is also expected to give careful consideration to proposing an undertaking in accordance with the guidance above so that the operator can be held fully accountable should further non-compliance issues arise.

6. Removal of an undertaking

- 6.1 Delegation to remove an undertaking attached to a licence may only be exercised in respect of a factual 'one time' undertaking such as the operator is required to have an audit undertaken or implement further driver training.
- 6.2 The evidence supplied must show full compliance with the undertaking, confirmed, if appropriate, by a third party: a trade association audit or driver training certificates for example.
- 6.3 Where, in the opinion of the S/TL, an audit report appears identify further shortcomings but there is evidence of prompt, relevant and potentially effective remedial action, it will be necessary for the S/TL to ask the operator to provide an undertaking for a further audit within (normally) 3-6 months in order to demonstrate that the action has taken place and remedied the problem. This can be done only once. Where the original issues giving rise to the audit undertaking have not been addressed so as to suggest future non-compliance then the issue should be referred back to the traffic commissioner.

6.4 The STL must record the removal of any undertakings and/or a finance condition on the operator licence database.

7. Minor clarification of legal provisions to be considered at Public Inquiry

7.1 Staff members at the appropriate level are permitted to make minor amendments to the proposed legislation under which an operator or applicant is to be called to a hearing but only by way of clarification. There can be no circumvention of a traffic commissioner's decision but there may be instances where a submission did not refer to or place sufficient weight on a piece of information as sufficient grounds to include additional legislation or where evidence is received subsequently that warrants inclusion of an additional ground. It is recognised that this delegation allows for the efficient use of tribunal time and resources by avoiding unnecessary adjournments. However, staff members are not permitted to make changes to grounds involving establishment, good repute, financial standing or professional competence.

7.2 Grounds can only be added not removed. Furthermore, grounds can only be added if the evidence was provided to the traffic commissioner.

8. Impounding

8.1 Authorised staff members are permitted to send a formal letter on behalf of the traffic commissioner advising DVSA that no application for return has been received by the traffic commissioner. That delegation is subject to checks being made with the licensing team, DVSA area office and other relevant intelligence sources to ensure that no correspondence has been received prior to the letter being despatched.

8.2 The decision on whether to call a hearing and/or return the vehicle is not to be delegated under any circumstances.

9. Section 9 / Section 43 statements

9.1 This delegation relates to requests normally received from DVSA enforcement staff but also occasionally from the police or other enforcement agencies. The statements are usually required to confirm whether or not a named individual/company is the holder of a Goods or PSV operator's licence or whether a vehicle is specified on a particular licence. A case worker may sign the statement as an officer of the traffic area on behalf of the traffic commissioner. Any request that is considered particularly complex or sensitive should be referred to the STL and, if appropriate, to the traffic commissioner. It is incumbent upon the member of staff to ensure that all legal requirements on data handling are complied with and to consider any relevant exemptions in line with operating instructions.

10. Acceptance of the surrender of a licence

10.1 As an operator's licence is "property" under the Human Rights legislation it is vital that there are proper checks to ensure that the individual offering the

surrender has the right to do so. Consequently, a pro-forma SUR1 must be completed by a properly authorised person.

10.2 Where the licence holder is a corporate entity and in administration, liquidation, or receivership, surrender may be accepted upon written application from the relevant insolvency practitioner.

10.3 Where there is any doubt as to the authority of the person offering surrender of an operator's licence then the issue must be referred to the traffic commissioner. Where a corporate entity no longer exists in law (i.e. it has been wound up) an application for surrender cannot be accepted.

ANNEX 6 - DELEGATIONS TO THE TRAFFIC COMMISSIONER INFORMATION ACCESS TEAM

Request Type	Comments	Delegated authority
Individual Subject Access Request (SAR)	Always referred to the traffic commissioner, even if not identified as a SAR by the sender but interpreted as one by the Information Access Team (IAT)	No – to be referred to relevant traffic commissioner
Freedom of Information (FOI) - Not releasing information as there is no information to release	Requests where there is no information available to release. Examples could relate to a request for any environmental reports that were provided to support an application where none are held	Yes – IAT does not release information. Many of these requests are addressed by the licensing and compliance teams and unless they are headed as FOI they would be dealt with by teams
Freedom of Information – Not releasing information as it falls outside of scope of FOI, i.e. tribunal function	Tribunal function includes matters ancillary to the tribunal but so closely linked as to be indistinguishable, i.e. may include a submission to a traffic commissioner or a person exercising delegations awarded by a traffic commissioner	Yes – IAT is not releasing any information and the definition of tribunal function is clearly set out
Freedom of Information – Not releasing information due to cost	Cases where it is determined that the cost of providing the information exceeds the mandated amount set out in the legislation	No – All cases should be referred to the relevant traffic commissioner as this may be contentious
Freedom of Information – Not releasing as already in public domain	This may relate to requests for statistics or similar information. Currently it would not generally be referred	Yes – As the information is already publically available it presents a minimum risk
Freedom of Information – Releasing information	Requests where information is to be released	No – All cases to be referred to the relevant traffic commissioner prior to release
Request from Agency with MoU – Does not fall within the terms of the MoU	Requests for information from Agencies with an MoU etc. but the information requested is not covered by that agreement	No – All cases refer to the relevant traffic commissioner
Request from Agency with MOU – No release of information	Requests for information from Agencies with a MOU but the information requested is not available	Follow the procedure for FOI requests
Request from Agency which does not have a MOU – Release of information	Requests received from Agencies that do not have a MoU but where the information is available for release	No – All cases referred to the relevant traffic commissioner

Request from Agency which does not have a MOU – No release of information	Requests for information from Agencies without an MoU etc. and the information requested is not available	Follow the procedure for FOI requests
Requests for Review	Request for a review lodged against a decision to decline a request for information	No – All cases referred to the relevant traffic commissioner

ANNEX 7 - AUDIT PROCESS FOR STAFF WORKING UNDER DELEGATED AUTHORITY FROM TRAFFIC COMMISSIONERS

Background

1. The legal background to delegations is explained in the Statutory Guidance above. The delegation of functions requires proper oversight and so there is a clear need for a record to be kept of the process of auditing the way in which staff exercise delegated functions, so that all who deal with the traffic commissioners and their staff can have confidence in the licensing system. These processes will also ensure that traffic commissioners have confidence in staff member who carries out work on their behalf under delegated authority. Members of staff of the Office of the Traffic Commissioner are specifically referred to the Statutory Guidance, which explains the basis of those delegations.
2. The process defined below provides evidence of a transparent audit system and includes audits of all staff working at all levels within the Office of the Traffic Commissioner so as to provide the relevant traffic commissioner with assurance that the delegation system is working properly and that staff are acting in accordance with all the Statutory Guidance and Statutory Directions.
3. Those carrying out the audits are reminded that the process set out below defines the minimum requirements and that, if there are concerns about a particular member of staff that result in further training, the audit frequency and type should be increased accordingly.
4. A distinction can also be drawn between those members of staff (at all levels) who have a number of years' experience in the Office of the Traffic Commissioner and a consequent breadth of expertise (referred to as established staff) and those members of staff who are either newly recruited or who have relatively little experience in their new post (referred to as new staff). Those carrying out the audits must therefore ensure that proper training and auditing takes place with particular regard to new staff.
5. Similarly where a traffic commissioner has legitimate concerns about an individual member of staff they must raise it with the Head or Deputy Head of the Office of the Traffic Commissioner at the earliest opportunity so that steps can be taken to address those concerns. All staff members are reminded that the final decision on whether to remove any delegation granted to a member of staff lies with the traffic commissioner alone and that any proposals by the Head or Deputy Head Office of the Traffic Commissioner to remove any delegations must be fully discussed with the traffic commissioner who will make the final decision.

Process

6. Team leaders will conduct audit checks every 3 calendar months of no less than 5 % of all decisions made by caseworkers (AO level) under delegated authority. A written record of those audit checks will be kept and provided to the traffic commissioner upon request.
7. Senior Team Leaders will conduct audit checks at least every 3 calendar months of no less than 5% of all decisions made by established team leaders (EO level) under

- delegated authority. A written record of those audit checks will be kept and provided to the traffic commissioner upon request.
8. In the licensing teams, senior executive officers will conduct audit checks at least every three calendar months of no less than 2.5% of all decisions made by established Senior Team Leaders (HEO level) under delegated authority. In the compliance teams, the responsibility for completing and recording audit checks lies with the relevant senior team leader. The Deputy Head of the OTC will be responsible for recording audit checks across the compliance teams in the individual Traffic Area Offices. A written record of those audit checks will be kept and provided to the traffic commissioner upon request.
 9. The starting point for the audit of “new caseworkers” (AO level) will be for the team leaders to conduct audit checks on a reducing scale in respect of conducting an audit of 50% of their work for the first month after grant of delegation, 25% of their work for the second and third month after grant, 10% of their work for the fourth month after grant, and 5% of the work thereafter. A written record of those audit checks will be kept and provided to the traffic commissioner upon request. If the team leader determines that the caseworker (AO level) is progressing quickly enough to depart from this starting point they are required to record that decision with reasons.
 10. Senior Team Leaders will conduct audit checks on a reducing scale in respect of “new Team Leaders” (EO level) conducting an audit of 50% of their work for the first month after grant of delegation, 25% of their work for the second and third month after grant, 10% of their work for the fourth month after grant, and 5% of the work thereafter. As the team leader (EO level) post is key to the audit of other members of staff there will be not be the scope for reducing the timescale for these audit checks. A written record of those audit checks will be kept and provided to the traffic commissioner upon request.
 11. Senior executive officers and above (who do not carry out case work on behalf of traffic commissioners) will conduct audit checks in respect of “new Senior Team Leaders” (HEO level) at least every 6 calendar months of decisions made under delegated authority. They will also conduct audit checks regarding any decision made at any level and not previously audited and a cross-check of decisions that have been audited. A written record of those audit checks will be kept and provided to the traffic commissioner upon request. To ensure a consistent approach the audit record will include comments as against the relevant headings below.
 12. Where minor errors are found during the audit it will be sufficient for the relevant line manager to deal with that matter informally with the member of staff by whatever means they consider appropriate e.g. further training or mentoring or auditing.
 13. Where major errors are found with a member of staff’s work as a result of the audit and/or where the member of staff has acted outside the limits of their delegation) the relevant line manager will bring the matter to the attention of the relevant traffic commissioner(s) forthwith and will agree with the traffic commissioner the steps to be put in place to satisfy the traffic commissioner that the delegation should either remain or be removed. It will be for the line manager to deal with any HR matters arising as a result but it will be a matter solely for the traffic commissioner as to whether to retain or remove the delegation.

14. The Head of the Office of the Traffic Commissioner will keep a register of those instances where members of staff are found to have acted either outside of their delegation or “ultra vires” and will provide a copy of that register to the Senior Traffic Commissioner on a quarterly basis. Additionally, those senior executive officers and above will report to the traffic commissioners every two months with regard to the overall levels of competence and achievement across Office of the Traffic Commissioner staff.

Matters to be included in the audit template – licensing staff

- Caseworker/team leader/senior team leader
- Date of check
- Licence Number
- Operator Name – of the entity and of any trading name
- Data input accuracy
- Searches
- Advert
- Maintenance arrangements
- Correspondence
- Transport manager qualifications
- Transport manager declaration
- Convictions
- Finances
- Conditions/undertakings
- Submission
- Intelligence check
- Publication
- Delegation
- Any additional comments
- Compliance with the Statutory Guidance and Statutory Directions

Matters to be included in the audit template – compliance staff

- Caseworker/team leader/senior team leader
- Date of check
- Licence Number
- Operator Name – of the entity and of any trading name
- Data input accuracy
- Searches
- Maintenance arrangements
- Correspondence
- Transport manager declaration
- Convictions
- Finances to comply with an undertaking
- Conditions/undertakings
- Submission – to include cross check that the call up letter (where applicable) refers to the correct legislation
- Call up letter – where appropriate
- Warning letter – where appropriate
- Publication
- Delegation
- Any additional comments
- Compliance with the Statutory Guidance and Statutory Directions

15. Additionally, an audit of documents received electronically in relation to digital applications will be carried out to ensure their authenticity. The documents to be included in the audit are newspaper advertisements, financial evidence, TM1 forms and certificates of professional competence. The audit will apply to 5% of applications received by digital means, and hard copies of all relevant documents will be obtained in those cases. The audit will be manually selected in each area to ensure that consistent numbers are being audited for individual traffic commissioners. Knowledge led audits will be carried out on an 'as and when' basis, subject to knowledge, previous history or suspicion. A request for hard copy financial documents will be triggered by a 'Yes' answer to any of the 'previous financial history' questions.