

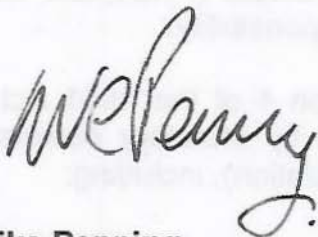
FRAMEWORK DOCUMENT: TRAFFIC COMMISSIONERS, DEPARTMENT FOR TRANSPORT INCLUDING ITS AGENCIES

Foreword: Joint statement by Mike Penning and Statutory STC for Great Britain.

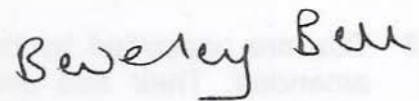
We are pleased to publish this Framework Document on behalf of the traffic commissioners (TCs) for Great Britain which builds on the internal Motoring and Freight Services Group Corporate Governance Framework issued in June 2009. It is designed to support TCs in their work and to describe the relationship between them and the Department for Transport (DfT), including its agencies. It is hoped that this document will assist licensed operators in understanding those relationships.

The Local Transport Act 2008 introduced changes to the way in which TCs engage with Government. As a tribunal and regulator it is important that the independence and impartiality of TCs which is both required by statute and also valued by industry and Ministers is properly accommodated. This Framework Document supports moves to make the service provided by individual TCs more transparent, accessible and efficient, whilst ensuring fairness and trust, which lie at the heart of the licensing system. This Framework flows from the previously published Secretary of State for Transport's Guidance to the STC.

We look forward to a successful and productive partnership.



Mike Penning
Parliamentary Under Secretary
of State for Transport



Beverley Bell
Senior Traffic Commissioner

1. Introduction

- 1.1 This Framework Document has been drawn up collectively by DfT, including its Agencies, and traffic commissioners. In this document, the term "TCs" is used to describe both full-time TCs and fee-paid, deputy TCs unless stated otherwise.

2. Background

- 2.1 The post of TC has existed with effect from 1st January 1931. From the outset of the implementation of the licensing system there has been close liaison between TCs, civil servants and Ministers. TCs have always been required to exercise a number of their powers in public and great emphasis continues to be placed on the need to ensure road safety and fair competition. The roles of the TCs are set out in the Public Passenger Vehicles Act 1981 (the 1981 Act) but the Local Transport Act 2008 introduced further changes and in particular strengthened the independence of TCs through the introduction of a statutory Senior Traffic Commissioner (STC) with new powers.
- 2.2 Administrative support to the TCs is provided by staff employed by the Vehicle Operator and Services Agency (VOSA), an executive agency of DfT as provided for in the VOSA Trading Fund Order 2003/942, with the Chief Executive appointed by HM Treasury as the Accounting Officer for VOSA under section 4(6) of the Government Trading Funds Act 1973. HM Treasury appoints the permanent head of each Government Department as the Principal Accounting Officer (PAO), and other additional Accounting Officers for whom the PAO retains responsibility.
- 2.3 TCs are appointed by the Secretary of State under section 4 of the 1981 Act as amended. Their role and responsibilities are determined by statutory powers in primary and secondary legislation (as well as European legislation), including:
- The Public Passenger Vehicles Act 1981
 - The Transport Act 1985
 - The Road Traffic Act 1988
 - The Goods Vehicles (Licensing of Operators) Act 1995
 - The Transport Act 2000
 - The Transport (Scotland) Acts 2001 and 2005
 - The Local Transport Act 2008
- 2.4 Schedule 2 to the 1981 Act allows for the appointment of deputy TCs, to whom TCs can and do delegate their work.

3. Purpose, Vision and Values

- 3.1 The TCs' purpose is to champion safe, fair and reliable passenger and goods transport.
- As regulators and in carrying out their judicial functions, TCs adopt an approach that is designed to ensure that licensed operators comply with the undertakings that are made upon grant of a licence as well as the mandatory requirements for holding a licence.
 - Operator licensing is designed to properly manage risks to road safety, to protect fair competition and to promote the running of punctual and reliable registered local bus services.

- TCs lie at the heart of a fair and proportionate licensing system and represent a modern approach to regulation allowing independent and value for money decision making.
- TCs are committed to working with others to improve safety, fair competition and the reliability of road transport.

3.2 The TCs' shared vision is a licensing system where applications for licences and regulatory cases are resolved in a way which is fair, timely, open and proportionate. This means that those taking decisions do so on soundly-based evidence and with proper regard to the needs of those affected; where people are helped to understand how the process works; and the cost of effective administration takes account of the constitutional position.

3.3 In the performance of their duties TCs seek to act in accordance with the standards expected of those in public life as per their agreed terms and conditions and TCs apply to their role the competencies identified for equivalent members of the tribunal judiciary. The following values reflect accepted principles of better regulation and underpin the way in which TCs seek to approach their work and those they work with:

Proportionality

The processes adopted must be such as are necessary to achieve their objectives and to prevent fraud or other unlawfulness. TCs have significant powers for instance to intervene in, or even end, a transport business. In certain circumstances, such as serious convictions, there is a mandatory requirement for revocation of an operator's licence. The action taken by TCs must be proportionate to the shortcomings revealed in the evidence brought to them.

Accountability

TCs give reasons for their decisions, whether that is upon refusal of a licence application or following a Public Inquiry or other hearing. They are accountable to the Secretary of State through the requirement to submit an Annual Report (see below). In their judicial/tribunal function, TCs are accountable to the courts in that their decisions can be appealed and may be subject to judicial comment and/or overturned.

Consistency

Consistency of decision making can be difficult to achieve in any area where discretion and judgement have to be applied. TCs are committed to consistency in their approach to decision making. The STC's powers referred to at paragraph 5.3 below and regular meetings and training seminars afford TCs the opportunity to achieve a consistent approach.

Transparency

TCs believe it is important that the transport industry, their representatives and the public understand their role and work, and how they are funded. They may use a variety of tools to communicate their message and the importance of their role in the wider road safety and public transport arena. TCs welcome the opportunity to engage in dialogue with those who have an interest in their work.

Targeting

TCs do not seek to burden the well-run, compliant operator. Trust is at the heart of the operator licensing system, and TCs are entitled to trust that operators will adhere to their undertakings until there is evidence to the contrary. It is right that

attention should focus on those who cannot, or choose not to, run their businesses properly, or on those individual drivers who fall short in their conduct.

4. Classification and jurisdiction

- 4.1 There are currently seven full-time TCs (including the statutory STC) regulating eight traffic areas. Whilst TCs are also deputy TCs for Great Britain, the Local Transport Act removed the requirement in section 4(1) of the 1981 Act for a local TC to be located in the locality within England and Wales for which he or she takes responsibility, with the object of allowing TCs to exercise reserved powers (i.e. those not delegated to the devolved administrations) anywhere within Great Britain. DfT has indicated a commitment to local accountability and recognises the benefit of the existing relationship between TCs and their Traffic Areas.
- 4.2 Each TC is a separate public body and independent office holder appointed by the Secretary of State and is expected to adhere to their terms and conditions of appointment. Following the abolition of the Council on Tribunals by the Tribunals, Courts and Enforcement Act 2007, a TC is a "listed tribunal" under the aegis of the Administrative Justice and Tribunals Council under Schedule 7 to that Act and has responsibility for taking action under the relevant legislation when dealing with a case. Each TC is independent of Government in their decision making and is expected to take due account of the Statutory Guidance and Statutory Directions issued by the STC. The STC is, in turn, expected to have regard to any statutory guidance issued to him/her by the Secretary of State.
- 4.3 The jurisdiction of TCs includes consideration of granting or refusing applications for operator licences for those who wish to operate goods or passenger carrying vehicles, consideration of whether to take regulatory action against those licensed operators who have failed to comply with the licence undertakings or who cannot comply with the mandatory requirements for holding an operator's licence, consideration of the conduct of drivers who hold or apply for licences to drive large goods and passenger-carrying vehicles, the exercise of powers in regard to failures by PSV licence holders to operate registered local bus services and the potential imposition of regulatory sanctions including financial penalties, consideration of applications for the return of goods and public service vehicles impounded by VOSA, acting as the appeal body in relation to decisions by the Secretary of State in relation to Acquired Rights of professional competence, consideration of whether to impose traffic regulation conditions to prevent danger to road users and/or reduce traffic congestion and/or pollution. These powers can be used to prevent or mitigate adverse aspects such as 'bus wars'. In Scotland, the TC also has responsibility for the registration and regulation of local bus services, taxi fare scale appeals and the appointment of Adjudicators to consider appeals in respect of decriminalised parking offences.
- 4.4 The role of TCs, partly judicial in nature, is a combination of regulator and tribunal. The Court of Appeal has confirmed that it is the independence and impartiality of TCs which meets the obligations on the State under Article 6 of the European Convention on Human Rights. The impartiality of TCs is therefore guaranteed in law. Appeals against their judicial decisions may be made to the Administrative Appeal Chamber of the Upper Tribunal and in limited circumstances by way of an application for judicial review to the Administrative Division of the High Court or Outer House of the Court of Session. A right of appeal against driver conduct decisions made by TCs lies by way of complaint to the Magistrates' or Sheriff Court local to the driver's home address.

- 4.5 TCs publicly adopted the five principles of better regulation in 2005 (see paragraph 3.3 but are now also subject to the statutory Regulators' Compliance Code introduced under section 23 of the Legislative and Regulatory Reform Act 2006. TCs must have regard to the Code when determining any general policy or principles about the exercise of specified functions or setting standards or giving general guidance about other regulatory functions. That Code only applies to regulatory functions and not to judicial decisions or conduct. TCs are also bound by the seven principles of public life, namely, selflessness, integrity, objectivity, accountability, openness, honesty and leadership.
- 4.6 In line with the Compliance Code, TCs also engage with the industries that they regulate and other interested parties: they listen to industry representatives, they meet with local authorities and integrated transport authorities, trade associations, professional bodies, passenger groups and they present seminars to groups of operators. TCs also offer views and comment to Parliament and the devolved administrations, for example by giving evidence before the Transport Select Committee and responding to consultation documents. External contacts are important to TCs both for ensuring a proper understanding of the industries they regulate and as part of the wider role in encouraging compliance so as to ensure the promotion of road safety and fair competition.

5. Relationships

5.1 The Secretary of State for Transport

- 5.1.1 The Secretary of State is responsible for the recruitment and retention of the TCs and appointments are made after an open competition process, involving Devolved Administrations where appropriate. The Secretary of State is also responsible for the recruitment and retention of the STC, who can only be appointed from a serving full-time TC.
- 5.1.2 The Secretary of State has powers under Schedule 2 to the 1981 Act to remove an individual TC and the grounds for removal from office are set out in the Local Transport Act 2008 but the key principle being that the TCs' regulatory and judicial functions remain independent of Government.
- 5.1.3 Civil servants provide advice to Ministers on all issues affecting TCs, including recruitment and retention. Regular contact is maintained between DfT and the STC, acting on behalf of TCs, and the STC meets with Ministers periodically. Contact is also maintained between DfT and individual TCs. The DfT Motoring and Freight Services Group Corporate Governance Framework issued in June 2009 specifically requires VOSA's Chief Executive to work with the STC to maintain the independence of the TCs and to ensure that each party can carry out their respective responsibilities in the management of VOSA and the administration of the operator licensing system as part of the trading fund established in 2003. This Framework describes a similar requirement for all officials to work with the STC to ensure that level of independence, for the benefit of the operator licensing regime and to ensure compliance with the Human Rights Act 1998.

5.2 Devolved Administrations

5.2.1 Under the Concordats between DfT and the devolved administrations, the Scottish and Welsh Governments have formal roles in the appointment of the respective TCs. The TCs for Scotland and for Wales will also liaise regularly with the respective devolved administrations. The Statutory Guidance and Statutory Directions issued by the STC do not apply to devolved matters.

5.3 Senior Traffic Commissioner

5.3.1 The Secretary of State has a duty under section 4A of the 1981 Act to appoint a TC to act as the STC. The statutory powers of the STC, subject to the usual legal limitations, are as follows:

- To require another TC to carry out specific functions, anywhere in Great Britain, although in Scotland this relates only to reserved matters;
- To issue guidance and general directions to TCs, subject to prior consultation;

5.3.2 Statutory guidance may include but is not limited to:

- the meaning and operation of any enactment or instrument relevant to the functions of the TCs;
- the circumstances in which, and the manner in which, a TC should exercise any power to impose any sanction or penalty;
- matters which a TC should or should not take into account when exercising any particular function.

5.3.3 General directions may include but are not limited to:

- the circumstances in which, and the manner in which, officers or servants of a TC may exercise any delegated function;
- the information which a TC might be asked to be supplied in connection with the exercise of any particular function;
- the procedure to be adopted in conducting inquiries under the legislation;
- the circumstances in which a TC should consult some or all colleagues.

5.3.4 Whilst both provisions are directed at TCs they are separate powers and cannot be used to undermine the principle of impartial decision making and any general directions are subject to the common law. The Secretary of State's powers to direct TCs were removed by the Local Transport Act 2008. The Secretary of State may still give the STC guidance as to the exercise of the STC's functions but again this is subject to the rule of law and decisions of the courts. The STC has no authority to alter the individual terms and conditions of TCs.

5.4 Department for Transport Agencies (VOSA, DVLA etc)

5.4.1 TCs of course require support staff to carry out administrative duties and to act under delegated authority in the discharge of certain individual functions. Paragraph 7 of Schedule 2 to the 1981 Act states that: "Subject to the approval of the Treasury, the Secretary of State may appoint such persons to act as officers and servants of a traffic commissioner as he considers appropriate".

5.4.2 The Secretary of State has delegated responsibility for the provision of support staff to VOSA, and to a lesser extent the Driver and Vehicle Licensing Agency (DVLA).

5.4.3 In practice this means that the Office of the TC (OTC) is staffed by employees who are employed by VOSA but who work for and on behalf of the TCs either with regard

to administrative matters or with regard to exercising delegated functions. The Office of the STC is also staffed by VOSA employees who work for and on behalf of the STC. TCs do not actually manage any staff but delegate and supervise work undertaken on their behalf. TCs also receive support from other Government officials to ensure that they have the resources required to undertake their functions in an efficient way.

5.4.4 The Chief Executive of VOSA remains the Accounting Officer for that Agency and related trading fund of 2003 for ensuring that processes are in place and for reporting on the work carried out by staff acting on behalf of the TCs. He retains responsibility for the recruitment, retention and performance management of the staff of the OTC and Office of the STC. The key service levels and standards against which VOSA is expected to deliver are set out in the Service Level Agreement and other Memoranda.

6. Accountability

6.1 Serving the local community

6.1.1 TCs, whilst still able to provide flexible cover for colleagues, are locally based within traffic areas which helps underpin the delegation of work to support staff and allows for the efficient use of resources and for quicker decision making in the processing of applications and the like. The advantage of local knowledge has been acknowledged by the appeal courts. TCs therefore engage with the communities which they serve at a local level.

6.2 Delegated functions

6.2.1 TCs may give permission to specified members of support staff employed by VOSA, to make decisions within tightly defined parameters. Any decision that would have the effect of revoking or suspending or curtailing a licence, whether of an operator or a driver, must be referred to a TC for consideration. Staff members cannot exercise delegated functions unless the individual has been specifically authorised in writing by a relevant TC. There are strict guidelines relating to the type and nature of such delegations. Only members of staff who have been authorised by a relevant TC may take decisions under delegated powers. A delegation must be explicit and specific. If a member of staff exceeds the delegation then their actions are not those of the relevant TC and VOSA may be liable for any prejudice/liabilities arising.

6.3 Appeals

6.3.1 As tribunals, which sit outside the unified Tribunal and Courts system, TCs are not subject to any common rules of procedure. The legislation enshrines the general discretion of the presiding commissioner to hold such inquiry as he or she thinks necessary for the proper exercise of his or her functions. TCs have acknowledged that there is a strong argument in favour of consistency of approach but this should not be mistaken for uniformity of decisions and consistency must not be pursued at the expense of the merits of individual cases.

6.3.2 The appeals process allows decisions which might be considered to be wrong or unlawful to be appealed firstly to the Administrative Appeals Chamber of the Upper Tribunal. In limited circumstances there may be a right of appeal to the

Administrative Division of the High Court or Outer House of the Court of Session instead or as well. The right of appeal extends to, amongst others, holders of an operator's licence and applicants for an operator's licence. Driver conduct appeals are by way of complaint to the Magistrates' or in Scotland by summary application to the Sheriff court, local to the driver's home address.

6.4 Complaints

- 6.4.1 The TCs have produced a formal complaints procedure. Complaints about a TCs' judicial decisions, including case management, are excluded.
- 6.4.2 Complaints about the handling of an application or other case by staff employed by VOSA in the Central Licensing Office or a Traffic Area Office, as opposed to a complaint about any decisions that might have been made by a TC or licensing staff under delegated authority, should be pursued through VOSA's complaints procedures. A complainant may ask for a particular decision to be referred to a TC for further consideration.

6.5 Annual Reports

- 6.5.1 The principles of better regulation (and the Compliance Code which flows from them) require TCs to be transparent in relation to their shared work programme. The Senior TC and TCs are committed to improved transparency and will publish documents which inform those involved in operator licensing. These documents may include:-
- Any strategy and related action and/or business plan;
 - STC objectives;
 - Appraisal scheme
 - Complaints procedure
 - Other relevant documents, such as the Guide to TC Conduct.
- 6.5.2 The 1981 Act sets out the prescribed reporting arrangements for TCs. Section 55 requires each individual TC to submit an annual report of their activities during the past year to the Secretary of State. There is no obligation in the legislation to publish such reports but in the interest of transparency the DfT has always done so. The DfT has described these Annual Reports as key to ensuring transparency and accountability to the industries served by the TCs.
- 6.5.3 Section 55 of the 1981 Act also empowers the Secretary of State to direct the particulars that should be contained within the Reports. The Secretary of State considers it important that the Annual Report should contain an assessment of performance against published objectives. The Secretary of State has indicated that it is for the STC to determine what data should be collected and any outcomes which might be measured without jeopardising either directly or indirectly the impartiality of TCs. The STC will therefore monitor and report annually on the support received from VOSA and from elsewhere within the DfT 'family'.
- 6.5.4 Financial reporting is via the VOSA trading fund annual report and accounts and certified by the Comptroller and Auditor General under the Government Trading Funds Act 1973 and The Vehicle & Operator Services Agency Trading Fund Order (2003) No. 942.

6.6 Parliamentary Scrutiny

6.6.1 TCs may be called to give evidence before Parliamentary Select Committees, the Scottish Parliament and the Welsh National Assembly. TCs also support the VOSA Chief Executive to meet his responsibilities as an Accounting Officer. TCs welcome the opportunity to engage with elected representatives from Great Britain and the devolved administrations on general policy issues as well as those relating to the local communities which an individual TC serves.

7. Budgeting, administration and support

7.1 General

7.1.1 The Secretary of State retains responsibility for recruitment, retention and other employment duties to TCs but, due to the need to protect impartiality, is assisted by the STC in ensuring that there are proper arrangements for their health and safety, and security. As indicated below the STC takes a role in business planning to help inform decisions on overall budgets, fee levels and resourcing considerations. The STC is therefore responsible for ensuring that there is an appropriate balance between the efficient use of resources across the TC licensing system (thus helping to keep fees as low as possible) and maintaining the service levels expected by and in the main paid for by industry.

7.1.2 The administration of the tribunal and licensing functions may be subject to standards and performance measures in common with other tribunals. The performance of staff provided in support of TCs is managed through VOSA. VOSA has no responsibility for recruitment and retention of any TC and similarly has no part in assessing their personal performance. TCs are not employees of either VOSA or DfT but are subject to the terms and conditions that were mutually agreed at the date of their appointment. All those involved in the discharge of TC functions are subject to the rule of law. Any monitoring of TC performance against any standards must retain both the reality and the perception of independent and impartial decision making. The TC appraisal system is therefore based on the core competencies set by the Judicial College scheme. The STC has responsibility for ensuring the proper administration of that scheme and will report on the discharge of that responsibility to the Secretary of State who, being responsible for recruitment and retention, is entitled to consider information on the performance of TCs in relation to their judicial performance and the support given by TCs to the Accounting Officer in the discharge of his duties.

7.2 Budget Allocations

7.2.1 TCs are funded from two sources. The administrative work that is carried out to support TCs in their driver conduct work is funded by the DVLA and central Government. However the majority of funds are obtained from powers in the 1981 Act, which allow a TC to charge fees for licensing activities. VOSA collects those fees and therefore has a duty to account for their expenditure and to ensure that they are used to cover the full costs of the TC licensing system. The majority of spend is on the staff allocated to support TCs. The legislation provides that these funds be administered through the VOSA trading fund. The STC is given responsibility for overseeing the amounts set aside by VOSA for salaries, fees and other TC claims, for communication, training and development, professional fees and reference material.

7.2.2 Operator licence fees are therefore relevant to the overall expenditure settlement for DfT. The Departmental Business Plan is agreed with HM Treasury and annual supply estimates are then approved by Parliament. The STC's contribution to high level business planning goes to support that process and influences the levels of fees. Proposals are subject to Ministerial approval before securing agreement from Parliament.

7.2.3 The Chief Executive of VOSA is appointed as Accounting Officer for the VOSA trading fund under the Government Trading Funds Act 1973, (as amended in the Government Trading Act 1990 and the Finance Acts 1991 and 1993). He has separate statutory responsibilities under that legislation. Those responsibilities are subject to the obligations imposed by the Human Rights Act 1998, which make it unlawful to act in a way which is incompatible with the European Convention on Human Rights.

7.3. VOSA Accounting Officer

7.3.1 Whilst TCs are mainly funded through their statutory powers to charge fees, the legislation provides that these funds are administered through the VOSA trading fund. The Chief Executive of VOSA is appointed as Accounting Officer for the trading fund and is therefore responsible for the sums spent by VOSA on the work of the TCs and the staff who act on their behalf both administratively and with regard to delegated functions. The Chief Executive as an Accounting Officer must report the discharge of his duties and responsibilities to the Principal Accounting Officer at DfT and both Accounting Officers are answerable to Parliament.

7.3.2 The Accounting Officer's role is described in guidance issued by Parliament (Managing Public Money and Corporate Governance in Central Government Departments). The handbook "Regularity, Propriety and Value for Money" issued to Accounting Officers also provides useful guidance. The guidance recognises that arrangements for accountability may be slightly different and therefore allows for a role in supporting the TCs' tribunal functions. Legislation ensures that financial management cannot undermine or be used to dictate the application of judicial functions. The Motoring and Freight Services Group Corporate Governance Framework of April 2009 reflects this by requiring the Chief Executive of VOSA to work with the STC to maintain the independence of TCs and to ensure that each party can carry out their respective responsibilities in the management of VOSA and the administration of the operator licensing system.

7.4 Administrative and Non Judicial Assurances

7.4.1 TCs have long sought greater transparency of the sums expended from the fees collected in their names and welcome increased accountability through the publication of additional financial and other data relating to licensing activities. They also wish to assist both Accounting Officers in reporting to the Secretary of State on a range of administrative and non-judicial conduct matters. To ensure compliance with the principles of public life and better regulation and to ensure that there is no doubt as to the TCs' commitment to regularity, propriety and value for money they work within arrangements that ensure the exchange of appropriate information between DfT, the Chief Executive of VOSA (as Accounting Officer), the STC and themselves. Those arrangements are intended to:

- allow the Secretary of State to continue to be reassured that those appointed are aware of and follow good administrative practice;
- ensure that officials in DfT and VOSA can jointly and separately provide and seek certain information through the STC, and provide support and information to the TCs and their deputies
- clarify how the STC acts as the co-ordinator of assurance information on behalf of TCs and their deputies and imparts and receives similar assurance information jointly and separately to and from officials in DfT and VOSA to the Secretary of State through annual reports.

7.4.2 As the above indicates, this cannot be used to influence judicial decisions or in a way which undermines the jurisdiction and/or places individual traffic commissioners exercising those functions in an impossible situation. There is a shared understanding between officials and TCs of the clear demarcation, and arrangements are in place through a service level agreement and other administrative assurance documentation.

