

# Triennial Review of the Traffic Commissioners.

*Reviewing the function, form and efficiency and governance of the Traffic Commissioners in Great Britain.*

March 2015

Department for Transport

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- Phase 2 produced by JMP Consultants

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## Introduction

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### Structure of the review

This review has been conducted in two clear phases.

Phase 1 was an internal review conducted by officials within the Department for Transport in accordance with Cabinet Office guidelines. This provides the context of the triennial review and a full overview of the current form and function of the traffic commissioner service. It also considers alternative delivery options as well as possible improvements within the broad scope of the current structure. It concludes with a number of recommendations.

Phase 2 was conducted by JMP Consultants with independent input from former Chief Executive of the Road Haulage Association. The aim of phase two was to provide independent challenge to the phase one findings and to examine the service in more detail. Phase 2 provides detailed data on the operation of the traffic commissioner service and includes a detailed examination of industry and stakeholder views on the effectiveness of the system. Based on these examinations, phase two highlights stakeholder recommendations.

The review was undertaken on the basis of existing regulatory arrangement for the transport industries in England, Scotland and Wales. Any changes arising from Smith and Silk Commissions were not considered in this review.

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## Executive Summary

All public appointed bodies, such as the traffic commissioners, are required to be reviewed on a periodic basis to challenge the continuing need for the body in its function and form and where it is agreed that a particular body should remain, to review the control and governance arrangements in place.

Phase 1 of the review involved consideration of the continuing need for the traffic commissioner activities. It concludes that it is imperative to retain a number of the functions of the traffic commissioners. Phase 1 found the carrying out of the TCs regulatory and tribunal function is transparent and open. However, there could be opportunities for efficiencies and more co-ordinated approaches to be introduced.

Phase 2 of the review sought to investigate some of these issues through further discussion with all interested parties, consideration of relevant documentation and analysis of data.

This part of the review involved a comprehensive consultation with industry and other stakeholders for their views of the traffic commissioner function and has provided a number of recommendations for the Department to take forward for consideration.

Phase 2 found that the traffic commissioners are well respected regulators with widespread support from stakeholders for the service in its current form. However, the processes and procedures associated with the work of the traffic commissioners are viewed by stakeholders as bureaucratic and out-dated. More delegation for granting licences could be given to OTC staff to help speed up licence application processes. The report suggests freeing up commissioner time to focus on ensuring compliance with safety requirements within the regulated industries possibly by passing off some current tasks undertaken by the commissioners; such as bus registration work and assessing the environmental suitability of operating bases.

The consultant's main recommendations are for a clarification and formalisation of the governance arrangements and interactions between the traffic commissioners, DVSA and DfT, with better definition of roles and responsibilities and lines of reporting. The report recommends that guidance documents should be given greater prominence.

The review overall, does not suggest the need for a major overhaul of traffic commissioner functions.

## The Review: Phase 1

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### 1. Triennial Review Context

- 1.1 In April 2011, the Cabinet Office announced that all Non Departmental Public Bodies (NDPBs) would be reviewed at least once every three years. This forms part of the wider Government agenda to ensure that it delivers its objectives as effectively and efficiently as possible, achieving the best possible value for taxpayers and the public.
- 1.2 This part of the report is Phase I of the overall review of the traffic commissioners for the six areas in England, plus Wales and Scotland. The review was announced on 27 March by a Written Ministerial Statement (WMS) and work commenced in September 2014. There are different arrangements for Northern Ireland and Gibraltar.
- 1.3 Phase 2 has been undertaken by JMP Consultants Ltd and will involve collation of industry views of the traffic commissioner role and closer examination of the costs and performance aspects of the commissioner function. An inherent part of Phase 2 will be to challenge the findings of the Department in Phase 1.
- 1.4 Phase 1 assessed the continuing need for the traffic commissioners, both in their function and form. It then considered the governance and control arrangements to ensure that they were operating in accordance with principles of good corporate governance.
- 1.5 The review is being conducted in accordance with the Cabinet Office Guidance on Reviews of NDPBs, recognising the need for the review to be proportionate to the relatively small size of the traffic commissioners as organisations. The full review is being carried out by a team of DfT civil servants with external support.
- 1.6 A noted industry figure Geoff Dunning, former Chief Executive of the Road Haulage Association (RHA) has been engaged in this review to provide external, independent challenge. He has been supported by a team within DfT and consultants JMP.
- 1.7 Traffic commissioners are in effect individual Tribunal NDPBs sponsored by DfT. This type of public body has considerable autonomy and independence from their sponsoring Department. Ministers are ultimately accountable to Parliament and therefore, the public for the performance and actions of the NDPB.

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## 2. Background – Traffic Commissioners

- 2.1 Traffic commissioners are appointed by the Secretary of State for Transport and have responsibility for the licensing of the operators of heavy goods vehicles (HGVs) and of buses and coaches (public service vehicles or PSVs); the registration of local bus services; and regulatory action against drivers of HGVs and PSVs. The seven commissioners regulate eight geographical areas, including specific commissioners for Wales and Scotland<sup>1</sup>. The traffic commissioners are assisted in this work by deputy traffic commissioners, who preside over a number of public inquiries and consider licensing applications.
- 2.2 One traffic commissioner (currently the traffic commissioner for the North West of England, Beverley Bell) is the Senior Traffic Commissioner (STC). The role is a statutory one, following the implementation of the relevant part of the Local Transport Act 2008.
- 2.3 Traffic commissioners are funded from two main sources. The fees paid by operators through their registration and renewals or through an element of the annual roadworthiness test. DVSA collects those fees and therefore has a duty to ensure that they are used to cover the full cost of the traffic commissioner licensing system. Around £1.4 million of costs are directly attributed to the commissioner salaries (including Deputies) and other directly attributable costs.
- 2.4 The industries regulated by the traffic commissioners are significant; with some 77,732 hauliers running 337,570 lorries – 9,155 passenger operators running 94,552 buses and coaches.

### Legal Basis

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<sup>1</sup> 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.

2.5 Traffic commissioners are appointed by the Secretary of State in accordance with section 4(3) of the Public Passenger Vehicles Act (PPVA) 1981. Deputy Traffic Commissioners (DTC) are appointed by the Secretary of State pursuant to Schedule 2 of the PPVA. Each traffic commissioner and DTC is an independent office holder appointed by the Secretary of State and as such are individual Tribunal NDBPs and do not act as a single corporate identity. Their role and responsibilities are determined by the 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

2.6 As a tribunal NDPB the traffic commissioners must satisfy the requirement that their judicial decisions are independent and they meet both the needs of the European Convention on Human Rights and the Regulators Code. The Court of appeal has accepted that the requirement under the Convention of Human Rights is satisfied. The Regulators Code provides a clear, flexible and principles-based framework for how regulators should engage with those they regulate. It requires that the adjudicating body should support industry, base their actions on risk, share information on their decisions and issue guidance and advice.

### **DVSA Relationship**

2.7 This relationship is outlined in traffic commissioner statutory guidance and directions and is summarised in the framework document agreed by STC and Chief Executive DVSA in March 2012. DVSA, as the main enforcement agency, undertake the majority of compliance checks that underpin investigative and disciplinary actions that the commissioners may subsequently take.

2.8 Traffic commissioners require support staff to carry out administrative duties such as processing and issuing licences and renewals. These administrative tasks are done by staff in the Office of the Traffic Commissioner under delegated authority in the discharge of certain individual functions.

2.9 Administrative support in the Office of the Traffic Commissioner is provided by staff employed by the Driver and Vehicle Standard Agency, an executive agency of DfT. This provision is provided for through DVSA accounts and is paid for by a

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proportion of the licensing fees. There are staff deployed at the seven Traffic Area offices and in the Central Licensing Office on Leeds.

- 2.10 Traffic commissioners do not actually manage any staff but delegate and direct work undertaken on their behalf. They also receive support from other Government officials to ensure that they have the resources required to undertake their functions in an efficient way.
- 2.11 The key service levels and standards against which DVSA is expected to deliver are set out in a Service Level Agreement between the STC and the DVSA.

### **DfT Relationship**

- 2.12 Although independent from Government there is a need for commissioners to work closely with Department officials. This applies in setting and achieving strategic objectives and in particular, when giving advice on drafting or amending legislation. Commissioners will also reflect wider Government policies such as removing burdens on industry and implementing measures under the Red Tape Challenge.
- 2.13 The Freight, Operator Licensing and Roadworthiness division within the Department are the sponsoring entity for commissioners as Non Departmental Public Bodies (NDPB). The division also manages several functions in connection with the commissioners, such as recruitment and payroll.
- 2.14 The STC, DVSA management and the Department have regular meetings with the purpose of facilitating policy delivery and improving levels of service to all stakeholders. The STC also attends forums such as the Commercial Vehicle Road Safety Compliance Forum which is chaired by DfT.



## Triennial Review - Traffic Commissioners

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## 3. Functions

- 3.1 The traffic commissioner's main purpose is to licence Goods and PSV operators. This includes consideration of new applications, variations to existing licences and regulating the compliance performance of operators thereby ensuring a standard of public safety and environmental protection. In addition, traffic commissioners;
- Regulate the issue of vocational driver's licences HGV and PCV
  - Register local bus services (outside London)
  - Consider the suitability of operating sites for goods vehicles
  - Adjudicate on local bus Quality Contract Schemes
- 3.2 A commissioner has the power to call operators to a Public Inquiry. Here, evidence can be produced and the commissioner will determine an outcome and make a ruling. Operators may appeal against the finding of a commissioner to the Upper Tribunal. (An independent panel of judges appointed by the Ministry of Justice).
- 3.3 A case may be instigated as a result of routine inspections at the roadside or an operator's premises, which would show poor maintenance or practices relating to drivers hour offences. Such investigations can be prompted by intelligence received. Normally DVSA staff employed in the OTC will collate evidence and put forward a case for a potential inquiry to a commissioner.

### **Statutory Requirements – UK**

- 3.4 Due to the fact that large vehicles have the capacity to cause significant damage to other road users they are subject to special laws. It is deemed appropriate that individuals or firms that operate large road vehicles should be licenced to ensure proper management and operation of their fleets. By having a system whereby commercial heavy vehicles can be directly linked to an operator ensures accountability for the standards that vehicle is operated to. This covers the mechanical state of the vehicle, safe loading and drivers observing legislation related to rest periods so as to avoid fatigue.

### **Statutory Requirements – EU**

- 3.5 The European Union recognise the importance of commercial road transport and legislated through 1071/2009 that each Member state should have a 'competent

authority' to regulate the road transport industries.<sup>2</sup> Whilst this function does not require an independent body with a judicial role it does specify a body with power to set conditions, impose sanctions and remove the authorisation to operate. Traffic Commissioners are the 'competent authority' in GB.

- 3.6 As NDPBs the traffic commissioners should satisfy at least one of the Government's "three tests"<sup>3</sup>. Continued satisfactory delivery of the function is reliant upon the commissioners being regarded as being politically independent and able to be impartial in their decisions.

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<sup>2</sup> 'Competent authority' means a national, regional or local authority in a Member State which, for the purpose of authorising the pursuit of the occupation of road transport operator, verifies whether an undertaking satisfies the conditions laid down in this Regulation, and which is empowered to grant, suspend or withdraw an authorisation to pursue the occupation of road transport operator...1071/2009 Art 1 Paragraph 7

<sup>3</sup> Three tests; is this a technical function (which needs external expertise to deliver); is this a function which needs to be, and be seen to be, delivered with absolute political impartiality ; or is this a function which needs to be delivered independently of Ministers to establish facts and/or figures with integrity

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## 4. Governance and Accountability

### Transparency

- 4.1 The traffic commissioners are appointed by the Secretary of State and each year they produce a report for the Secretary of State which is publically available. The report from each commissioner covers their activities in the year, how they have approached their duties and identifies future objectives and priorities. Included in the report are statistics on the licensing activities, public inquires and hearings with the consequent outcomes. The Annual Reports do not include financial performance details or forward business plans.
- 4.2 Each Traffic Area publishes documents online, called Applications and Decisions and Notices & Proceedings. These detail applications received or variations sought and the eventual decisions relating to those. The documents also list the location and time for Public Inquiries and again will record the decision made by the commissioner. Public Inquires are open to the public.
- 4.3 The basis on which commissioners are appointed are set out in legislation which is publically available. Their licensing and judiciary activities are published on a routine basis and the Annual Report indicate their individual approaches and concerns. The establishment and process of the function of the traffic commissioners is therefore highly transparent and accessible.

### Funding Accountability

- 4.4 The traffic commissioner functions are funded by the industry they regulate. Fees are charged for issuing licences. Part of the fees charged when commercial vehicles are tested also goes to cover the costs of the traffic commissioner system. This money is collected by DVSA and forms part of the Trading Fund. DVSA publish annual accounts and a business plan, however it is not possible to identify the precise income and costs specifically relating to the traffic commissioners within those accounts.
- 4.5 The budget attributed to the traffic commissioner function is part of the Trading Fund managed by DVSA. Nominal division of overheads or sharing of costs such as IT systems can be identified but may not in fact reflect the actual costs involved. DVSA support staff undertake general licensing or administrative work as well as providing support to the commissioners. Staff in more general roles, including senior staff, will also have a level of engagement with the duties and function of the traffic commissioners.
- 4.6 Accountability is therefore difficult to absolutely determine. The proportion of the licence fee that is directed towards the commissioners in their judicial role is 9.67%

of the revenue collected through licence fees and other specified income streams<sup>4</sup>. Management of such revenues should correspond with guidance on public funds<sup>5</sup>.

### **Costs and Delivering Efficiencies**

- 4.7 The majority of the cost attributed to traffic commissioners covers the administrative staff who support the commissioners with around £1.4 million of costs directly attributed to traffic commissioner costs within the operator licensing system. Additional administrative work that is carried out to support such activities as driver conduct hearings is separately funded by central Government.

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<sup>4</sup> DVLA payment in reference to driver conduct hearings and DfT Single Enforcement Budget

<sup>5</sup> 9.4 in the Treasury handbook 'Regularity, Propriety and Value for Money' as updated in 2004

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## 5. Alternative Delivery Options

- 5.1 It is worth noting again that the functions performed by the traffic commissioners are required and cannot simply be stopped. The functions support road safety, fair competition and effective enforcement in the regulated industries. Some functions also need to be fulfilled to meet EU requirements.
- 5.2 However, the roles required in legislation to meet both UK and EU requirements could be carried out by a number of bodies;
- i. Government
  - ii. Government Agency
  - iii. Local Authority
- i. Government*
- 5.3 The tasks currently carried out by traffic commissioners could be undertaken by staff in either the central Civil Service or within an appointed agency. This is in effect what happens in Northern Ireland where primary legislation confers similar regulatory functions and powers on the Department of the Environment for Northern Ireland (DOENI). These tasks are exercised by the Department through civil servants within the Traffic Regulation Unit who preside over hearings and Public Inquiries concerning operators and determine appropriate regulatory actions. Decisions can be appealed to the Upper Tribunal.
- 5.4 This can, in theory, be replicated in Great Britain. The determinations made by civil servants could still be subject to an appeal to the Upper Tribunal.
- 5.5 One advantage is that Civil Servants who could undertake the role are likely to be on lower salaries than that of Commissioners who are paid £94,941pa.
- 5.6 Currently the Department for Transport has policy sponsorship for the traffic commissioners. As the commissioners role is partially judicial in nature there may be some justification in having the commissioners as part of the administration of the Ministry of Justice (MoJ). MoJ will have experience of management of tribunal services, legal training and recruitment of suitable candidates.
- ii. Government Agency*
- 5.7 A high degree of the administrative work is already done by OTC and licensing staff. Most of the licensing of operators and enforcement activity is carried out by DVSA. Similarly, the issuing of vocational licences to HGV and PCV drivers is done by DVLA. Determining licence applications and renewals by operators is mostly done under delegated authority by DVSA staff working in the OTC. Here, DVSA staff act on authority delegated by the Commissioner. As in i) above, staff in a separate agency could make determinations on the suitability of an operator

and place conditions on their licence, again such determinations could be subject to an appeal to a first tier tribunal.

*iii. Local Authority*

- 5.8 Provision could also be done by local authorities. There could be synergy as local authorities currently grant licences for taxi operators. Local authorities also have a direct interest in bus registrations as they will tender for services that are not provided commercially if they determine they are socially beneficial. However, there may be a conflict of interests as local authorities are frequently operators of vehicle fleets. Given the number and different format of local authorities, establishing consistent standards of regulation would be challenging. In addition, the complexities of the licensing regime and the requirement for a National Register may make this more expensive and less user friendly than other systems.

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## 6. Amended Delivery Options

### Independent Administrative Support

- 6.1 One option could be for Commissioners to be supported by a fully independent administrative set up separate from DVSA and with its own staff. Whilst this would provide a very clear delineation of the traffic commissioner role from the general enforcement remit of DVSA there are some issues to consider.
- 6.2 The cost of setting up and running an independent administrative unit would have to be met from licence fees. It is highly likely that such cost would be greater than present as such economies of scale and sharing of facilities and staff as exists could be lost.
- 6.3 There was previously independent administrative provided support through the Traffic Area Network, part of the Department for Transport. This was combined with the Vehicle and Operator Services Agency VOSA was formed to realise cost savings.

### Partial Transfer of Functions

- 6.4 It could be possible to have traffic commissioners undertake all current functions except the holding of Public Inquiries. Rather than holding Public Inquiries the traffic commissioners could make determinations where the operator retains the right to appeal to the Upper Tribunal. This appeal process is what happens now with traffic commissioners, the key difference would be the removal of the initial Public Inquiry to be replaced with an administrative determination which would be simpler and quicker. However, this does contain a risk that there will be more costly appeals to the Upper Tribunal.
- 6.5 It may be appropriate for just the public inquiry function currently performed by the traffic commissioners to be placed within the general court service. Responsibility for direction and sponsorship would rest with the Ministry of Justice (MoJ). MoJ indicated that such a move could in theory produce efficiencies, as MoJ is already familiar with administering tribunal services and judicial functions through Her Majesty's Courts and Tribunal Service (HMCTS). The task of public inquiries for the road transport industry could be spread to a wider panel of judges which may have advantages in terms of location or dealing with a high volume of cases in any location. However, the particular knowledge of a highly specialised area of law may be lost.
- 6.6 It could also be possible to remove the environmental assessment of goods operators operating centres from the traffic commissioners and place such determinations to Local Authorities who are responsible for planning issues. This could avoid an overlap of planning approval with the responsibility the



commissioners currently have for assessing the suitability of operating sites for goods vehicles.

### **Further Delegated Authority**

- 6.6 Traffic commissioners give permission to specified members of support staff employed by DVSA to make decisions within tightly defined parameters. Staff members cannot exercise delegated functions unless the individual has been specifically authorised in writing by the relevant traffic commissioner. There are strict guidelines relating to the type and nature of such delegations. The volume and level of this delegated decision process can vary across different Traffic Areas. Greater use of staff under delegated authority would allow traffic commissioners to concentrate more on the core objectives.
- 6.7 Whilst there is little room for manoeuvre for fixed salaries there is considerable spend on Travel & Subsistence and on the deployment of Deputy Commissioners. In addition, due to the nature of each Commissioner being a separate NDPB there can be sub-optimal coordination in certain areas of activity such as public engagements.
- 6.8 The consideration to maintain the traffic commissioners in their present form meets the requirement to satisfy at least one of the Government's 'Three Tests'<sup>6</sup> in that it is a function which needs to be, and be seen to be, delivered with absolute political impartiality. Also, in the judicial role the traffic commissioners undertake inquiries that need to be delivered independently of Ministers to establish facts and/or figures with integrity. It is not a technical function that requires particular technical expertise although the specialised area of traffic law that the commissioners engage is recognised.

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<sup>6</sup> Three tests; is this a technical function (which needs external expertise to deliver); is this a function which needs to be, and be seen to be, delivered with absolute political impartiality ; or is this a function which needs to be delivered independently of Ministers to establish facts and/or figures with integrity

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## 7. Other Considerations

### Safety

- 7.1 It is possible to state that the haulage and passenger industries in UK are safe in comparative terms. In terms of statistics of those killed or seriously injured by a HGV per million of population the UK is the fourth safest EU state<sup>7</sup>. On PSVs, we rank 7<sup>th</sup> out of 24 EU states on the same parameter. This is positive and would seem to indicate that the overall regulatory system is performing better than the EU average; however, in absolute terms it will always be possible to say that regulated activities could be made safer and it is not possible to attribute this performance directly to the traffic commissioner system.

### Independence

- 7.2 A noted feature of the current structure is for commissioners to be judicially independent. This independence of the role and status supports impartiality. The Court of Appeal has confirmed that it is this independence and impartiality of traffic commissioners which meets the obligations on the State under the European Convention on Human Rights. It is a positive aspect to be able to demonstrate the independence of the traffic commissioners, both from political and Government influence and from possible industry influence and influence of the enforcement bodies.

### Localism

- 7.3 As they are regionally based, commissioners have a particular knowledge of the characteristics of operating vehicles in an area, whether it is distinct by geography or economics. A local commissioner can develop an understanding working relationship with operators in their area.

### Specialism & Knowledge

- 7.4 This relates to the specialised and detailed knowledge and experience commissioners build up in the very particular areas of transport law they deal with. This expertise is further enhanced by individual commissioners taking on responsibility for certain areas of activity or development. By taking a lead on a particular portfolio area a commissioner can utilise their experience or interest to best effect. Commissioners, through stakeholder involvement and shared working

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<sup>7</sup> 2010 CARE Database supplied by European Road Safety Observatory

in turn pass on the benefits of their knowledge to other commissioners and those within industry.

## 8. Findings - Phase 1

- 8.1 Whilst the concept of traffic commissioners regulating an industry has been in place since the 1930s the current format is quite new with changes brought into place in 2011 by the 2008 Transport Act, such as appointing the Senior Traffic Commissioner. Similarly, the arrangements for administrative support for licensing and for the judicial element have seen a number of changes over the years. Such changes will have been undertaken with a view to make savings when possible.
- 8.2 As confirmed by stakeholders during consultation events and borne out in research as part of Phase 2, the independent status of traffic commissioners is valued by industry. The view being that decisions are made by a body that is not part of the enforcement process is seen as a particular strength.
- 8.3 The independent aspect of the judicial function is recognised by both industry stakeholders and the Court of Appeal. Similarly the support to industry, the transparency regarding decisions and the focus on the highest areas of risk (the serially non-compliant) meets the requirements of the Regulators' Code.
- 8.4 The accountability of the function may be improved by a clearer delineation of allocation of overheads and shared costs. As the STC has a role in setting the strategic objectives for the commissioner function it is logical that the STC should also have input into the business planning of the traffic commissioner function.
- 8.5 Greater consistency in approach to regulatory matters could be achieved by ensuring resource support for STC in their role in drafting guidance and appraising / advising colleagues.
- 8.6 Commissioners' engagement with industry provides useful contact and exchange of information. Such activity could benefit from a better understanding of the effectiveness as to which events were attended. This analysis could include what type of function it was and an assessment of audience numbers and further coverage through reports and press articles.

### Summary

- 8.7 The traffic commissioners in their current format fulfil a role that must be performed to implement both EU and domestic legislation for the road haulage and passenger industries.

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- 8.8 The independent role of the traffic commissioners is valued by industry and is recognised by the Court of Appeal as ensuring such determinations as they might make as being compatible with human rights principles.
- 8.9 The commissioners are a small and specialised group focusing on an important area of law. Their role has a wider societal benefit of regulating a safe and fair industry to transport goods and people.
- 8.10 There is little, if any, marginal cost saving possible through setting up alternative delivery models or managing the function through any other part of government (see section 5.3 to 5.6). Such changes, if implemented would incur transition costs.
- 8.11 The purpose and activities of the commissioners is open and accountable. Certain aspects of financial reporting could be more transparent through clearer accounting of overheads and proportion of administration costs.
- 8.12 It is not likely that significant savings can be realised through any form of substantial restructure given the relatively small numbers involved. Changes requiring alteration of primary or even secondary legislation require resources in preparation and drafting. This would take up valuable time in the legislative programme, but more importantly there would be significant transitional costs that would ultimately have to be met by the industries concerned. Given the limited opportunities for significant savings through substantial administrative change, it is not recommended that a wholesale reconfiguration of the traffic commissioners (as the GB competent authority for operator licensing) is pursued. However there are areas as outlined above where improvements should be examined.

## **Conclusion**

- 8.13 There are many positive aspects of the current traffic commissioner function;
- They meet a requirement for such a regulatory body
  - Traffic commissioners are independent
  - The carrying out of the traffic commissioner tribunal function is transparent and open
  - The aspect of traffic commissioner independence is valued by industry
  - The commissioners are experienced specialist regulators of an important industry
- 8.14 However;
- Accountability of allocated resources could be improved

## Triennial Review - Traffic Commissioners

- Value for money could be improved through better coordination of activities in the judicial role and in engaging with industry
- There is a need to be able to deliver more coordinated regulation

### **Recommendations**

- i. For the traffic commissioner function to continue in its present form.
- ii. To work with the Senior Traffic Commissioner and individual commissioners in drafting guidance and aligning policy delivery.
- iii. To work with DVSA, the Senior Traffic Commissioner and individual commissioners in addressing areas of service to stakeholders, resources and expenditure.
- iv. To work with STC, DVSA and other sectors of the Department to improve the level of financial information.

### Traffic Commissioner Service - Review by JMP Consultants

#### 9. Phase 2 - Summary

- 9.1 Traffic commissioners are well respected and valued independent regulators of the road haulage and passenger industries. Costing £13 million per annum, the Traffic Commissioner Service oversees an industry with over 86,000 operators' licences on issue, holding 1800 public inquiries each year to call operators to account. The traffic commissioners are seen as having a positive role in maintaining safety standards and dealing with non-compliance effectively.
- 9.2 The Traffic Commissioner Service consists of 7 commissioners, 13 deputy commissioners and 170 support staff, employed by the Driver & Vehicle Standards Agency (DVSA), in the Office of the Traffic Commissioner (OTC). Between them they licence and regulate, performing a role that must be carried out to implement both EU and domestic legislation for the road haulage and passenger industries. The service is provided through a centralised licensing office and a number of small area offices, where each of the traffic commissioners are based.
- 9.3 While the Traffic Commissioner Service is unique in its make-up, this is not a reason for change. Indeed, given the widespread support from stakeholders for the service in its current form, and its proven track record, there is no reason for this model of provision to change.
- 9.4 However, Phase 1 of the review identified that there could be opportunities for efficiencies and more co-ordinated approaches to be introduced. The various roles and responsibilities assigned to the commissioners have developed over time, and so periodically it is worth reviewing them.
- 9.5 Consequently, Phase 2 of the review sought to investigate some of these issues through discussion with all interested parties, consideration of relevant documentation and engagement with industry representatives.
- 9.6 The review has taken a balanced, independent view and found a number of strengths, challenges and weaknesses. The main issues revolve around the practicalities of management, governance and processes. In particular, on-going tensions around governance issues and the interaction between the commissioners, DVSA and DfT can act as a distraction from regulatory activities. Much of this stems from the commissioners' desire to ensure they act completely independently, free from any external influences. While this is important, commissioners cannot operate in a vacuum and need to collaborate as a group to

ensure some consistency in decision-making. Equally, they have to be accountable to someone and need to have the support of staff in the OTC to help them fulfil their duties.

- 9.7 Currently, much of the staff support is provided through a network of traffic area offices. While this is useful from a local knowledge perspective, the maintenance of small teams is difficult to sustain. This in turn can lead to variable levels of service, due to inadequate availability of resources. Local area offices are partly justified by the area-based licensing system that exists. However, most stakeholders consider that this is outdated and there should be a move to a single licence covering the whole of Great Britain.
- 9.8 The processes and procedures associated with the work of the traffic commissioners are viewed by stakeholders as bureaucratic and out-dated. It is encouraging to note that DVSA is working to introduce new electronic systems that will help to address this. However, it will be important to ensure that processes are streamlined as much as possible.
- 9.9 Traffic commissioners have been given a number of different roles, not all to do with industry regulation and safety. Some are purely administrative and could be undertaken by other agencies. Some licensing issues are duplicated by the work of others, so again could be left to others to perform.
- 9.10 The work and impact of the traffic commissioners is not always recognised. The close relationship with DVSA and DfT mean that commissioners can be overlooked by outsiders. An important part of regulatory activity is education and awareness-raising with the transport industry. While commissioners do engage well with industry, these activities tend to be with generally compliant operators. An important challenge is to find ways of reaching those operators who are non-compliant, either intentionally or unintentionally.
- 9.11 The review does not suggest the need for a major overhaul of the traffic commissioner function. Rather, it recommends taking steps to build on the service's strengths and addressing the identified weaknesses. In these ways service improvements and efficiencies can be achieved.
- 9.12 The main recommendations are for a clarification and formalisation of the governance arrangements and interactions between the traffic commissioners, DVSA and DfT, with better definition of roles and responsibilities and lines of reporting. Coupled with this, it is recommended that commissioners work together as a group under the direction of the Senior Traffic Commissioner (STC), with OTC staff work programmes directed by commissioners.
- 9.13 Introduction of a single licence covering Great Britain would bring some simplification of the system. It would also give an impetus to review the continuing need for area-based offices, whereby some centralisation could occur. In parallel,

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more delegation for granting licences could be given to OTC staff to help speed up licence application processes.

- 9.14 It is recommended that commissioners be allowed to focus more on their main purpose – that of ensuring a safe industry that is compliant with licence conditions.
- 9.15 Achieving greater awareness of the regulatory activities of the traffic commissioners is also important. Various measures to achieve this are recommended, including the use of new operator seminars and more effective use of publications such as Notices and Proceedings and Applications and Decisions.



## 10. Traffic Commissioners

- 10.1 Traffic commissioners are appointed by the Secretary of State for Transport and have responsibility for the licensing of the operators of heavy goods vehicles (HGVs) and of buses and coaches (public service vehicles - PSVs), registration of local bus services, and regulatory action against drivers of HGVs and PSVs.
- 10.2 Administrative support to the traffic commissioners is provided by staff employed by the Driver and Vehicle Standards Agency (DVSA), as an executive agency of the Department for Transport (DfT).

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## 11. Review of Phase 1

- 11.1 Phase 1 of the review was undertaken by civil servants within DfT, with an independent input from Geoff Dunning, former Chief Executive of the Road Haulage Association (RHA). JMP Consultants were appointed by the DfT to undertake Phase 2, with the aim of examining the service in more detail following the findings of Phase 1.
- 11.2 JMP's review team included:
- Peter Hardy, Director
  - Lee White, Associate Director
  - Denise Faber, Associate
- 11.3 On the basis of the findings of Phase 1, the review moved to Phase 2. The focus of this was to investigate potential efficiencies and service improvements, taking on board views of stakeholders and other interested parties.

### **Independent challenge**

Geoff Dunning reviewed the Phase 1 report, and has provided the following statement:

I have independently reviewed the Phase 1 report and would make the observations that follow below. In order to ease understanding, my comments have been made using identical headings to the Department for Transport's Phase I report.

#### 1. TRIENNIAL REVIEW CONTEXT

This section clearly sets out the arrangements that are expected of a Triennial Review and provides an appropriate basis on which to carry out Phase 2 of the Review of the Traffic Commissioner Service.

#### 2. BACKGROUND – TRAFFIC COMMISSIONERS

This section summarises the current legal and administrative provisions which form the environment in which traffic commissioners discharge their duties. I agree with the analysis as presented, including the legal basis and the descriptions of the relationships between the commissioners, DVSA and DfT.

#### 3. FUNCTIONS

This section sets out the various functions of the Traffic Commissioners and the way that these are carried out to meet statutory requirements. I have no comment to make on its content.

#### 4. GOVERNANCE AND ACCOUNTABILITY

This section briefly outlines the arrangements that are in place with regard to the traffic commissioners' reporting of their activities and how the funds generated by fees and charges are disbursed. The statement that "accountability is therefore difficult to absolutely determine" is a cause for concern, as the industry that pays the various fees and charges imposed rightly expects to see that those funds are properly accounted for. I suggest that this issue be an important matter for investigation in Phase 2 of the review.

#### 5. ALTERNATIVE DELIVERY OPTIONS

This section summarises a number of different arrangements that could be considered as other ways of discharging the duties currently undertaken by the Office of the Traffic Commissioner. It rightly highlights that there could be advantages and disadvantages of these alternatives. Having identified these, Phase 2 of the review needs to explore these further and see whether industry considers them to be appropriate and worthy of further investigation.

#### 6. AMENDED DELIVERY OPTIONS

This section considers a range of possible changes to current procedures, including partial transfer of functions or the further delegation of authority. I agree that these options are possibilities and may be raised by stakeholders. Therefore, I recommend that these be considered further in Phase 2.

#### 7. OTHER CONSIDERATIONS

a. Safety – The acknowledgement of the industry's good safety record is welcome, as is the contribution to this achievement that derives from the Traffic Commissioner Service.

b. Independence – There is no doubt that the judicial independence of the Traffic Commissioners is important and the recognition of this feature of their work is welcome. I agree with this assessment and consider that this is also the view shared by industry.

c. Localism – Whilst there is no doubt that the ability to develop a working relationship with operators in a Traffic Area is welcome, there is a need to investigate the current boundaries, which were established some considerable time ago. There is also an issue regarding the ability to match workflow with the resources available in the network of small offices that support the work in each traffic area, and reported inconsistencies between areas. This will be a matter of interest to industry and should be explored further in Phase 2.

d. Specialism and Knowledge – From my own experience, I agree that commissioners are well respected for their knowledge and experience.

#### 8. FINDINGS

I have the following comments:

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a. The recognition that licensing and disciplinary decisions are made by a body that is not part of the enforcement process is important, but it must also be accepted that in discharging their duties, the Traffic Commissioners should have direct and substantial involvement in the monitoring of operators performance.

b. The industry has an understandable expectation that the fees and charges that are imposed on them are properly used for the purposes for which they are levied. Therefore, more transparency is needed in this respect.

c. The commissioners' engagement with industry is important, but is a relatively small element of their activities. On the question of the proportion of time commissioners spend on various functions, we need to be clear that this relates not only to how time is allocated to matters such as stakeholder engagement, but also to their various formal responsibilities:

- Licensing of HGVs and PSVs,
- Registration of bus services,
- Regulatory action against O' licence holders and drivers,
- Impounding of vehicles,
- Adjudicating on Quality Bus Contracts,
- Statutory consultee on other bus schemes,
- Issue of International freight and coach permits.

d. Summary:

I agree with the majority of the comments made here. However, the following points should be noted:

- The comment regarding the need for "Certain aspects of financial reporting..." should be further investigated in Phase 2 to cover all revenue generated by the fees and charges collected in the Traffic Commissioners' name and not limited to overheads and administration costs.
- There are no specific suggestions for legislative change in the Report, but it suggests that the industries would have to bear the "...significant transaction costs..." of such action. Given the fact that some of the issues identified could well be best addressed by such change, and that the benefits to industry could be real and substantial in terms of reduction in bureaucracy, I suggest that Phase 2 should continue to consider options that may require legislation change, particularly where there may be significant benefits.

e. Conclusion:

- I suggest that the comment that "...the TCs' function is transparent and open" is not entirely correct and that there are a number of issues in respect of financial accountability that merit further investigation.

- There is a general recognition that commissioners do help achieve a good safety record across the HGV and PSV industries. This should be acknowledged in the conclusion, as it is an important outcome of the service.

- The final section does not reflect the full range of issues that are identified in earlier sections. For example, the possibility of using alternative delivery arrangements was highlighted in previous sections. Such options should be included in this final section to form a list of issues to be explored further in Phase 2. Part of this exploration should be to assess the extent to which stakeholders consider these options to be worth exploring.

***Geoff Dunning FCILT, Independent Advisor<sup>8</sup>***

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<sup>8</sup> Geoff Dunning, Chief Executive of the Road Haulage Association 2009 -14

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## 12. Phase 2 Review

12.1 The aim of the review was to examine all aspects of the structure and operation of the traffic commissioner service by addressing a number of objectives:

- Understand the current organisational structure and operation, both from an internal and external perspective
- Assess the effectiveness and relevance of the service in current circumstances
- Identify issues, challenges, constraints and positive features of the current service
- Consider options for change or development
- Formulate a report of findings, considerations and options

12.2 The review involved various strands of activity, including the following:

- Review of background material, including Traffic Commissioners' Annual Reports
- Meetings with each of the traffic commissioners, Senior Traffic Commissioner, and a number of deputy traffic commissioners
- Meetings with DVSA staff working within the OTC
- Meetings with DfT and DVSA
- Analysis of current organisational structure, procedures and practices
- Workshop sessions and discussions with industry stakeholders
- Analysis and assessment of data, including costs regarding the activities of the Traffic Commissioner Service
- Consideration of different models of regulation

12.3 From these activities, various issues and findings emerged that were given further consideration, leading to the development of options for change and to a number of recommendations. These findings and considerations are documented later in the report.

## 13. Activities and the current service

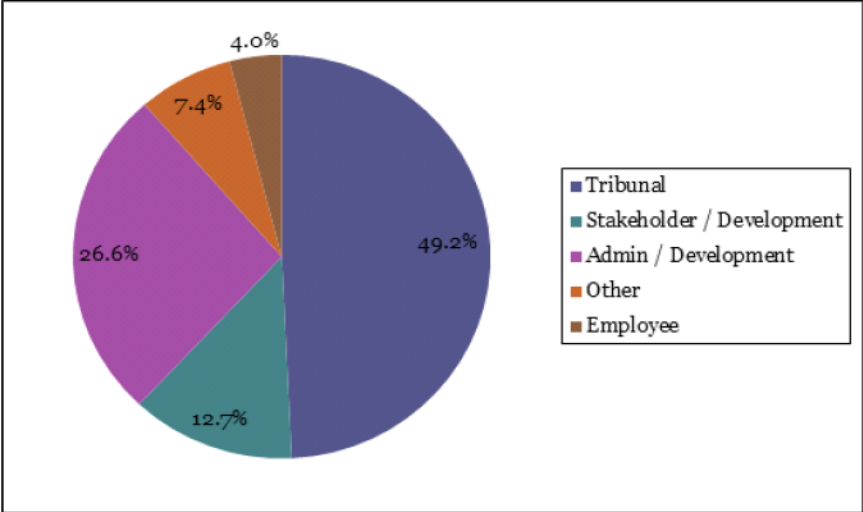
- 13.1 A traffic commissioner is appointed by the Secretary of State for Transport and they have responsibility for a particular geographical area. In their region or country, each commissioner is responsible for the licensing of operators of HGVs and PSVs, the registration of local bus services, and regulatory action against drivers of HGVs and PSVs.
- 13.2 Other activities include impounding of vehicles and the responsibility to adjudicate on the public interest test for Quality Contract Schemes. A number of other matters are also dealt with, including statutory consultee to bus ticketing schemes and statutory bus partnership schemes.
- 13.3 The role of traffic commissioners, 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 traffic commissioners and the right to appeal which meets the obligations on the State under Article 6 of the European Convention on Human Rights. The impartiality of traffic commissioners is therefore guaranteed in law. Appeals against their judicial decisions may be made to the Administrative Appeal Chamber of the Upper Tribunal.
- 13.4 One serving traffic commissioner is the Senior Traffic Commissioner (STC); this is currently Beverley Bell, who is the commissioner for North West England. The STC may direct any traffic commissioner to carry out specific functions as required anywhere in Great Britain (although in Scotland this only relates to reserved matters). Equally, the STC is empowered to give guidance and directions to the other traffic commissioners and deputy traffic commissioners, subject to prior consultation. This is provided through a series of Statutory Guidance Documents.
- 13.5 A framework document sets out the general principles of engagement between the traffic commissioners and the DfT and its agencies. It is designed to support traffic commissioners in their work and to help licenced operators understand the relationships between the different parties.
- 13.6 DVSA staff support the commissioners with regard to administrative matters or with regard to exercising delegated functions. Traffic commissioners do not manage any staff, but delegate and supervise work undertaken on their behalf.
- 13.7 The Chief Executive of DVSA is the accounting officer for ensuring that the processes are in place for staff to support the traffic commissioners and is responsible for the recruitment, retention and performance management of the staff of the OTC.

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## 14. Analysis of Traffic Commissioner Activity

14.1 We conducted an assessment of traffic commissioners' activity during September and October 2014. The average weekly hours of work for traffic commissioners in this period was 46.6 hours per week. Statistically, this is a limited sample and there will have been factors such as sickness leave which will have had an impact on the result. The time worked was distributed as follows:

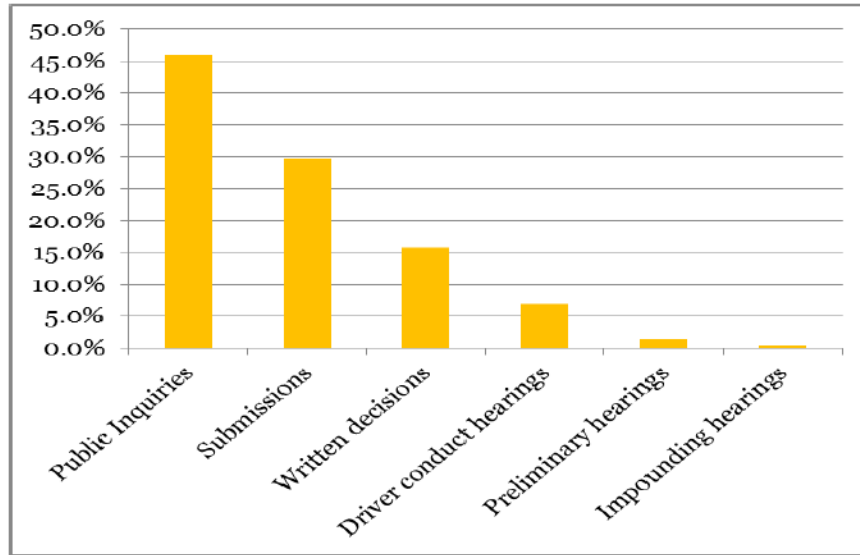
**Figure 1: Traffic commissioners' time spent on various activities (September – October 2014)**



14.2 This indicates that the single largest activity in respect of time is in dealing with regulatory matters (i.e. the tribunal function). Within the tribunal function, time was distributed as below:

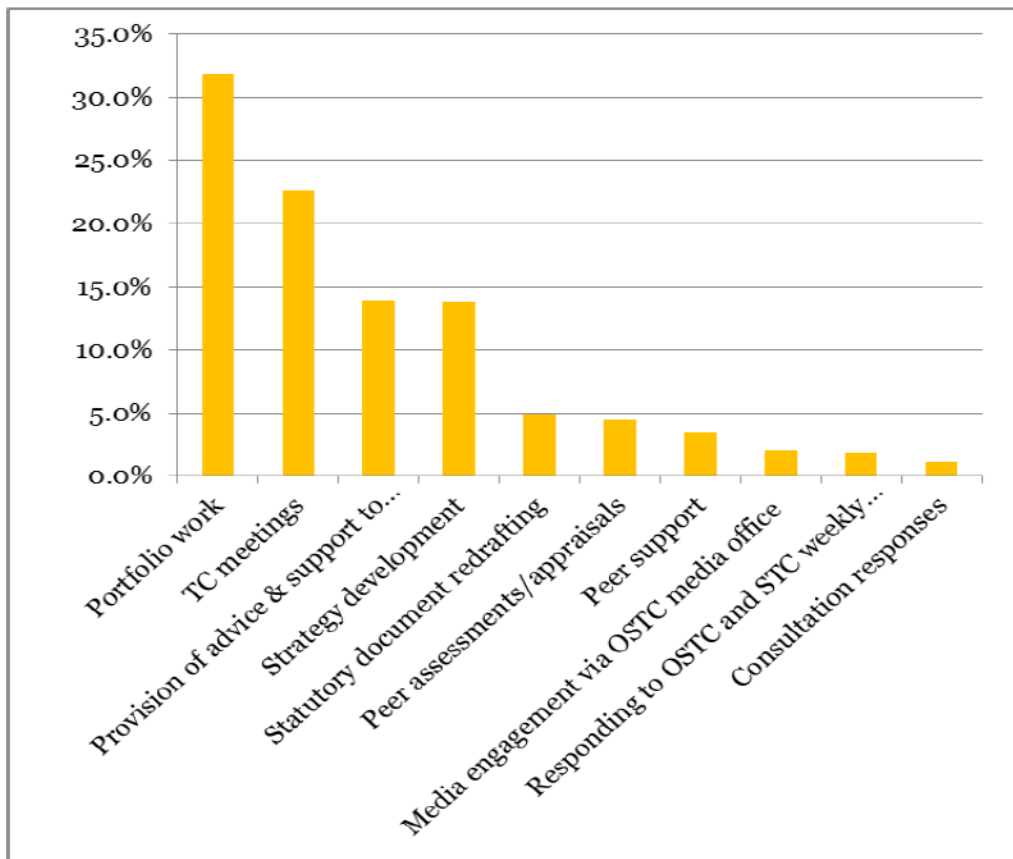
**Figure 2: Tribunal function time (September – October 2014)**





14.3 For the administration and strategy development element, time was deployed as follows:

**Figure 3: Distribution of time spent on administration and strategy (September – October 2014)**



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14.4 The traffic commissioners are supported by an administration staff provided by the DVSA as the OTC. Current staffing is shown below:

**Table 1: OTC Staff by grade**

<b>Grade</b>	<b>FTE</b>	<b>%</b>
Grade 7	1.0	0.6
Senior Executive Officer	3.0	1.7
Higher Executive Officer	16.0	9.4
Executive Officer	23.9	14.0
Administrative Grades	126.4	74.2
Ungraded	1.0	0.6
<b>TOTAL</b>	<b>170.3</b>	<b>100%</b>

14.5 Due to vacancies, a number of agency staff are currently filling administrative positions.

14.6 Staff are spread across different OTC locations<sup>9</sup>:

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<sup>9</sup> As at December 2014

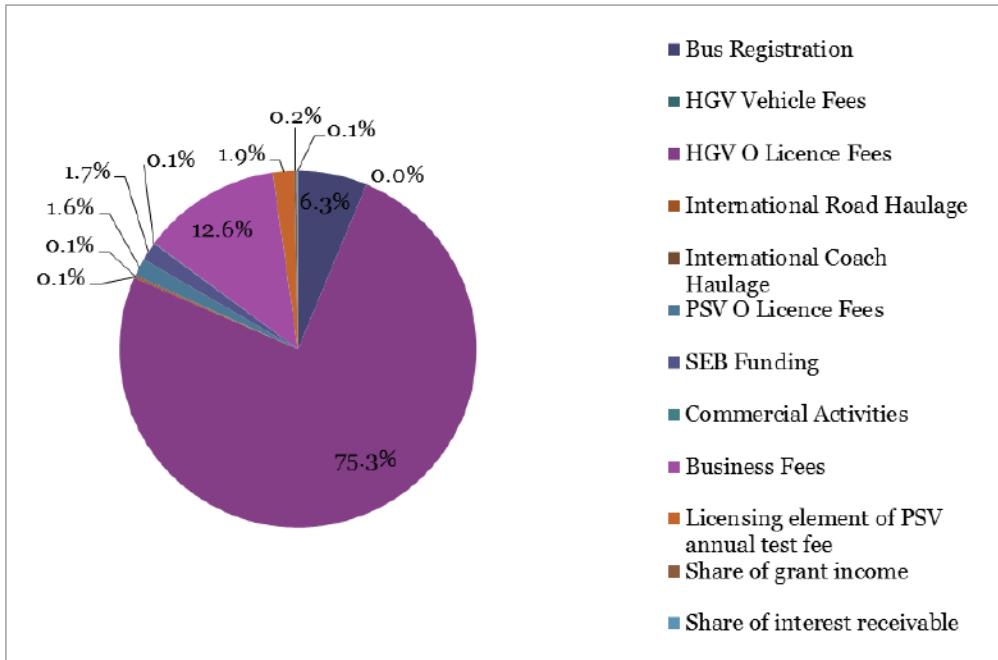
**Table 2: OTC staff by location**

Traffic Area (office location)	FTE	%
Wales (Birmingham)	3.2	1.9
South East (Eastbourne)	9.7	5.7
Western (Bristol)	11.0	6.5
West Midlands (Birmingham)	6.8	4.0
North East (Leeds)	11.0	6.5
Scotland (Edinburgh)	14.0	8.2
Eastern (Cambridge)	13.2	7.8
North West (Golborne)	12.0	7.1
Scottish Parking Adjudication (Edinburgh)	5.0	3.0
STC support (Golborne)	2.0	1.2
TC Media Office (Golborne)	1.0	0.5
TC Information Access Team (Bristol)	2.0	1.2
Central Licensing Team (Leeds)	80.11	45.7
Head of OTC and support	2.0	1.2
<b>TOTAL</b>	<b>169.3</b>	<b>100.0%</b>

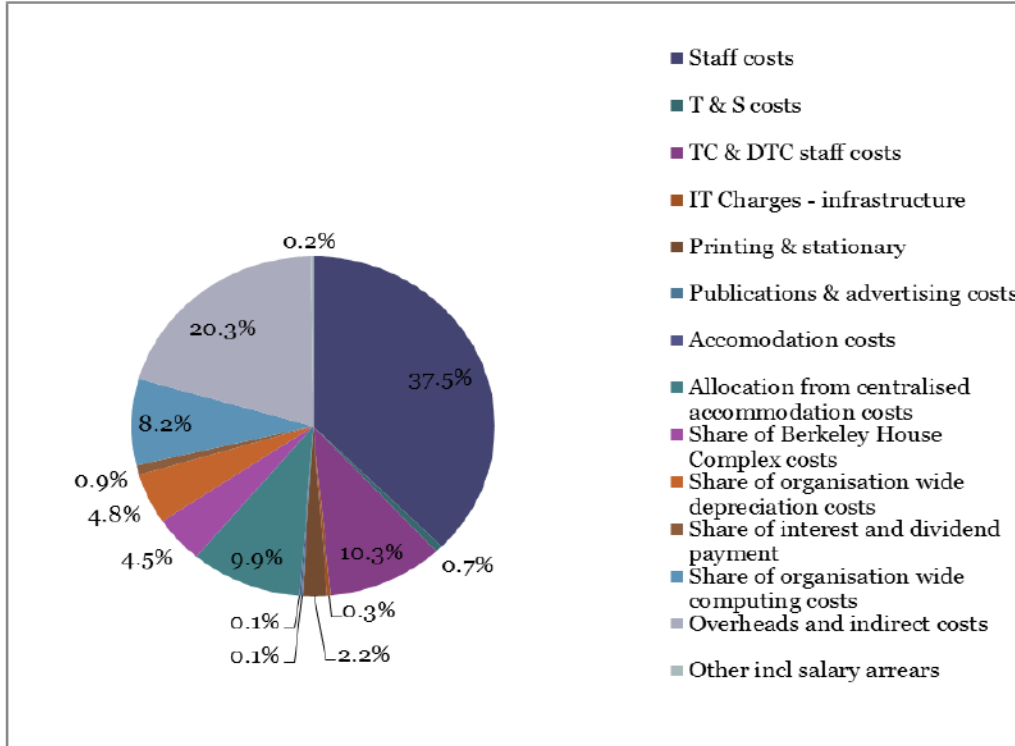
### Financing of the Traffic Commissioner Service

14.7 The Traffic Commissioner Service costs some £13 million per annum to provide. Almost half of this is accounted for in the staff costs of the traffic commissioners and OTC. The Traffic Commissioner Service is funded from income from a number of sources, although three quarters comes from HGV operator licences. Details of income and expenditure for the year 2013-14 are illustrated in the following charts.

**Figure 4: Sources of Income for Traffic Commissioner Service (2013-14)**

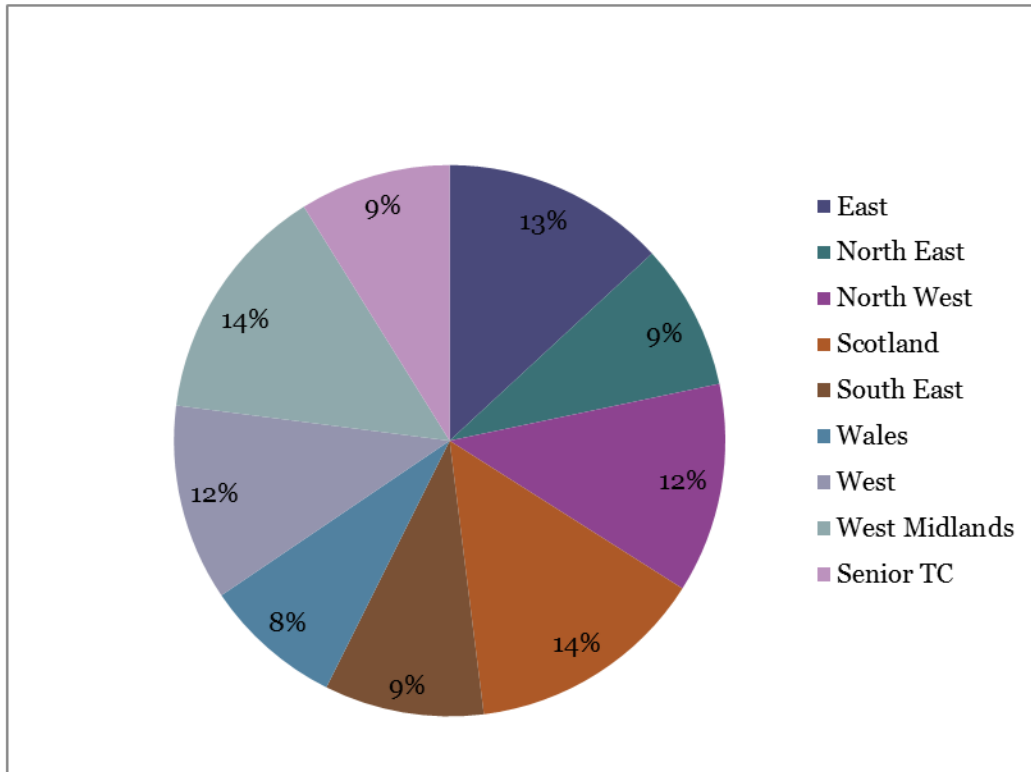


**Figure 5: Expenditure by Traffic Commissioner Service (2013-14)**



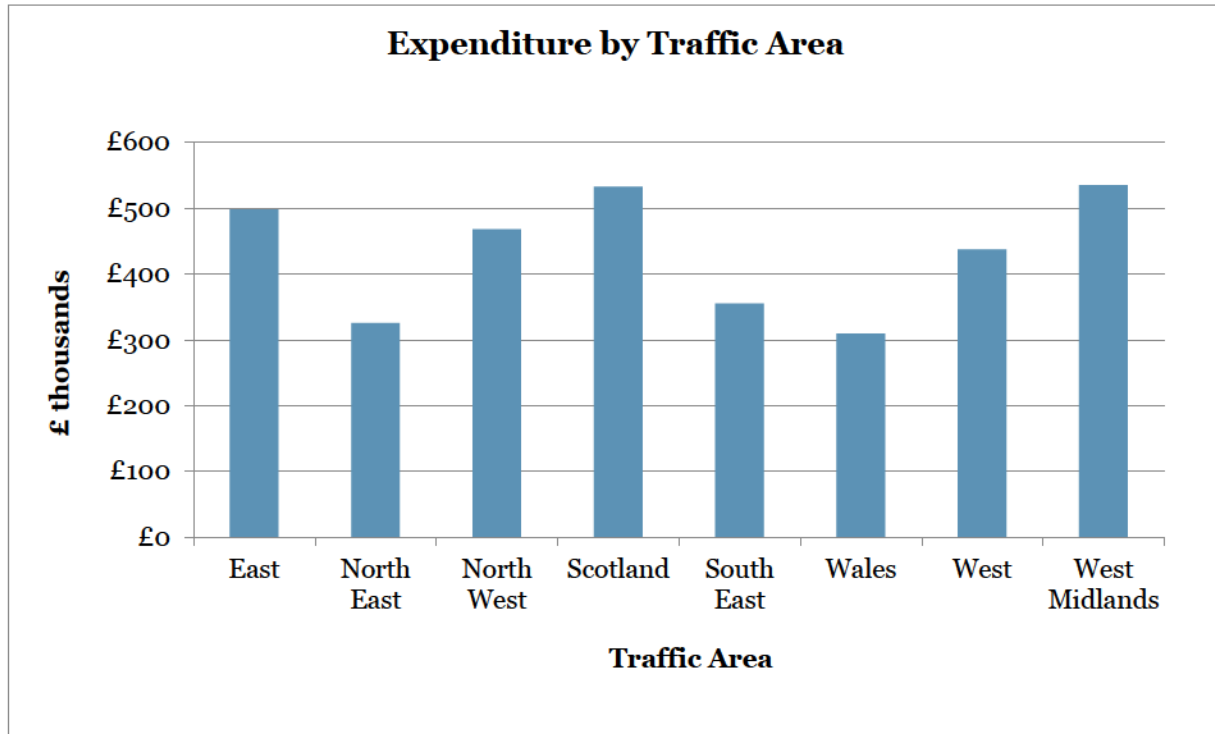
14.8 The cost of the OTC area offices is £3.8 million pa. The following chart shows how this cost is distributed quite evenly across the areas; not surprising given the similar levels of staffing in each office.

**Figure 6: Expenditure split by Traffic Area (2013-14)**

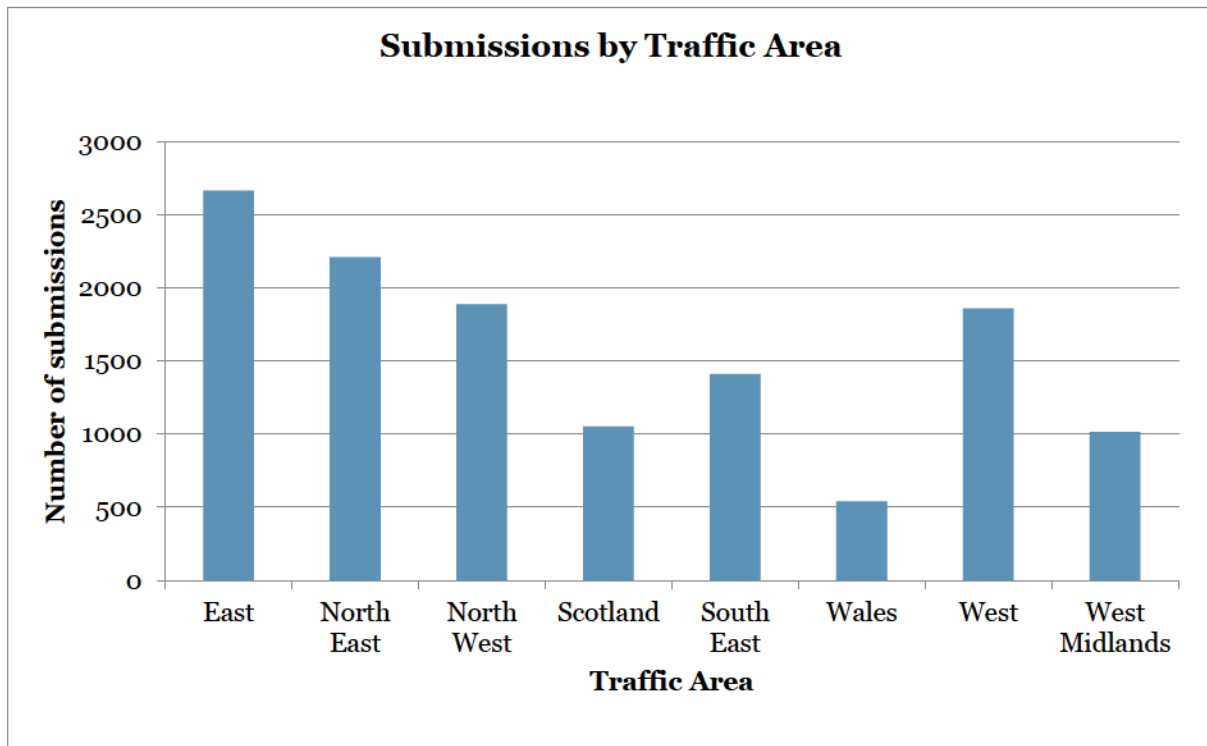


14.9 The following five charts provide an indication of the varying activity levels between the areas in relation to expenditure for 2013-14. This analysis suggests that there is no correlation between activity levels and costs, probably due to the variability within those activities. For example, some applications or public inquiries are straightforward, while others are not (for example, if an inquiry needs an adjournment). This variability makes the predictability of workload difficult to assess, which can make matching activity levels with small teams spread across different locations a challenge.

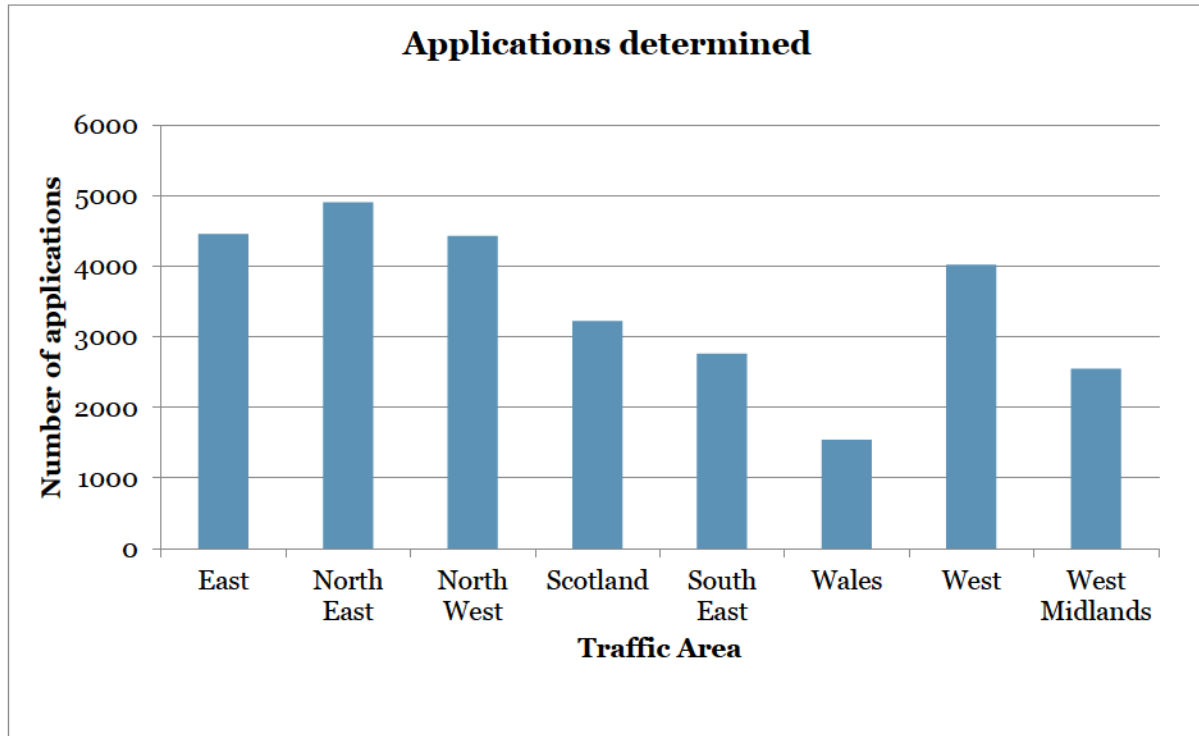
**Figure 7: Expenditure by Traffic Area**



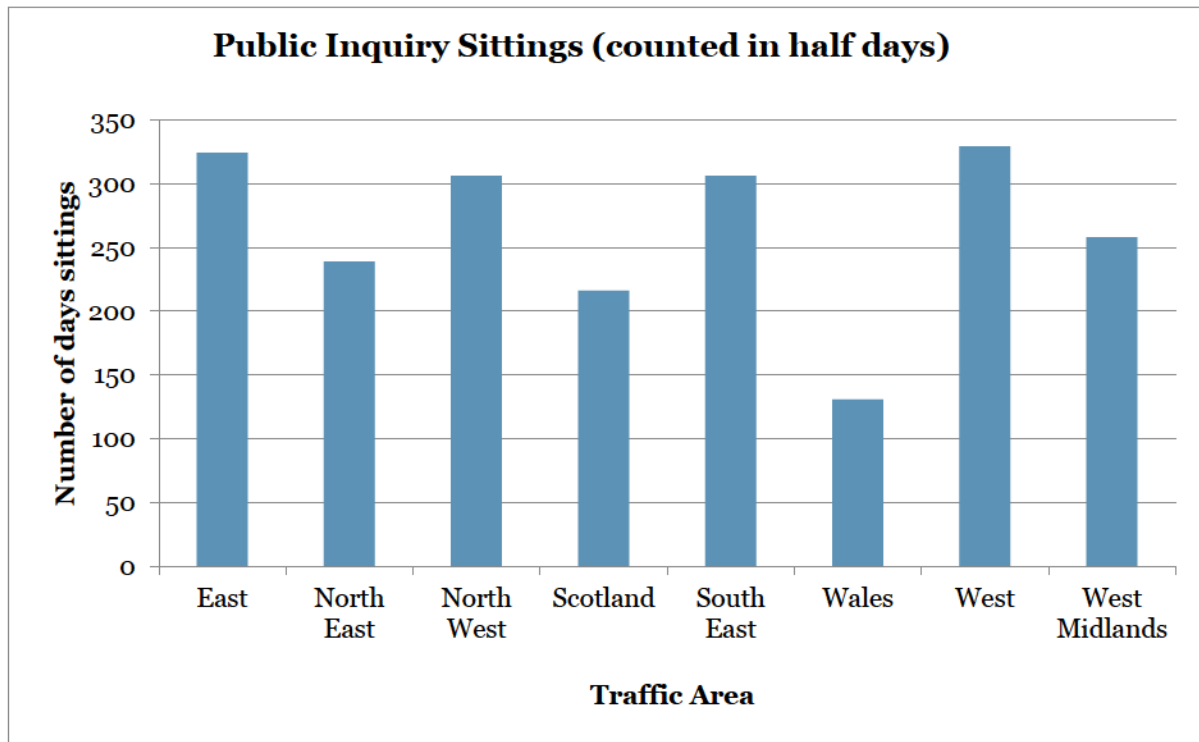
**Figure 8: Submissions by Traffic Area**



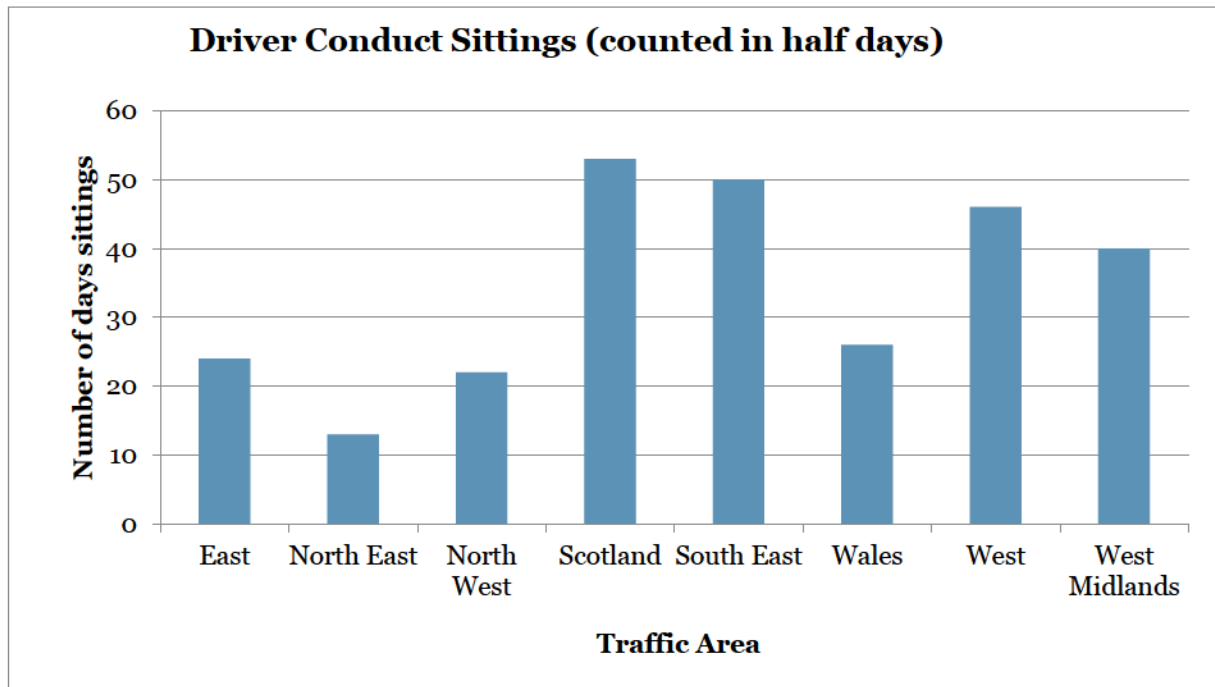
**Figure 9: Applications Determined**



**Figure 10: Public Inquiry Sittings**



**Figure 11: Driver Conduct Sitings**



14.10 Issues identified from the analysis of current activities and service:

- Different activity levels are dealt with by different commissioners.
- Traffic commissioners have no line management responsibility for the staff who support them in their activities.
- Significant amounts of licensing revenue go on meeting DVSA central costs (including enforcement activity), over and above the cost of servicing the activities of the OTC.

14.11 Significant amounts of licensing revenue go on meeting DVSA central costs (including enforcement activity), over and above the cost of servicing the activities of the OTC.



## Triennial Review - Traffic Commissioners

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## 15. Views on the Traffic Commissioner Service

15.1 We engaged with a variety of stakeholders during the review through workshops, meetings and follow-up correspondence. Furthermore, there was an opportunity for anyone to raise any matters via the DfT website. We also considered various background documents and reports.

### **Industry workshops**

15.2 Three half-day workshops were arranged, with industry representatives invited to participate. These were structured and facilitated to cover the topics necessary to satisfy the Phase 2 review, but provided sufficient flexibility for attendees to make any points they wished. Each of the workshops was themed (PSV; HGV; driver conduct), with stakeholders attending the most appropriate to their interests.

15.3 During each session notes were recorded on flip charts. These reflected views that all attendees generally agreed. Following the workshops, the notes taken were sent to attendees, with an opportunity for them to respond if they were not in agreement with anything.

15.4 The workshops were framed around a number of questions that were posed to provide structure to the discussions, as follows:

- What are the most important features of the traffic commissioners to you and why?
- What do you think about the effectiveness of the work of the traffic commissioners?
- How effective do you think the traffic commissioners are in minimising burdens on businesses?
- What do you think about the level, effectiveness and value of communication that you get from the OTC?
- How do you think the traffic commissioner system could be improved?

### ***PSV industry workshop***

15.5 This was attended by representatives from:

- Confederation of Passenger Transport (CPT) – representing all the large bus operating groups, coach operators, and many medium and small operators.
- Association of Local Bus Company Managers (ALBUM) – representing 50 independent bus operators, with a combined fleet of 5,000 buses.

- Association of Transport Co-ordinating Officers (ATCO) – representing local government officers working in passenger transport activities in virtually all Local Transport Authorities in England, Scotland and Wales.
  - Chartered Institute of Logistics and Transport (CILT)
  - Passenger Focus
  - Community Transport Association (CTA) – representing 1,500 organisations involved in operating or supporting voluntary and not-for-profit transport provision across the UK.
  - Association of Road Transport Lawyers (AoRTL)
- 15.6 The role of the traffic commissioners in the regulation of the bus and coach industry was strongly supported. All workshop attendees agreed that the independence of commissioners, being free from political influence, was extremely important and needed to be retained. Indeed, the view was that commissioners are highly respected within the industry (although probably more so by good operators than poor ones). Their specialist knowledge and understanding of the industry, and ability to provide good, reasoned responses in public inquiries, are factors that help promote this positive view.
- 15.7 Commissioners were viewed as approachable and willing to engage with the industry. The fact that they do not work dogmatically to a set of procedures and processes was seen as positive, providing the flexibility to deal with each case on its own merits. After all, operators were protected by the ability to appeal to the Upper Tribunal if they wished to challenge a decision made by a traffic commissioner.
- 15.8 With regard to keeping rogue operators off the road, concerns were raised about the ability of such operators to re-emerge in a different guise.
- 15.9 It was considered that licensing processes were bureaucratic and out-dated, with delays caused by inefficient processes. There was a view that different approaches were followed by different commissioners and that some ‘gold-plated’ the process, sometimes using what should be an ‘information process’ to be a ‘vetting process’, such as applications to change the nominated transport manager. In cases of the death of a licence holder or company insolvency, ‘O’ licence transfer can be very difficult and drawn out. The danger of delays in dealing with such situations can lead to operators choosing to be non-compliant in order to meet public need.
- 15.10 Overall, representatives considered that moving to a single licensing area, covering the whole of Great Britain, would be beneficial, rather than maintaining the separate traffic areas.
- 15.11 The group felt that there were unnecessary burdens on industry. Local bus service registrations were cited as an area of concern, with processes and procedures

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needing a complete overhaul. The continuation of paper-based registrations and the lack of take-up of electronic bus service registration (EBSR) were seen as issues. Some attendees questioned whether the Traffic Commissioner Service is the appropriate body to deal with registrations. The use of short notice changes was considered a particular problem, but an aspect that is increasingly used as registration notice periods have increased. One participant cited particular frustration for operators in having to make phone calls to the bus registrations team to find out whether short notice service registrations or changes had been accepted.

- 15.12 Bus service registrations form the basis of a national timetable dataset. Therefore, accuracy and the ability to transfer data with ease into information systems is vital. Paper-based registrations do not help in this aim.
- 15.13 In terms of organisational structure, industry representatives thought that the old role of Clerk to the Traffic Commissioner was a useful one: a knowledgeable intermediary providing a link between the commissioner and the industry.
- 15.14 There was support for the current structure of a STC with a group of other commissioners, but a view that the STC needed to exercise line management responsibility over the commissioners to achieve greater consistency. The need for more clarity in the interaction between commissioners, DVSA and DfT was also cited.
- 15.15 While there was support for the way public inquiries were conducted, there was concern about the tone and wording of correspondence regarding hearings, which tended to suggest a presumption of guilt that needed to be disproved by the operator.
- 15.16 Overall, it was considered important that traffic commissioners concentrated on safety. Therefore, it was questioned whether commissioners should be involved in other issues, such as bus registrations and punctuality, and adjudicating on quality partnerships and quality contract schemes.

### ***HGV industry workshop***

15.17 This was attended by representatives from:

- Freight Transport Association (FTA) – representing companies who operate more than half of the UK's HGVs.
- Road Haulage Association (RHA) – representing 6,000 firms in road haulage that between them operate about 100,000 HGVs.
- British Vehicle Rental & Leasing Association (BVRLA)
- Association of Road Transport Lawyers (AoRTL)

- Transport for London (TfL)

15.18 Representatives were positive about the overall clarity of the regulatory function, which focused on road safety and fair competition. Equally, the part that commissioners play in this is seen as positive. Various points made supported this view:

- The robust framework of regulation that is in place, which is widely respected and has resulted in improvements in compliance standards.
- The recognition of commissioners' independence, ensuring that they are free from influence from the DfT, DVSA and the industries they regulate.
- Flexibility offered in the allocation of commissioners, making use of the specialist knowledge.
- The good relationship that commissioners have with those they regulate, which makes communication easier and more effective.
- The efforts made to improve consistency across both licensing and disciplinary decisions, although there is still scope for further improvement.
- The range of sanctions available, which act as a powerful deterrent to non-compliance.

15.19 The Traffic Commissioner Service was seen as effective, with outcomes that are valuable and make a difference in terms of safety and fair competition. However, there were concerns that processes and procedures were perceived as inefficient and lacking in transparency. Also, it was considered that inadequate communication between commissioners and enforcement agencies meant that the worst offenders were not effectively targeted and in a timely manner. It was widely felt that operators who were inclined to be compliant were subject to the same approach as those inclined to be non-compliant in respect of licensing issues.

15.20 There was a view that communications to industry from commissioners and DVSA could be more joined up. Equally, representatives considered that if there was more effective communication between commissioners, there might be improvements in licensing and disciplinary decisions.

15.21 With respect to minimising burdens on business, it was considered that more could be done to simplify and speed up administrative processes and decision-making. As with the PSV sector, the complex and drawn out procedures for changes to legal entities or relocation of operating centres were cited as unnecessary and inappropriate.

15.22 The rules regarding operating centres, particularly associated with the environmental aspects, were felt to duplicate matters of planning law, such that they should be dealt with by local authorities.

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- 15.23 There was a suggestion that consideration could be given to differential fees, reflecting the demands placed on the administration of licences.
- 15.24 Some concern was raised that the impositions of licensing and other requirements, such as tachograph rules, meant that some operators choose to avoid the system by operating smaller vehicles not exceeding 3.5 tonnes. This results in more vehicles on the roads overall, and ones that are unregulated.
- 15.25 There was a view that traffic commissioners can seek to try and micro-manage businesses, being overly prescriptive on matters such as transport managers. One representative considered that commissioners should pay more attention to a risk-based approach to regulation, as set out in the Regulators' Code.
- 15.26 There was universal support for the traffic commissioner system and for the independent regulation that it provides. However, some improvements were considered necessary, including:
- The staff who support the commissioners should be under their control, rather than within DVSA
  - The STC should have greater authority over commissioners and the deputies
  - Greater clarity in how fees and income is spent on supporting compliance and enforcement
  - Ensuring that the statutory guidance documents issued by the STC are more closely followed by staff and other commissioners, to achieve greater consistency
  - Extending the range of sanctions available to commissioners to include financial penalties, as an alternative to suspension or curtailment of a licence (which can have a devastating effect on a business)
  - Restructuring of local offices to overcome difficulties that are caused by problems in recruiting, training and retaining good quality staff and establishing robust and consistent procedures
  - Review geographical boundaries of commissioners' activities, with consideration of a single traffic area and licence for the whole of Great Britain

### ***PSV and HGV driver conduct workshop***

- 15.27 This was attended by representatives from organisations interested in drivers' conduct issues as follows:
- The Unite union – with 95,000 workers across the passenger transport industries.
  - Confederation of Passenger Transport (CPT)

- Association of Local Bus Managers (ALBUM)
- Association of Road Transport Lawyers (AoRTL)

15.28 In 2013/14, traffic commissioners dealt with about 12,000 drivers' cases. Of these, about 2,500 were dealt with at a hearing.

15.29 As with the other workshops, representatives were positive about the role of the traffic commissioners and their understanding of the industry. Because of this, drivers prefer to be dealt with by the commissioners rather than Magistrates, who do not have the expert knowledge of the industry. Although most hearings for drivers are quite short (10-20 minutes), drivers value them because of the opportunity to state their case.

15.30 Representatives perceived that commissioners liked to hold driver hearings, as it provided opportunities to question drivers about employers' behaviours. At all hearings, commissioners ask drivers whether they are employed and who they work for.

15.31 There was confusion amongst attendees about how cases were referred to commissioners, including who was involved, and the volume and nature of information provided to them.

15.32 Suggested improvements to the current system were as follows:

- Provide more information about the referral of cases to the traffic commissioner, so that the process is more transparent and greater awareness promoted among drivers and employers.
- Consideration should be given to the publication of decisions relating to driver conduct, so that employers can be aware.

### **Listening to Industry Event**

15.33 The DfT ran a 'Listening to Industry' workshop on matters relating to operator licensing and traffic commissioners. Recurring issues raised related to processes and procedures being slow and not in line with expectations. Also, concerns were raised about forensic scrutiny by the OTC of all operators, both compliant and non-compliant, rather than taking a risk-based approach. Linked to this was the perception that operators appeared to be treated as guilty until proven innocent.

15.34 While traffic commissioners were seen as supporting industry, there was a desire to see more consistency between commissioners and a view was given that the STC should lead and direct the work of the commissioners more.

15.35 For the duration of the Phase 2 review, there was an opportunity on the DfT's website for anyone to make comments relevant to the review. Of the 49 responses,

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38 were from parish councils or organisations representing the interests of parish councils. All wanted to see a requirement for parish councils to be included as statutory consultees for applications for HGV licences, with a number highlighting the lack of co-ordination on such matters between traffic commissioners and local planning authorities.

15.36 A number of local transport authorities also responded. They pointed to the positive features of the traffic commissioners – their independence, experience and professionalism. One Welsh local authority considered a weakness to be the sharing of a commissioner between the Wales and West Midlands traffic areas, particularly as the operating territories and types of operations were quite different.

15.37 The need for streamlining of processes was also highlighted, and particularly the local bus registration process. The Welsh local authority suggested that Traveline Cymru would be better placed to process registrations, ensuring that the information was readily transferred into public information systems.

### **Transport for London (TfL)**

15.38 With responsibility for transport across London, TfL works closely with the Traffic Commissioner Service. TfL recognises the role that commissioners play: “traffic commissioners are specialist regulators and therefore have the essential knowledge and expertise to deal with the vast array of regulatory issues (often complex) that exist. This crucial function is highly valued by TfL, and by the industries regulated by the traffic commissioners.”

15.39 TfL supports the allocation of commissioners to specific areas, in respect of developing local knowledge. In this respect, it considers that having a commissioner dedicated to London as essential.

15.40 In its submission, TfL makes a number of recommendations for the review:

- Consider the current accounting system for operator licence fees and identify opportunities for greater transparency.
- Investigate whether current systems and processes are fit for purpose and look to opportunities for significant improvement, reducing their cumbersome nature.
- Expand the programme of DVSA / Traffic Commissioner facilitated seminars for new operators; TfL is willing to assist in this.
- Improve the understanding across the industry of the nature of the relationship between DVSA and traffic commissioners, and the value the commissioners add to the industry.



- Investigate whether the creation of a national licence system would provide value for money and other benefits.
- Reconsider the location of the existing traffic area boundaries to ensure they are fit for purpose, aligning them with economic activity and forecasts of future growth.
- Review the location of the existing offices to determine whether they are located in areas that best serve the industry. TfL considers that Eastbourne is not the best location to serve the south east area.
- Review the existing appeals process, to overcome concern about the transparency and accountability of the Upper Tribunal, which “does not always seem to have a reasonable understanding as to why traffic commissioners took the decision they did....Some of the decisions they have made with regards to limousine operators and construction and waste operators have confused and thus undermined enforcement efforts in London.”
- Make more of the traffic commissioners’ data available to stakeholders (however, this needs effective processes and procedures to collect and store data accurately).
- Due to the impact on an individual traffic area once a STC is appointed, an active traffic commissioner should not be burdened with the additional role of STC.
- Additional resources are needed to reduce timescales for getting from a case submission to public inquiry, in order to deal with seriously or dangerously non-compliant operators as quickly as possible.

15.41 Issues identified by the Listening to Industry event and TfL responses:

- Improve transparency of accounting system to show how licence fees are used.
- Streamline procedures and processes.
- Enhance the programme of seminars to educate and inform operators.
- Consider a national licence, review traffic areas and remove the burden on the STC of having responsibility for a specific area.
- Improve the appeals process.
- Traffic commissioners should function more as a team, directed by the STC, to provide consistent decision-making.
- Establish clear approaches to the consideration of the environmental aspects of HGV operator licence applications, with the ability for local views to be taken into account.

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## Stakeholder written responses

15.42 Following on from the workshops, a number of organisations provided more detailed written responses to us, in order to emphasise the views of their members. These are summarised as follows:

### ***Association of Local Bus Managers (ALBUM)***

15.43 ALBUM represents over 50 companies in the independent, state-owned and municipal sectors, which between them operate some 5,000 buses and coaches. ALBUM supports the current provision of the Traffic Commissioner Service, particularly valuing its neutrality and independence from the DfT and DVSA, and considers that the roles of STC and traffic commissioners should be retained.

15.44 In its submission, ALBUM puts forward a number of suggestions for change or improvement as follows:

- One or more commissioners should be designated with special expertise in, and responsibility for, buses.
- The processing of local bus service registrations should be returned to local offices, where there is some local knowledge; but in the absence of this, registrations should be handled by local transport authorities.
- Greater attention should be paid to the requirement for reduced bureaucracy, as set out in the Regulators' Code.
- Involvement of the commissioners with bus operators should be increased, including dialogue between the two ahead of, and potentially avoiding, formal public inquiries.
- The relationships and demarcation of responsibilities between the traffic commissioners, DVSA and DfT should be clarified.
- Commissioners should be freed from diverse, peripheral tasks to enable them to concentrate on primary safety and quality assurance aspects.
- The commissioners' roles as regulatory controller and adjudicator be made more explicit and transparent.
- The efficiency and adherence to regulations expected of operators be matched by improved efficiency by the commissioners, OTC and DVSA in matters including record-keeping, information retrieval and the timely issue of registrations and licences.
- Consideration should be given to a two-tier system of regulation, with separation between administrative and investigative tasks and decision-making (sanctions).

***Association of Transport Co-ordinating Officers (ATCO)***

- 15.45 ATCO draws its members from staff in local authorities who develop, arrange and plan passenger transport services. ATCO considers traffic commissioners to be highly regarded, independent regulators. However, it suggested that systems and processes need modernising. For example, local bus registrations should be fully electronic, so that information can be transferred to Traveline effectively.
- 15.46 Whilst it was recognised that commissioners had good links with industry organisations, it was considered that there was little routine communication with local authorities.
- 15.47 ATCO suggested that a single operator's licence for each operator should be considered. Also, it considered that the centralised handling of bus services registrations was not completely effective, and that alternative organisations be investigated to administer local bus service registrations.

***Confederation of Passenger Transport (CPT)***

- 15.48 CPT represents members involved in the provision of passenger transport services. In its response, CPT acknowledges the positive contribution of the commissioners: "Traffic commissioners are independent and free from political interference both nationally and especially locally in upholding PSV law. This is a major plus point and one that the bus and coach industry wants to see maintained at all costs."
- 15.49 Comments about, and suggested improvements to, the current system were:
- For large, national companies it would be more practical and consistent to have all dealings with the traffic commissioners centralised and with one commissioner.
  - Commissioners need to remain independent of DVSA, ensuring separation of the regulatory authority from the enforcement agency.
  - Processes and procedures need streamlining; "the time taken to process applications considerably exceeds the time taken before IT came into common use."
  - The commissioners' powers should be extended to be the only regulating authority for the issue and regulation of section 19 and 22 permits, ensuring consistency of approach.
  - Traffic commissioners should do more to call local authorities to account for failures to manage the local roads network and assist the punctuality of bus services.

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- Administration of bus service registrations should transfer away from DVSA, either to the direct control of the STC or possibly to Traveline. While it is understood that other stakeholders favour seeing registrations processed by local authorities, CPT would be against such moves on the basis that they would not be independent of political interference.
  - Consideration should be given to the size of local offices of the OTC and whether the current position is effective.

15.50 Overall, CPT considers that “current engagement by the commissioners with the bus and coach industry is probably greater than at any time in the past and is welcomed by operators.”

### ***Freight Transport Association (FTA)***

15.51 The FTA represents over 14,000 members associated with the transport of freight. “FTA members strongly support the traffic commissioners and recognise the vital role they play in ensuring road safety and fair competition in the road freight industry; however there are certainly areas within the Traffic Commissioner Service and the operator licensing system that could be improved and streamlined.”

15.52 These are summarised below:

- “Operators are entitled to an effective service for the licence fee which they pay; in this context, waiting for 9 weeks to be told that there are no problems with an application is unacceptable.” FTA believes that an agreement should be defined that sets out service standards that can be expected, with a higher standard of service for those identified as compliant, so as to engender risk-based regulation.
- A strength of the commissioners is in their role as a quasi-judicial regulator, holding operators who fall below acceptable standards to account. However, all too often, the commissioners adopt a forensic approach scrutinising applications and variations from operators with a strong history of compliance. This appears contrary to the Regulators’ Code, which suggests that regulatory activity should be based on risk. Therefore, FTA considers that the level of scrutiny adopted by commissioners should be reviewed. For example, could the DVSA’s ‘earned recognition’ scheme also be used by the licence-issuing body to determine whether a presumption to issue the licence can be made without further forensic investigation?
- Inconsistencies in approaches between commissioners is a concern; more so at the point of application.

- Traffic commissioners should regulate existing rules and avoid creating rules themselves. “This has been seen recently with aspects such as creating a ratio of transport managers to vehicles to define continuous and effective management and attempting to require operators to increase the number of expensive roller brake tests they need to undertake even when there was no evidence that that operator had deficiencies in their brakes.”
- The fact that staff of the OTC are employees of DVSA could create some conflict of interest, whereby the staff of the judicial arm are employed (and paid) by the enforcer. OTC staff could be supplied by another body, or the administration of licensing could be removed from the traffic commissioners altogether.

### ***Passenger Focus***

15.53 Passenger Focus is an independent passenger watchdog for the bus and rail industries. Whilst recognising that the organisation doesn't have firsthand experience dealing with traffic commissioners in their regulatory role, Passenger Focus' perception from within the industry is that “they are clearly knowledgeable, respected and operate in an approachable manner. They also act in an impartial way and, just as important, are perceived to be free from political influence. Traffic commissioners also play an active part in bus partnerships as a co-signatory.”<sup>10</sup>

15.54 Passenger Focus suggests the modernising of processes, particularly bus registrations, in order to improve dissemination of information for passengers. It would also advocate use of vehicle location technology to maintain punctuality.

15.55 Suggestions put forward to improve the effectiveness and operations of the Traffic Commissioner Service include:

- Consistent application of STC guidance in all areas to best serve the needs of passengers.
- More monitoring and transparency to enforce punctuality standards, rather than action only when a commissioner happens to receive a complaint. The current situation means that the commissioners and DVSA have a low public profile.

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<sup>10</sup> Written response from Passenger Focus, following attendance at Stakeholder Workshop

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- With greater staff and budget there would be an opportunity for the “traffic commissioner network to be more passenger-centric,” particularly through more attention to punctuality.
  - Give greater encouragement for passengers to complain about poor bus services to the traffic commissioners, backed by a “code of practice and passengers’ charter, with recourse via the traffic commissioner for compensation for poor service, delay and disruption, or sanctions imposed on operators to provide free or reduced price travel.

### ***Public Transport Consortium (PTC)***

15.56 The PTC is a special interest group within the Local Government Association. Again, they expressed a generally positive view of current arrangements, “Traffic commissioners are highly regarded, and ensure standards and safety for those who use bus services. Their independence is a strength. Regional officers provide the opportunity for them to gain local knowledge. Public inquiries are conducted in a professional manner. They are a focus for passengers’ complaints, although resources seem inadequate; public awareness of their role, activities and actions needs to be increased. Traffic commissioners have some flexibility in the discharge of their responsibilities.”<sup>11</sup>

15.57 In its submission, the PTC puts forward a number of suggestions for change or improvement as follows:

- Systems and procedures need modernising and more should be managed electronically, with speedier processes in place. The time taken to arrange a public inquiry should be reduced to ensure effective enforcement.
- A single operator’s licence for each operator should be considered for the whole of Great Britain.
- Greater co-operation between commissioners and DVSA is needed and more resources for monitoring made available. To function as regulators, regular monitoring is necessary and action taken at an early stage.
- Consider local authorities taking on responsibility for processing bus service registrations.

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<sup>11</sup> Written response from PTC

- Increase levels of information sharing between commissioners and local authorities.
- Enforcement and monitoring of Statutory Quality Bus Partnerships needs to be more effective, or devolve powers to local authorities, with a minimum standard set for the frequency of monitoring checks.

### ***Passenger Transport Executive Group (PTEG)***

15.58 PTEG, the organisation that represents the Passenger Transport Executives and a number of other urban transport authorities, was invited to the workshops, but was unable to be represented. However, they did raise some points with us in a separate telephone discussion, as follows:

- The bus service registration process needs to have more resource allocated to it, or moved to an organisation (e.g. Traveline or Passenger Focus) that has the resources and understanding to manage the process effectively; this needs to include greater monitoring and enforcement.
- Commissioners should focus on matters relating to safety; other tasks should be passed to other bodies.

15.59 Issues identified from industry engagement:

- Current licensing and application procedures are bureaucratic, inefficient and slow and in need of modernising and making more transparent.
- Different approaches taken by different commissioners.
- Local bus service registrations may be more appropriately dealt with by a different organisation
- Environmental requirements for approval of goods vehicle operating centres could be dealt with by planning authorities.
- Need for commissioners to engage more with those operators who are non-compliant (either intentionally or unintentionally), rather than those who are compliant.
- Commissioners should be more willing to engage with and share information with other organisations, such as local authorities.
- Commissioners should work more as a group, led and managed by the STC, with the aim of achieving greater consistency.
- Greater clarity needed in the interaction between commissioners, DVSA and DfT.
- Greater clarity needed on how fees and income are spent.

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- Correspondence regarding public inquiries has a presumption of guilt before the inquiry has taken place.
  - Commissioners should concentrate on matters relating to safety.
  - Create more separation between administrative and investigative tasks and decision-making.
  - Commissioners should have management responsibility for staff who support them.
  - Geographical boundaries of commissioners' activities need to be reviewed, with consideration of a single licensing area for the whole of Great Britain.
  - Poor understanding about the referral of drivers' cases and lack of information made available on decisions.
  - Need for more monitoring to ensure early action when problems exist.

## **Other Public Sector Views**

### **DVSA**

- 15.60 We met with two senior executives within the DVSA, to discuss the functioning of the Traffic Commissioner Service in relation to the remit of the DVSA.
- 15.61 The overall view of the traffic commissioners is that they are very valuable as industry regulators and that industry has confidence in them. The sanctions that they are able to impose act as a real deterrent to poor operation. Their existence provides a much better route to dealing with non-compliance than having to work through the courts.
- 15.62 There appears to be a lack of understanding from industry of relationships between DVSA and OTC.
- 15.63 It is acknowledged that there are inconsistencies in the way that individual commissioners work and in their approach to decision making. To some extent this reflects individual characters and isn't necessarily a problem. However, it can be a problem if resultant decisions appear unfair compared with others. Equally, different levels of service can be experienced in different areas.
- 15.64 In respect of licensing, the majority of decisions are delegated to staff. However, where decisions are referred to commissioners, the supporting information required by different commissioners can vary significantly. This doesn't seem right, when there is effectively one single licensing system. Indeed, it highlights the question as to whether there is still relevance in having to hold a licence within each traffic area. Should there be a single licence covering operations across the



whole of Great Britain? Furthermore, do any licensing decisions need to be referred to traffic commissioners? DVSA could deal with all aspects of licensing applications and changes, with any challenge to those decisions being referred to commissioners to adjudicate on.

- 15.65 The centralisation of licensing in Leeds has shown how economies of scale can be achieved, smoothing out work flows, and providing easier recruitment and management of staff. Therefore, there may be scope to centralise more functions of the OTC. Removal of some tasks from the OTC would allow the commissioners to concentrate on what they are good at – being industry regulators.
- 15.66 Some inconsistencies may arise from commissioners' over-riding desire to act, and be seen to be acting, independently. Whilst everyone acknowledges the value of their independence in decision-making, traffic commissioners are accountable to the Secretary of State. Independence doesn't mean commissioners can say what they want, or do what they want; they need to be accountable in respect of the spending of public money. Over the years there has been considerable debate regarding the relationships between commissioners, DVSA and DfT. It is important that these governance issues are resolved. However, since the accounting function moved to DfT, tensions between DVSA and commissioners have disappeared.
- 15.67 It is vital that traffic commissioners are seen to add value to the industry. The main ways of doing this are by keeping rogue operators off the road and improving levels of compliance. This means targeting their activities, such as focusing on operators that are unconsciously non-compliant.
- 15.68 Currently, traffic commissioners are effectively appointed until the age of 65. Moving to a system of periodic reappointment would help ensure that commissioners maintain their focus on industry priorities and continue to operate in line with the requirements of the DfT.
- 15.69 The Traffic Commissioner Service has been shaped by historic needs and circumstances. However, over time the road passenger and freight industries have changed. Currently, the service is designed around structures and procedures that have been in place for some time. This review provides the opportunity to step back and consider the workload and activities and then design the service appropriately to deal with these. Processes and procedures need to be streamlined and made more transparent. For example, introduction of a tracking service would help operators see where they are in the process. Equally, service standards need to be set out, so that operators know precisely what to expect, for example in respect of turnaround times.
- 15.70 It was considered that there should be more focus on outcomes, with the OTC and DVSA working together in a common approach. This will provide consistency and efficiencies.

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### **OTC staff**

- 15.71 We met with a number of staff from the Office of the Traffic Commissioner, both within the Central Licensing Team in Leeds and local offices, in order to gain views from their perspectives.
- 15.72 One of the common themes to emerge was the different approaches taken by the various traffic commissioners and how these led to inconsistencies in procedures, practices and decision-making. For example, some traffic commissioners were more likely to call an adjournment before making a decision, while others were keen to make a decision on the day. Staff felt that adjournments led to a lot more time and effort needing to be devoted to particular cases.
- 15.73 Interactions between commissioners and OTC support staff in each of the offices were considered to be different in nature. Whilst this partly reflects the different characters of the commissioners, staff felt that the lack of any line management responsibilities was also a factor.
- 15.74 The feeling was that some of the inconsistencies that arise are due to the commissioners acting too independently of one another. It was considered that this could be addressed by the commissioners acting more as a team, with all commissioners reporting to the STC in a line management capacity. Staff also considered there may be merit in commissioners being appointed for fixed periods (say 5 years), with the ability to reappoint where appropriate.
- 15.75 Staff considered that there was a lot of administration around dealing with deputy traffic commissioners and that the DTCs were not accountable to anyone. The view was that workloads are fairly consistent and so are relatively predictable. Therefore, it might be more appropriate to replace all the DTCs with a couple of additional full time commissioners. If DTCs were to be retained, then it may be useful to set fixed rates for dealing with particular activities.
- 15.76 There was concern that the small offices in each of the traffic areas are not sustainable. There are often vacancies and delays in filling these mean that agency staff are brought in to cover. A loss of two staff out of an office complement of 10 can have a significant impact. This might be partially alleviated through some centralisation of activities into a smaller number of offices, which would allow more sharing of workloads. The downside of this would be that staff might become more remote from commissioners, resulting in a disjointed service. Equally, even with centralisation, there would still be a need to hold public inquiries in convenient locations around the country.

- 15.77 It can be difficult for OTC staff, particularly those in the small offices, to understand how they fit in. Whilst employed by DVSA they are categorised as being within the OTC; they support the work of the commissioner, but do not report to them. We did discuss whether there may be a case for the OTC staff to become a free-standing body, separate from DVSA, either totally independent or under the umbrella of DfT. This would resemble the situation of some of the other regulatory bodies that exist in other sectors, such as the Gambling Commission. Also, the STC suggested that it might be a suitable model to consider.
- 15.78 Staff considered that there were opportunities to streamline some activities and processes. For example, many issues of non-compliance have to be referred to the relevant commissioner. It was felt that some of these matters could be dealt with by staff using delegated authority; if challenged, cases could then be referred to commissioners. Some simple actions, such as recommending to the commissioner that no action needs to be taken, can take a disproportionate amount of time. These processes need to be simplified with less justification having to be given to the commissioner.

### ***DVSA Operator research***

- 15.79 A telephone survey amongst 512 HGV and PSV operating businesses was undertaken on behalf of the DVSA in 2014. The results were published in September 2014. A number of the findings are relevant to this review of the Traffic Commissioner Service and are highlighted below:
- Membership of trade organisations is higher amongst larger operators than smaller: 39% of small fleet operators (1-6 vehicles) are members; 80% of medium / large fleet operators (7+ vehicles)
  - 26% of operators believe compliance is not sufficiently easy (higher amongst smaller operators)
  - Over 85% of operators consider the weight of administration is acceptable
  - Operators would prefer to see easier working with DVSA than reductions in costs
  - 83% of respondents were fairly or very confident in DVSA's ability to ensure compliance
  - 95% of operators agree that the Operator Licensing Team take operators' needs into account
- 15.80 The OTC is respected and considered to be efficient and reliable; however, operators were not as positive about the OTC's impact on society and its ability to develop new ideas to improve the service

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*Issues identified by DVSA and OTC:*

- Decision-making needs to be seen to be fair, with consistency in procedures and practices.
- All aspects of licence applications and changes could be dealt with by DVSA staff, without reference to commissioners.
- The independence of traffic commissioners doesn't mean that they don't have to be accountable; governance issues between the commissioners, DVSA and DfT need to be resolved.
- Commissioners need to add value to industry and focus on non-compliant operators.
- Commissioners should be appointed for fixed periods.
- Commissioners should have some line management responsibilities for staff supporting their activities.
- Commissioners and deputy commissioners should operate more as a team, reporting to the STC.
- Deputy traffic commissioners should be replaced by a number of additional full time commissioners.
- Small area offices exhibit difficulties in staff recruitment and retention. . Procedures mean that recruitment of replacement staff is slow, meaning that agency staff are used; it takes time for them to build suitable knowledge.
- Challenges in matching variable workloads with resources available in each local office.
- Activities and processes need to be streamlined, with more tasks and decisions delegated to staff.
- Challenges of operating from small regional offices and in matching variable workload with resource.
- Challenge of matching full complement of support staff, leading to problems covering workload. Due to DVSA procedures, recruitment of replacement staff is slow, meaning that agency staff are used; it takes time for them to build suitable knowledge.

***DfT Bus and Taxi Division***

15.81 With its responsibility for bus and taxi policy, the Buses and Taxis Division of the DfT has an interest in the role and responsibilities of the traffic commissioners. We met with representatives of the Division, providing them with an opportunity to input into the review.

- 15.82 There was support for the review and the role of the commissioners in respect of regulating the industry. Their perception was that commissioners spend a disproportionate amount of time dealing with PSV matters, considering the number of PSVs and operators compared with the HGV industry.
- 15.83 The view is that the role and scope of responsibilities of traffic commissioners has grown over time. As a result, safety is no longer the sole focus.
- 15.84 This review provides the opportunity to consider whether there should be more separation of the safety and economic regulation of the bus industry, and whether some of the responsibilities that are not associated with safety should be given to other organisations. Matters relating to Statutory Quality Partnerships, multi-operator ticketing schemes and punctuality could fall into this category. Equally, some of these activities could be seen to be drawing the commissioners into policy issues, which are not about regulation.
- 15.85 While many consider bus service punctuality and compliance with registered timetables to be an important matter that should have more monitoring and enforcement time dedicated to it, if this was undertaken, would it take resources away from the enforcement of safety?
- 15.86 Having introduced the concept of electronic bus registrations some time ago, Bus & Taxi Division is keen to see much greater use of it, rather than continuing with paper-based documents. This links to the government's open data agenda, particularly as an important use of the data in is publicly-available public transport information systems.

*Issues identified by DfT Bus and Taxi Division:*

- The main focus of traffic commissioners should be safety, with the possibility of moving other activities to other organisations.
- Bus service registration system needs to be fully electronic, with all operators using it.

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## 16. Traffic Commissioner Views

16.1 JMP met with the 7 incumbent traffic commissioners and 3 of the deputy traffic commissioners. The following issues emerged as common themes:

### **Independence and separation of functions**

16.2 Ensuring that they are independent and maintain their position is a vital concern to the commissioners and a number of points were raised.

16.3 Some confusion was caused by the Local Transport Act 2008, which sought to establish traffic commissioners as a collective entity as opposed to a judicial regulator. The framework document clearly seeks to separate the regulatory and judicial functions of the traffic commissioners.

16.4 In the case *Nolan Transport v Vehicle & Operator Services Agency & Secretary Of State for Transport* [2012] the matter of judicial independence of the traffic commissioners was explored. The judgement of the Upper Tribunal considered that: "It is important that everyone, at whatever level in the DfT, who has direct or indirect dealings with or responsibility for Traffic Commissioners is aware of the importance attached to their independence and aware of the ease with which it could be undermined....Eternal vigilance is also needed when it comes to the protection of judicial independence, including that of Traffic Commissioners. We feel sure that the DfT recognises that if it was clearly shown that it had failed to protect the independence of Traffic Commissioners it might run the risk that demands will be made for its responsibility for Traffic Commissioners to be moved to another Department."

16.5 The Transport Select Committee's Third Report of 2013-14 Session called on VOSA (now part of DVSA) to take steps to improve its relationships with the police and Traffic Commissioners. It specifically identified that an increased separation of functions was required to reinforce the independent tribunal role of traffic commissioners.

16.6 The need for separation of purely administrative matters (e.g. licensing applications) from judicial decision making was raised as a way of speeding up processes. IT systems are in the process of being upgraded. The aim is to allow operators to apply and vary applications on-line, which should also speed things up. The possibility of moving to a single national licence, but administered locally, was supported by a number of commissioners.

16.7 While there may be an argument for taking away bus registrations from the traffic commissioners, as it is not a safety matter, commissioners noted that it was a

relatively small area of work and considered that there may not be a suitable alternative body to fulfil the role.

### **Consistency**

- 16.8 Consistency across the traffic commissioners is achieved by following the statutory guidance documents and through regular meetings, where they go through cases to see if they would arrive at the same conclusion. Once a year, there is a 3-day professional development seminar to which deputy commissioners also attend.
- 16.9 Commissioners felt that it was important for them to act as individuals, rather than as a single 'service', so that relationships can be developed with the industry locally.

### **Role of STC and DTCs**

- 16.10 The inability of traffic commissioners to have productive management of the panel of DTCs is seen as a challenge. Local understandings over the use of 'local' DTCs exist in order to reduce expenses.
- 16.11 The role of the STC in having no management responsibility beyond the deployment of deputy commissioners generally and traffic commissioners for Bus Quality Contract Schemes is seen as an issue.
- 16.12 The role of the STC in providing statutory guidance to aid the commissioners and deputies was seen as helpful. The STC commented that guidance although 'statutory' should be the basis of decision making and reasons for deviating from the guidance based on the facts of an individual case should be reported in written decisions.

### **'Scope Creep'**

- 16.13 Commissioners noted the additional duties imposed on them over and above general PSV and HGV industry regulation, including:
- Bus Quality Contracts
  - Vehicle impounding appeal decisions
  - Consultee on Statutory Bus Partnership and Statutory Bus ticketing schemes
  - Novelty vehicles and limousines licensing
- 16.14 Currently, the time taken in terms of these functions is limited, but the forthcoming hearing into the Nexus Quality Contract Scheme (QCS) proposal may change

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this.<sup>12</sup> The QCS panel, chaired by the North East Traffic Commissioner, has already indicated that an extended timescale will be necessary to deliver a decision<sup>13</sup>.

### **Control of Enforcement Activity**

- 16.15 Targeted enforcement is important, but commissioners have no direct control over enforcement activities.
- 16.16 The Traffic Commissioners as a group noted the need for deterrence, either through the dissemination of decisions or through education. New operator education was seen as a key issue.
- 16.17 The Transport Select Committee's Sixth Report of the 2014-15 Session said in terms of enforcement: "An intelligence-led approach to enforcement that targets the most serious non-compliance and the repeat offenders depends on access to and the effective sharing of data."
- 16.18 It was noted that at a local level cooperation between the OTC and DVSA staff was generally good.

### **Value**

- 16.19 The Transport Select Committee's Sixth Report of the 2014-15 Session stated: "Offenders need to be caught and dangerous vehicles must be removed from the road network. We view this as essential to reduce the likelihood of traffic accidents and save lives." The traffic commissioners consider that this is what they do. In achieving this, they feel industry values their contribution.
- 16.20 The commissioners noted that it is difficult to reach operators in most need of education. While being invited to speak at events organised by industry professional bodies, these are not attended by those companies who fail to comply.

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<sup>12</sup> A traffic commissioner is required to chair an adjudication panel to ensure that all necessary steps have been taken in proposals to ensure a Quality Contract Scheme will be in the public interest.

<sup>13</sup> Statement made by NE Traffic Commissioner: [www.gov.uk/government/news/qcs-board-confirms-plans-to-examine-north-east-quality-contract-scheme](http://www.gov.uk/government/news/qcs-board-confirms-plans-to-examine-north-east-quality-contract-scheme)



## **Service**

16.21 One commissioner considered that while operators and applicants paid the same fees, they received a different level of service due to the way in which resources are allocated across the country. The commissioner suggested that there have been times when the average number of weeks taken to prepare a submission in different traffic areas varied between 2 and 20, while the average listing from sign-off ranged from 9 to 22 weeks.

## **Organisational structure**

16.22 There is some unease in the current organisational positioning of traffic commissioners. While acting as independent regulators appointed by the Secretary of State for Transport, they are dependent on DVSA staff for support, but have no line management responsibilities for staff in each local office. However, they wish to maintain a distance from DVSA and DfT to ensure their independence from political and industry interference. Meanwhile, expense claims are submitted to DfT.

### *Issues identified by traffic commissioners:*

- Tensions between maintenance of independence and ability to function as a group of commissioners.
- STC has no management responsibility for other commissioners and deputies.
- Need for greater separation of administrative and tribunal functions.
- Main role of safety is being encroached on by other activities.
- Commissioners need the ability to direct enforcement action, so it can be more effectively targeted.
- Need to reach those operators most in need of education – those that are either consciously or unconsciously non-compliant.
- The possibility of moving to a single national licence, that is administered locally, should be investigated.
- Consider whether there is an alternative body that could deal with local bus service registrations.
- Need for resources to match requirements, in order to provide consistent levels of service in all areas.
- Resolve governance issues between STC, traffic commissioners, DVSA and DfT.

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## 17. Regulatory Approach

### Current Position

17.1 The Government's 'Better regulation framework manual' sets out the general principle of regulation. The Government will regulate to achieve its policy objectives only:

- Having demonstrated that satisfactory outcomes cannot be achieved by alternative, self-regulatory, or non-regulatory approaches
- Where analysis of the costs and benefits demonstrates that the regulatory approach is superior by a clear margin to alternative, self-regulatory or non-regulatory approaches
- Where the regulation and the enforcement framework can be implemented.

17.2 For the road transport industry, the requirements for access to the industry are set by EU Regulation 1071/2009:

It should be the responsibility of the Member State of establishment to verify that an undertaking satisfies at all times the conditions laid down in this Regulation so that the competent authorities of that Member State are able, if necessary, to decide to suspend or withdraw the authorisations which allow that undertaking to operate on the market. Proper compliance with, and reliable monitoring of, the conditions governing admission to the occupation of road transport operator presuppose that undertakings have an effective and stable establishment.

Undertakings engaged in the occupation of road transport operator shall:

- (a) have an effective and stable establishment in a Member State;
- (b) be of good repute;
- (c) have appropriate financial standing; and
- (d) have the requisite professional competence.

17.3 In Great Britain, the competent authority is the Traffic Commissioner. In Northern Ireland, a civil service department is the competent decision making authority. Given the different approach there, we explored how this operated, in order to

compare it with the independent traffic commissioners in England, Scotland and Wales.

### **Northern Ireland**

- 17.4 In 2012, a new system of HGV licensing came into force in Northern Ireland, bringing it more in line with the rest of Great Britain. At the same time, the Transport Regulation Unit (TRU) was established within the Department of the Environment. This is staffed by civil servants and the head of the unit acts in effect as the *'traffic commissioner'* (industry regulator) for Northern Ireland. The head of the unit manages the staff within the unit, unlike the traffic commissioners in Great Britain who have no line management responsibilities for support staff of the OTC (who are employed by DVSA).
- 17.5 As part of this review we met with the current head of the TRU, along with her predecessor, who was instrumental in establishing the unit and new licensing system. We were particularly interested in exploring how the system works with a civil servant, rather than a commissioner.
- 17.6 Experience of the last 2 years suggests that the independence of the TRU Head has not been compromised. The role still has 'teeth', in that operators can be called to inquiry, and operators take this very seriously with many seeking to be legally represented at hearings.
- 17.7 At the time of setting up the unit, there was considerable debate around the independence that could be demonstrated by a civil servant as opposed to an independently-appointed commissioner. The view by the Head of the TRU is that only part of the regulators' roles requires independence – i.e. the consideration of evidence and determination of a decision about an operator. The structures within the Department enable this. Furthermore, the opportunity to challenge decisions made by the TRU still exists, with referral to the Upper Tribunal, in the same way as the decisions of the traffic commissioners can be challenged.
- 17.8 The downside of the Head of the TRU being the regulator is the demand of competing aspects of the work on the role. The unit head spends 60% of her time managing the unit, with 40% of time spent on regulatory matters. Also, there is no time to spend on aspects of educating the industry. The role covers the whole of Northern Ireland and it is not possible for Head of the TRU to have local knowledge of all areas. This does not appear to be a problem. The TRU Head's view is that a public inquiry should be based on the evidence presented, rather than the possession of any local knowledge.
- 17.9 It is important to ensure consistency in thinking and action. Given that the Head of the Northern Ireland TRU performs the same role as a traffic commissioner, there would be merit in more networking and sharing of information between them.

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17.10 In 2013/14 the running costs of the TRU were £1.16m, which included the costs of staff based in Northern Ireland, Leeds and Swansea. There are a total of 5,689 HGV operator licences in Northern Ireland, covering the operation of over 19,000 vehicles. The TRU deals with about 200 licence variations per year.

17.11 For Great Britain, in 2013/14, there were a total of 77,732 HGV licences and 9,155 PSV licences. The total cost of the Traffic Commissioner Service was £13.09 million. This equates to £168 per HGV licence, compared with £204 per licence in Northern Ireland. However, given the different responsibilities of both the TRU in Northern Ireland and OTC in Great Britain this does not represent a direct comparison.

## **European Union**

17.12 The table in Appendix D provides details of the organisations responsible for regulating the road transport industry in all EU countries, including licensing and policy bodies. For each it highlights which organisation is designated as the competent authority.

17.13 From this analysis it can be seen that the traffic commissioners' status as individual NDPBs is unique.

## **Better regulation**

17.14 The Government's Better Regulation Delivery Office (BRDO) has produced a Regulators' Code. For the traffic commissioners, the framework agreement is clear that the Code only applies to their regulatory functions and not judicial matters.

17.15 Regulators must have regard to the Code when developing policies and operational procedures that guide their regulatory activities. Regulators must equally have regard to the Code when setting standards or giving guidance which will guide the regulatory activities of other regulators.

17.16 The appendix to the Code identifies the relevant regulators. The traffic commissioners are grouped with other Non Departmental Public Bodies. The table in Appendix D considers the structure and staffing of these NDPB regulators and a small number of additional bodies that are established by separate legislation and therefore do not fall directly under the Code.

17.17 The Traffic Commissioner Service is one of only a few regulators that have powers across all 5 areas of regulation (licensing, investigation, tribunal function, education, economic regulation). Virtually all other regulators operate through a

board,<sup>14</sup> or via a nominated chief inspector, and are served by in-house support. Therefore, the traffic commissioners' status as individual NDPBs appears to be unique, together with their reliance on support staff from a third party (DVSA).

## **Regulators' Code**

17.18 The general duties of a regulator are to carry out regulatory activities in a way which is transparent, accountable, proportionate and consistent, and that are targeted only at cases in which action is needed.

17.19 The Regulators' Code sets out 6 guiding principles:

1. Regulators should carry out their activities in a way that supports those they regulate to comply and grow
2. Regulators should provide simple and straightforward ways to engage with those they regulate and hear their views
3. Regulators should base their regulatory activities on risk
4. Regulators should share information about compliance and risk
5. Regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply
6. Regulators should ensure that their approach to their regulatory activities is transparent

17.20 We have undertaken an assessment of the Traffic Commissioner Service against these guidelines, to consider how well the service matches up to the Code.

*Regulators should carry out their activities in a way that supports those they regulate to comply and grow.*

17.21 The Traffic Commissioners support the industry positively in two ways:

- By the development of a level playing field for operators

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<sup>14</sup> Moving to a board for the traffic commissioners was considered in 2007, as part of the DfT's consultation on Modernising the Traffic Commissioner System

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- By ensuring that a driver base of a suitable minimum standard is available for operators.

17.22 While the traffic commissioners and their support staff do perform this function, stakeholders have indicated concerns about the procedures used as bureaucratic and slow.

*Regulators should provide simple and straightforward ways to engage with those they regulate and hear their views*

17.23 The education and information provision of the traffic commissioners on an individual basis is good with strong links to the industry's representative bodies. The issue is the ability to reach operators that are not members of the industry's representative bodies, and new entrants to the industry, especially in the case of restricted licence holders.

17.24 The publication of Notices and Proceedings and Applications and Decisions does provide information about applications, inquiries and decisions, but is limited in respect of providing effective engagement with the industry.

17.25 Representatives of the freight industry made the point in our workshop that an operator's record does not in any way influence how an application is dealt with.

*Regulators should base their regulatory activities on risk*

17.26 The approach of the traffic commissioners does appear, in principle, to be risk based. However, industry views suggest that commissioners adopt a forensic approach in their dealings with compliant operators as well as non-compliant ones.

17.27 Currently DVSA staff lead the targeting and delivery of investigatory activity. Local working between DVSA, OTC and individual commissioners is noted to be generally successful at ensuring compliance is achieved. However, DVSA has to prioritise the work of road transport industry enforcement and investigation against a range of other similar tasks in different fields of work, which can prevent the commissioners from fully discharging this requirement.

17.28 DVSA uses the Operator Compliance Risk Score (OCRS) to decide which vehicles should be inspected. OCRS is used to calculate the risk of an operator not following the rules on roadworthiness (the condition of its vehicles) and traffic (for example, drivers' hours, and weighing checks). It is more likely that an operator's vehicles will be inspected if its OCRS is high.

*Regulators should share information about compliance and risk*

17.29 The current position regarding data sharing is complex, with each commissioner being a stand-alone entity for data protection and management purposes. This can constrain the ability to share information between commissioners, which in turn might inhibit effective regulation.

*Regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply*

17.30 The Statutory Guidance Documents produced by the STC to meet the requirements of the Local Transport Act 2008 have the primary function of guiding the traffic commissioners in their duties and responsibilities. The documents do provide another useful, non-statutory function and that is to provide information to operators, drivers and potential entrants to the road transport industry on the necessary requirements for entry and legal obligations.

17.31 The level and consistency of information beyond the Statutory Documents is unclear. However, for example, we are aware of local initiatives, such as new operator seminars that seek to inform and guide. Also, there are useful documents available, such as the Guide to Maintaining Roadworthiness and the Operators' Guide.

*Regulators should ensure that their approach to their regulatory activities is transparent*

17.32 The issue of separation of powers in terms of regulatory and tribunal functions has been raised by a number of stakeholders and the incumbent commissioners. The limited access to *Notices and Proceedings* and *Applications and Decisions* is an issue already noted.

17.33 The scheme for the delegation of regulatory decisions and initial opinions to officials is not clearly publically available.

17.34 The Annual Reports made by the traffic commissioners provide a useful overview of issues and trends, and provide industry with an insight into regulatory activities. These reports help in providing anyone with an interest a broader understanding of the traffic commissioner function.

17.35 There is limited information available about the revenue generated from industry and how this is allocated.

**Cost of Review**

17.36 The cost to the Department of undertaking this review is currently £31,805.

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## 18. Recommendations from Stakeholders

- 18.1 This review has demonstrated that traffic commissioners are highly respected and effective regulators of the road transport industry. Therefore, their role should be maintained. However, stakeholders have suggested that there are opportunities for the Traffic Commissioner Service to improve its operations and activities.

### **Relationship between traffic commissioners and Government**

- 18.2 There has been a previously uneasy relationship between traffic commissioners and Government. The framework agreement between the parties sets out the roles of each and the limitations on interactions in terms of the regulatory and judicial functions of the commissioners. It is clear that the primary role of the commissioners must be through the regulatory and tribunal processes to maintain a safe road transport sector. Equally, commissioners should not be seeking to set policy, but rather apply government policy in the areas they regulate.
- 18.3 Traffic commissioners are appointed by the Secretary of State for Transport, their terms and conditions are set by DfT, and their salaries and expenses are processed and paid by DfT. Therefore, commissioners should accept that while being independent in their decision making, they are accountable to DfT and the Secretary of State.

Stakeholder Recommendation 1: It is recommended that the Framework document, currently undated, should have statutory force to ensure clear demarcation exists. This would ensure that the question of independence, as raised in the 'Nolan case', is given formal recognition. A strong framework agreement and clear demarcation between the traffic commissioners and the DfT would negate the possibility that the Traffic Commissioner Service would need to be moved elsewhere, for example to Ministry of Justice control.

### **Relationship between traffic commissioners and DVSA**

- 18.4 The current relationship with DVSA is unsatisfactory. The traffic commissioners are unique amongst the NDPB regulators examined in not controlling their own secretariat. Equally, the lack of control and direction over enforcement investigation from the traffic commissioners was noted as a weakness in the current arrangements. It was also noted in stakeholder engagement that the Clerk to the Traffic Commissioner in years past had a strong presence in terms of ensuring the administration of the Traffic Commissioner Service delivered effectively.

Stakeholder Recommendation 2: The small scale of the traffic commissioner function may not warrant the establishment of a free-standing separate organisation, although this could be investigated. However, there would seem to be a case for commissioners to have greater influence over the direction of



enforcement activity in their sphere of regulation. As such, a number of changes should be considered:

- Place OTC staff under the direct control of the relevant traffic commissioner, with administrative matters only dealt with by DVSA. The STC should issue guidance on the duties that commissioners could expect these staff to undertake.
- Traffic commissioners should have at their disposal an agreed level of inspection resource for their deployment. This could be in form of an agreed number of days of DVSA staff activity. Day to day management of these staff would be retained by DVSA, but their activity directed by the commissioners.
- The possible re-establishment of the role of Clerk to the Traffic Commissioner, being responsible to the commissioners for the deployment of OTC staff and management of case-work.

### **Traffic areas and licences**

- 18.5 The requirement for operators to hold a licence in each traffic area in which they have an operating centre seems out of step with modern transport operations. Industry stakeholders supported a move to a single licence for a single traffic area for Great Britain.

Stakeholder Recommendation 3: The basis of traffic areas should change. The concept of a strong local traffic commissioner in each area should be retained, but with the granting of licences in each replaced by a single national licence. Some re-drawing of area boundaries would help in the spread of the workload. An establishment of a Midlands Traffic Area could cover East and West Midlands, including Derbyshire and Northamptonshire. The South East should include Buckinghamshire and former Berkshire authorities. Consideration should also be given to some further centralisation of OTC staff.

Stakeholder Recommendation 4: There are advantages to both devolved administrations retaining a stand-alone traffic area, particularly as there are some areas of divergence in policy and activities undertaken and further regard should be made to the consequences of further devolution of powers relating to transport. However, this should not prevent introducing a single operator's licence for Great Britain as a whole.

### **Non regulatory and tribunal functions**

- 18.6 The core function of the traffic commissioners is controlling entry into the industry and compliance with a view to ensuring safety. This should be the main focus of commissioners' activities, with other non-regulatory functions considered for delivery through alternative bodies.

Stakeholder Recommendation 5: As part of the modernisation of services, consideration should be given to staff in the Central Licensing Team being given full responsibility to grant operator's licences. Only where decisions were

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challenged, would licence matters be referred to the commissioners. If such a move were to be adopted, the statutory guidance documents and scheme of delegation should clearly set out the criteria on which decisions on applications may be made.

- 18.7 Local bus service registration activity has a limited level of intervention in terms of rejected submissions. It is primarily an administrative function that could be moved elsewhere. As well as existing so that operators can be held to account for not running services as registered, it exists to inform the travelling public, local authorities and competitor operators of services in operation or subject to change. Moving to a completely electronic system would be beneficial, particularly in improving data transfer and processing for public transport information provision. Local authorities and Traveline need the details of bus services – authorities to understand where there are gaps in the network and for information systems, and Traveline for the provision of travel information – therefore, it is these organisations that might be best placed to deal with registrations.

Stakeholder Recommendation 6: Consideration should be given to the responsibility for bus registrations being passed from the OTC to another body or bodies.

Stakeholder Recommendation 7: In respect of bus market regulation, it is appropriate for the traffic commissioners to remain consultees for statutory bus ticketing and bus partnership schemes on the basis that sanction for non-involvement by operators is through the licensing system.

- 18.8 In terms of Bus Quality Contract Schemes, the public interest test is about the balance of convenience and wider public interest of the proposed scheme. As such, it does not seem necessary for a traffic commissioner to act as an economic or market regulator.

Stakeholder Recommendation 8: It is suggested that the requirement for a traffic commissioner to be involved in the adjudication of a Quality Contract Scheme be removed. Instead, it is recommended that the existing QCS panel be used to staff the decision making body and the Treasury Solicitor's Department appoint counsel to panel inquiry, with a possible recharge of the fees to the applicant authority. The traffic commissioner in the affected area should remain a statutory consultee and potential party to the panel examination.

- 18.9 The environmental requirements for the approval of goods vehicle operating centres do not need to be a matter for the traffic commissioners. Local planning authorities have adequate control over the use of land through planning consents to control the environmental matters currently assessed by the commissioners. They also have access to relevant investigatory resources (e.g. environmental health officers) and the ability to conduct any necessary adjudication or enforcement proceedings.

Stakeholder Recommendation 9: It is recommended that the traffic commissioners' involvement in the environmental matters for HGV operating centres is removed, leaving these matters to local planning authorities.

### **Traffic commissioners' terms and conditions**

18.10 During the review, some suggestions have been made about traffic commissioners being appointed for a fixed period and for a maximum duration. This could help to maintain accountability. However, the basis of judicial appointments is that security of the position is an underlying principle of maintaining their independence.

Stakeholder Recommendation 10: It is recommended that consideration be given to the length of appointments as part of an overall review of the relationships between the commissioners and DfT and DVSA and the accountability of the commissioners.

18.11 We consider the STC should have a formalised leadership role for the Traffic Commissioner Service, being the line manager for commissioners and deputies. This, when coupled with the changing and formalisation of relationships with the DfT and DVSA, will give clear direction and leadership to the service. The Local Transport Act 2008 envisaged the STC having more direction over the Traffic Commissioner Service, which we believe this approach will deliver. In this leadership role, the STC would have authority to deploy commissioners and deputy commissioners as required.

Stakeholder Recommendation 11: It is recommended that the STC be given a formal leadership role with responsibility over traffic commissioners and deputy commissioners.

18.12 The full responsibilities of a traffic commissioner cannot be maintained by a commissioner who is also the STC. For example, in the North West area covered by the current STC, 85% of tribunal activity is dealt with by deputy commissioners.

Stakeholder Recommendation 12: It is recommended that a new full time commissioner be appointed to cover the area of the STC. The STC should not be allocated to a specific area, but should be required to carry out a minimum level of tribunal activity each year.

18.13 In terms of deputy commissioners, the main issue is that their activity outside of the inquiry room is without any formal management and control.

Stakeholder Recommendation 13: It is recommended that the number of deputy commissioners be reduced, perhaps replaced by one or two new full time commissioners. For the remaining deputies it is recommended that the contractual arrangements be similar, for example, to crown court recorders, who commit to a maximum number of sitting days per annum.

### **Approach to statutory guidance**

18.14 The requirement for the STC to produce statutory guidance documents is to ensure consistency between the decisions of individual traffic commissioners.

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Stakeholder Recommendation 14: It is recommended that it be a formal requirement that the guidance documents be followed in regulatory and tribunal matters, unless material considerations in a particular case dictate otherwise. Any deviation should be recorded in written decisions and justified on a case by case basis. The STC should have the power to enforce this requirement.

Stakeholder Recommendation 15: It is recommended that a set of formal tribunal rules are introduced to formalise the processes leading to and at public inquiry. The current statutory document does not have sufficient standing to ensure the effective operation of the inquiry process and offers no potential for costs against parties who fail to conduct themselves properly.

### **Information and education issues**

18.15 There are problems caused by the current situation where each traffic commissioner is a data controller for data management purposes. If moves were made to introduce a single national licence and the establishment of a Traffic Commissioner Service managed by the STC, there will be a greater ability to share sensitive information.

Stakeholder Recommendation 16: Linked to other recommended changes to licensing and structure of the service, it is recommended that the STC be given the data management responsibility for the Traffic Commissioner Service as a whole.

Stakeholder Recommendation 17: It is recommended that *Notices and Proceedings* and *Applications and Decisions* should be consolidated into a single publication and the level of information provided enhanced. The removal of matters such as bus registrations from *Notices and Proceedings* will allow concentration on regulatory and tribunal matters. The publication of full details of tribunal outcomes in the combined document would help industry to appreciate more the activities of the traffic commissioners and help encourage operators to be compliant.

Stakeholder Recommendation 18: The provision of education sessions for new licence holders is useful. If attendance was obligatory as part of being granted a licence, then all new operators would be reached.

## 19. Conclusion

- 19.1 The Department welcomes the perspective afforded by an external review to be considered alongside the Department's internal review. In particular DfT were interested in receiving the views put forward by industry stakeholders. We note the demand for greater clarity around the interaction between commissioners, DVSA and DfT and on how fees and income are spent.
- 19.2 The recently published strategic objectives of the traffic commissioners support the request from industry for commissioners to engage more with those operators who are non-compliant (either intentionally or unintentionally) which supports the request for safety related matters to have priority.
- 19.3 The Department recognises that current licensing and application procedures can be bureaucratic, inefficient and slow. The Department is currently working with DVSA, OTC staff and commissioners to modernise and improve the general licensing process. This is undertaken as business as usual within the programme of regular meetings between STC, DVSA and DfT with a view to improve the standards of compliance and service.
- 19.4 As stated within Phase 1 the Department undertakes;
- To work with the Senior Traffic Commissioner and individual commissioners in drafting guidance and aligning policy delivery.
  - To work with DVSA, the Senior Traffic Commissioner and individual commissioners in addressing areas of service to stakeholders, resources and expenditure.
  - To work with STC, DVSA and other sectors of the Department to improve the level of financial information.
- 19.5 In addition to considering the consultant's recommendations based on stakeholder input identified in section 18 of the review, the Department will be taking forward work on the representations we have received through the open policy website on Traffic Commissioners and Operator Licensing and the Listening to Industry event (held on 5 February 2015).
- 19.6 Some of the consultants' recommendations propose future changes to some functions, so that they would move away from the Traffic Commissioners. The Department will consider these recommendations further, but remains committed to supporting the Traffic Commissioners operating all of their current functions, unless and until any are actually transferred or changed.
- 19.7 The Department will undertake to examine all recommendations arising from the consultants review and will produce an indicative timetable for consideration, evaluation of the recommendations including Impact Assessments if necessary.

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## Annex A: Compliance with the Principles of Good Corporate Governance

<p><b>Statutory Accountability</b>  <i>Principle: The public body complies with all applicable statutes and regulations, and other relevant statements of best practice.</i></p>	<p><b>Findings of Review</b>  <i>Traffic Commissioners are compliant overall.</i></p>
<p><b>Provision 1</b>  <i>The public body must comply with all statutory and administrative requirements on the use of public funds. This includes the principles and policies set out in the HMT publication “Managing Public Money” and Cabinet Office/HM Treasury spending controls. The public body must operate within the limits of its statutory authority and in accordance with any delegated authorities agreed with the sponsoring department.</i></p>	<p><i>Traffic Commissioners are partially compliant. This does not apply fully as DVSA has the accounting officer role for the Trading Fund from which the TC costs are met.</i></p>
<p><b>Provision 2</b>  <i>The public body should operate in line with the statutory requirements and spirit of the Freedom of Information Act 2000. It should have a comprehensive Publication Scheme. It should proactively release information that is of legitimate public interest where this is consistent with the provisions of the Act.</i></p>	<p><i>Traffic Commissioners are fully compliant</i></p>
<p><b>Provision 3</b>  <i>The public body must be compliant with Data Protection legislation.</i></p>	<p><i>Traffic Commissioners are partially compliant.</i></p>
<p><b>Provision 4</b>  <i>The public body should be subject to the Public Records Acts 1958 and 1967.</i></p>	<p><i>Traffic Commissioners are fully compliant.</i></p>



## Annex B: List of Stakeholders Consulted

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- Confederation of Passenger Transport (CPT)
- Association of Local Bus Company Managers (ALBUM)
- Association of Transport Co-ordinating Officers (ATCO)
- Chartered Institute of Logistics and Transport (CILT)
- Passenger Focus
- Community Transport Association (CTA)
- Freight Transport Association (FTA)
- Road Haulage Association (RHA)
- British Vehicle Rental & Leasing Association (BVRLA)
- Association of Road Transport Lawyers (AoRTL)
- Transport for London (TfL)
- The Unite union
- Confederation of Passenger Transport (CPT)
- Association of Local Bus Managers (ALBUM)
- Public Transport Consortium (PTC)
- Passenger Transport Executive Group (PTEG)
- DVSA / OTC
- DfT Bus and Taxi Division
- Transport Regulation Unit (TRU) Northern Ireland
- Traffic Commissioners
- Ministry of Justice (MoJ)

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## Annex C: Terms of Reference of the Review

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To provide a robust challenge of the continuing need for individual NDPBs – both their functions and their form; and where it is agreed that a body remain as an NDPB, to review:

- its capacity for delivering more effectively and efficiently, including identifying potential for efficiency savings and its ability to contribute to economic growth; and;
- the control and governance arrangements in place to ensure that the public body and the sponsoring department are complying with recognised principles of good corporate governance. This should also include an assessment of the body's performance.

In detail, does the NDPB have a valid legislative base? Does the NDPB meet, or go beyond current and future EU requirements?

Examine whether their control and governance arrangements are appropriate and continue to meet the recognised principles of good corporate governance of transparency and accountability. In keeping with Departmental policy to identify and consider options that the NDPB has for removing Burdens to Industry.

The review should consider whether it is appropriate for the functions some, or all, of the body to move to the First-Tier or Upper Tribunal administered by the Ministry of Justice.

## Annex D: EU Regulatory Organisations

### EU Road Transport Industry Regulators

Country	Licensing and Policy Organisations	Competent Authority
Netherlands	Dutch Organization for National and International Road Transport (NIWO)	*
	Professional Transport Licences Commission (CVB)	*
	Ministry of Transport, Public Works and Water Management	
	Provincial Executive (passenger transport)	
France	Prefects of the regions	*
	Directions régionales de l'équipement,	
	Ministry of Transport	
Germany	Road Haulage and Passenger Transport Bureaux of the Länder	*
	Federal Ministry of Traffic, Building and Housing (BMVBW)	
	Housing (BMVBW)	
Belgium	Department of Road Transport of the Service public fédéral Mobilité et Transports	*
Italy	Provincial Transport Committees	*
	Ministry of Infrastructure and Transport	
Lithuania	State Road Transport Inspectorate	*
	Municipalities (passenger transport)	
	Ministry of Transport	
Luxembourg	Ministry of Transport	*
Portugal	Directorate General of Land Transport	*
	Ministry of Public Works, Transport and Housing (DGTT)	
Slovenia	Chamber of Commerce and Industry	*
	Ministry of Transport	
UK	7 Traffic Commissioners in 8 areas	*
	Department for Transport	
	DVSA	
Denmark	Road Safety and Transport Agency	*
	Ministry of Transport and Communication	
Spain	17 Regional Transport Administrations (RTA)	*
	Ministry of Transport and Public Works (MFOM)	
Ireland	Department of Transport – Road Haulage Division – Licensing Section	*
Austria	9 RTAs	*
	Federal Ministry of Transport, Innovation and Technology	
	Professional Transport Association	
Finland	6 Provincial State Offices	*

	Ministry of Transport and Communications	
Sweden	21 County Administrative Boards	*
	Swedish Administration for National Roads	
	Ministry of Industry, Employment and Communications	
Greece	Ministry of Transport and Communications, Directorate General for Transport	*
Cyprus	Road Transport Council	*
	Ministry of Communications and Works (RTD)	
Hungary	Regional branches of General Inspectorate of Transport	*
	Ministry of Economy and Transport	
Poland	Licensing Department of MOI (BOTM)	*
	Ministry of Infrastructure (MOI), Road Transport Department	
Czech Republic	Trade and Licence Authority	*
	14 Regional Transport Authorities	
	Ministry of Transport and Communications	