



# SENIOR TRAFFIC COMMISSIONER

Statutory Document No. 13

## SMALL PSV OPERATIONS

### INCLUDING LIMOUSINES AND NOVELTY VEHICLES

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

## Introduction

- a) The production of the Statutory Guidance and Statutory Directions below in part reflects the significant increase in the number of limousines and novelty vehicles on Great Britain's roads and the increasing importance to licensing. Inevitably it involves reference to the general provisions relating to the operation of public service vehicles.
- b) Increasingly complex legislation and at times a lack of specific provisions relating to the licensing of that type of vehicle has led to calls for greater clarity, not least to assist legitimate operators as they make efforts to be compliant, a process that is not without considerable costs. In the case of limousines and novelty vehicles there are many involved as operators, enforcement bodies or as customers who have found difficulties in this complex area of regulation.
- c) The Senior Traffic Commissioner's statutory powers are aimed at providing guidance and directions to the traffic commissioners. In the interests of safety and fair competition, they have been drafted to also offer some assistance to others, including the limousine industry and potential new entrants to the industry. It is also available for financial institutions and others who support the industry.
- d) The Statutory Guidance and Statutory Directions below might also be useful in responding to interested members of the travelling public who might have safety concerns regarding, for instance:
  - unlicensed vehicles (given that they are statistically more likely than not to be defective);
  - many unlicensed vehicles (whilst appearing outwardly comfortable and offering apparently expensive interiors) are incapable of being licensed because they do not meet the safety standards required for licensed vehicles;
  - drivers may not be licensed to drive the vehicle and in some cases have convictions for sexual and/or violent offences. A lawfully operated vehicle is more likely to be driven by someone who is both safe and is entitled to drive that vehicle;
  - some unlicensed businesses are linked to wider criminal activities.
- e) Nothing in the Statutory Guidance and Statutory Directions below is intended to undermine the value placed on the legitimate limousine trade. A substantial number of operators of limousines and/or novelty vehicles have, in applying for a PSV operator's licence, acted in good faith. However some seek to apply in order to circumvent the requirements of a private hire licence or to avoid an appeal to the local magistrates' or Sheriff Court. It is therefore imperative that staff within the Central Licensing Office carry out thorough checks on behalf of the traffic commissioners.

## GUIDANCE

1. The Senior Traffic Commissioner for Great Britain issues the following Guidance under section 4C(1) of the Public Passenger Vehicles Act 1981 (as amended) to provide information as to the way in which the Senior Traffic Commissioner believes that traffic commissioners should interpret the law in relation to the licensing of smaller Public Service Vehicle operations, including limousines and novelty vehicles.
2. As a general rule any motor vehicle being used in Great Britain to carry passengers for hire or reward on a commercial basis will need an operator's licence of some kind. The type of licence required depends upon on the capacity of the vehicle and the type of operation undertaken.
3. For vehicles constructed or adapted to carry 8 or fewer passengers, a private hire vehicle (PHV) licence allows the vehicle to be hired out, with a driver, as a whole (i.e. an exclusive hiring). In England and Wales these licences are administered by the relevant local authority or Transport for London (TfL), which has discretion as to which vehicles they will license. The Scottish Government is responsible for regulating the powers of Scottish local authorities to license taxis and private hire cars.<sup>1</sup> If vehicles with up to 8 passenger seats, including stretched limousines, are used solely for weddings and/or funerals, they are exempt from PHV licensing requirements.
4. For vehicles constructed or adapted to carry more than 8 passengers, the licence required is a public service vehicle (PSV) operator's licence, which is issued by the relevant traffic commissioner.<sup>2</sup>

### Public Service Vehicle Legislation – The Public Passenger Vehicles Act 1981

5. Under sections 13(1)–(3) there are two categories of PSV operator's licence, as follows:
  - **Restricted licence.**  
This category only allows the operation of a maximum of two vehicles. There are restrictions as to who may hold a restricted licence and these are set out below. Whilst there is no requirement to have a qualified transport manager who holds a Certificate of Professional Competence and whilst this may reduce the financial burden on the operator, the standards required for both vehicle safety and records are the same as for standard licences. Experience has shown that the levels of knowledge and compliance with the rules that apply are considerably less with restricted licences.
  - **Standard national licence and standard international licence.**  
There is no restriction on the maximum number of authorised vehicles that can be applied for, subject to an operator meeting the repute, financial and professional competence requirements.

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<sup>1</sup> Under the Civic Government Act 1982 licensing is the responsibility of Scottish local authorities, which have a wide discretion to determine appropriate licensing arrangements.

<sup>2</sup> The general requirements for PSV licences are contained in other Statutory Guidance and Statutory Directions, for instance of Good Repute and Fitness.

6. In order to qualify for a restricted licence an applicant must show that it meets the requirements of section 13(3), which provides that a restricted licence only authorises the use (whether national or international) of the following:
  - (a) PSVs not adapted to carry more than 8 passengers; or
  - (b) PSVs not adapted to carry more than 16 passengers when used –
    - (i) otherwise than in the course of a business of carrying passengers; or
    - (ii) by a person whose main occupation is not the operation of PSVs adapted to carry more than 8 passengers.
7. That main occupation qualification rule does not apply to small (8 passenger seat or less) vehicles but it does apply to all 9 to 16 passenger seat vehicles.

#### *Public Service Vehicle*

8. A “public service vehicle” is defined within section 1 of the above Act as a motor vehicle (not a tram) which:
  - a) is adapted to carry more than 8 passengers and is used for carrying passengers for hire or reward; or
  - (b) is not adapted to carry more than 8 passengers but is used for carrying passengers for hire or reward at separate fares in the course of a passenger carrying business.“Used” means current use which has not been permanently discontinued.
9. Regulation 28(1)(b) of the Public Service Vehicles (Condition of Fitness, Equipment, Use and Certification) Regulations 1981, (“the 1981 Regulations”), provides that: “a length of at least 400 millimetres measured horizontally along the front of each seat shall be allowed for the accommodation of a seated passenger”.

#### *Hire or Reward*

10. Under section 1(5) a vehicle is to be treated as carrying passengers for hire or reward if payment is made for, or includes, the carrying of passengers, irrespective of the person to whom the payment is made including on behalf of a member of any association. A payment made for the carrying of a passenger (excluding those connected with an air replacement service) is to be treated as a fare notwithstanding that it is made in consideration of other matters in addition to the journey and shall be treated as made for the carrying of a passenger if it gives a person the right to be carried, for one or more journeys and whether or not the right is exercised.

#### *Separate Fares and advertisements to the public*

11. Section 1(3) provides that a passenger carrying vehicle carrying passengers at separate fares will not be treated as a public service vehicle unless it is adapted to carry more than 8 passengers. Part I allows for the sharing of taxis and private

hire vehicles at separate fares. If those conditions are met then the vehicle is not a PSV. Part III of Schedule 1 of the 1981 Act does not allow an operator to circumvent these requirements by bringing together all the passengers for the purpose of making the journey where that is done by or on behalf of:

- (a) the holder of the PSV operator's licence under which the vehicle is to be used;
- (b) the driver *or the owner of* the vehicle or any person who has made the vehicle available under any arrangement;

and otherwise than by any person who receives any remuneration in respect of the arrangements.

- 12. The journey must be made without previous advertisement to the public of the arrangements and all passengers must, in the case of a journey to a particular destination, be carried to, or to the vicinity of, that destination, or, in the case of a tour, be carried for the greater part of the journey. As a result, no differentiation of fares for the journey on the basis of distance or of time can be made.
- 13. The reference to advertisement excludes a notice displayed or announcement made at a place of worship for persons attending, at a place of work for those employees, by a club or voluntary association, or contained in a periodical published for the benefit of and circulating mainly among users of the above premises.
- 14. A journey made by a vehicle in the course of which one or more passengers are carried at separate fares is not to be treated as made 'in the course of a business of carrying passengers' if:
  - (a) the fare or aggregate of the fares paid in respect of the journey does not exceed the amount of the running costs of the vehicle for the journey; and
  - (b) the arrangements for the payment of fares by the passenger or passengers being carried were made before the journey began.

The running costs of a vehicle for a journey will be taken to include an appropriate amount in respect of depreciation and general wear.

### *Small PSVs Subject to Regulation as Private Hire Vehicles*

- 15. Section 79A of the 1981 Act applies to England and Wales<sup>3</sup> and provides that where a small bus (a PSV adapted to carry fewer than 9 passengers) is provided for hire with the services of a driver for the purpose of carrying passengers otherwise than at separate fares; it is not to be regarded as a public service vehicle. A PSV operator's licence therefore does not excuse or overrule the requirements of a PHV licence.<sup>4</sup>
- 16. That provision is subject to a limited exemption in that, if the operator operates a business which nearly all involves the operation of large buses, it can operate

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<sup>3</sup> The Scottish Government is responsible for regulating the powers of Scottish local authorities to license taxis and private hire cars.

<sup>4</sup> Section 265 Transport Act 2000 amended the 1981 Act and the Criminal Justice and Public Order Act 1994.

PHVs under the PSV operator's licence. However, this can only be a small part of the overall business. The Department for Transport has issued guidance suggesting an indicative threshold of 10% of the business (measured by mileage) but other elements may also be relevant.

## Case Law

17. This Guidance may be subject to decisions of the higher courts and to subsequent legislation. The Guidance cannot anticipate any reforms being recommended by the Law Commission on taxi and private hire law. There is a lack of clarity in some of the law and an absence of specific provisions relating to the licensing of this type of small vehicle. The Senior Traffic Commissioner has extracted the following principles and examples from existing case law.

### Definition of a Public Service Vehicle

18. The meaning of 'public service vehicle' and 'used' is set out in the legislation. The term 'adapted' has previously been interpreted to include altered or changed.<sup>5</sup> A minibus with four out of eleven seats blocked off was found not to be a public service vehicle.<sup>6</sup> In 2002/039 Excellent Connections Ltd the traffic commissioner followed legal advice that vehicles carrying up to 8 passengers for hire could not lawfully operate without either a taxi or a private hire licence, in addition to any PSV licence the operator might hold. The predecessor of the Upper Tribunal expressed *marked reservations* about that legal advice and remitted the matter. However the Upper Tribunal has now made clear<sup>7</sup> by reference to section 1(1)(a), the Encyclopaedia of Road Traffic Law and Practice and higher courts case law<sup>8</sup> that the term 'adapted' is not restricted to 'altered' but in this context means 'fit and apt for the purpose' or 'suitable':

*"It follows, in our judgment, that what is fit and apt or suitable for one purpose will not necessarily be fit and apt or suitable for another purpose. In other words the question of whether or not a vehicle is adapted to carry more than eight passengers is a question of fact and degree that will turn on the purpose for which the particular vehicle is used and how it is equipped."*

19. It follows that issues such as customary use or even marketing may be irrelevant to the question of whether the vehicle is adapted so as to fall within scope. That must be judged on whether the vehicle is suitable to carry more than 8 passengers. Where a vehicle is not adapted to carry more than 8 passengers for hire and reward but carries passengers at separate fares in the course of that business or the operator seeks to rely on any other exemption, it is permissible for the traffic commissioner to seek evidence to support the operator's position.<sup>9</sup> It may be necessary to seek evidence accounting for all of the relevant journeys in order to demonstrate whether the conditions in the legislation are met.

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<sup>5</sup> Baker v Secretary of State for the Environment [1983] 2 All ER 1021, [1983] 1 WLR 1485, Burns v Currell [1963] 2 QB 433, [1963] 2 All ER 297, Traffic Commissioners for South Wales Traffic Area v Snape [1977] RTR 367, DC, relying on earlier authorities

<sup>6</sup> Westacott v Centaur Overland Travel Ltd [1981] RTR 182, DC

<sup>7</sup> 2012/053 Clayton Car Sales Ltd

<sup>8</sup> In Maddox v Storer [1963] 1 QB 451, [1962] 1 All ER 831 the Divisional Court had to consider a provision in Schedule 1 to the Road Traffic Act 1960 which defined the maximum speed for: "a vehicle ... adapted to carry more than seven passengers exclusive of the driver."

<sup>9</sup> 2013/063 Balwant Singh Uppal t/a Professional Chauffeuring Services & PCS Limos Ltd

20. In the case of a mini-bus it may be reasonable to expect someone to use a passenger seat next to the driver, but in the case of a stretch limousine the Upper Tribunal has stated that different considerations might apply. A person using the front passenger seat in a stretch limousine will be facing away from “the party” in the back. In addition the vehicle may have a partition between the passenger compartment and the driver, which provides those in the back with a degree of privacy.

### *Limousines*

21. In the leading case<sup>10</sup> the Upper Tribunal stated as follows:

*“We wish to make it clear that there is widespread and in our view justified concern about the extent to which stretch limousines are operated, in circumstances where a PSV operator’s licence is required, without there being a PSV operator’s licence in force. Nothing we say is intended to undermine the use of impounding in circumstances in which stretch limousines are being used in contravention of the requirement to hold a PSV licence. But it is important that all VOSA officers concerned with the possible impounding of Stretch Limousines recognise that Stretch Limousines are only liable to be impounded if they are being operated in a way that contravenes the requirement to hold a PSV operator’s licence”.*

22. In the *Clayton Car Sales* case the Upper Tribunal indicated that it may be wrong to simply determine how many passengers a vehicle is *physically* capable of carrying. The measurement of 400 mm, derived from the Public Service Vehicles (Condition of Fitness, Equipment, Use and Certification) Regulations 1981, is not an absolute requirement from which there can be no deviation.<sup>11</sup> That minimum may be appropriate in the case of a mini-bus but the Upper Tribunal was persuaded that it may not necessarily be suitable in a stretch limousine, where the expectation of the passengers is likely to be for a greater degree of comfort. However this was not fully argued before the Upper Tribunal. In *Johnson* there was other evidence before the Justices to the effect that the passenger compartment was fitted with 8 seat belts and that the purpose of the vehicle was to convey passengers in a degree of luxury.
23. In determining whether a vehicle is “*fit and apt for that purpose*” or “*suitable*” it is suggested that a traffic commissioner may be required to reach a decision on more than just a measurement of 400 mm per passenger. It may be necessary to consider the total measurement, whether any allowance has been made, for example, for corners in a seat, and the number of seat belts. The Upper Tribunal observed that stretch limousines are hired and marketed on the basis of a certain *degree of “luxury”*. A space of 400 mm per seat may be sufficient in a mini-bus but it may well be inadequate when a greater degree of luxury is to be expected. Many stretch limousines have a bar or drinks cabinet. In the view of the Upper Tribunal the presence or absence of a bar or drinks cabinet is also a relevant

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<sup>10</sup> Clayton Car Sales Ltd (As Above) - The Upper Tribunal referred to a passage at the end of the judgment Lord Parker CJ in *Wurzal v Addison* [1965] 2 Q.B. 131 [1965] 2 W.L.R. 131 which might at first sight suggest that a stretch Limousine adapted to carry no more than 8 passengers could fall within section 1(1)(b). The Upper Tribunal made it clear that the *Wurzal* case was concerned with different legislation (see below).

<sup>11</sup> Divisional Court upheld a decision to reject “mere straight line measurement” as a means of judging the accommodation, as it depends on the particular facts under consideration. - *Vehicle and Operator Services Agency v Johnson* [2003] EWHC 2104 (Admin) DC, in contrast to Traffic Commissioners for South Wales Traffic Area v Snape (As above).

consideration because if the passengers are drinking they may well expect to have more space so that they do not accidentally spill drink on each other. The Upper Tribunal therefore suggested the test is not whether it is physically possible to seat more than 8 passengers in the vehicle (with a minimum of 400 mm each) but whether the vehicle in question is fit (apt) or suitable, to carry more than 8 passengers. A traffic commissioner therefore might also wish to refer to the Certificate of Initial Fitness (COIF).

### *Use of a Public Service Vehicle*

**24.** Vehicles with fewer than nine passenger seats cannot normally be considered to be public service vehicles except in very limited circumstances. The first, under section 79 of the 1981 Act allows their use by an operator of larger vehicles provided their use forms only a small part of the overall public service vehicle operation. The second opportunity to use vehicles with fewer than nine passenger seats arises from the definition of a public service vehicle in Section 1 of the Act. This allows a vehicle with fewer than 9 passenger seats to be considered a public service vehicle if a range of conditions are met. In short, these are that:

- separate fares are charged to each passenger<sup>12</sup>;
- fares to passengers must differentiate based on distance travelled;
- journeys must be advertised in advance in such a way that there is a genuine opportunity for individual members of the public to travel on them; and
- the operator, or a paid intermediary, must either bring the passengers together or make the arrangements for the payment of separate fares.

**25.** The Upper Tribunal has approved of this approach and by reference to the Guide for Operators of Stretched Limousines.<sup>13</sup> Limousine operations using vehicles adapted to carry fewer than 9 passengers are likely to fall outside the PSV operator licensing regime and require a PHV licence, as they are unlikely to meet the above conditions. More recent guidance to prospective operators of small limousines on the GOV.UK website states: *For small limousines – seating up to 8 passengers - you'll need a private hire vehicle (PHV) operator licence.* Where an operator fails to meet those conditions a traffic commissioner will be entitled to take action against the operator's licence. A traffic commissioner is entitled to take into account any evidence of the way in which the operation is being run, including evidence of advertising<sup>14</sup>.

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<sup>12</sup> In *Excellent Connections Ltd* (as above) the Transport Tribunal considered the decision of the Divisional Court in *Wurzal v Addison* which referred to section 118(3)(b) of the Road Traffic Act 1960. The case concerned the operation of a minibus, licensed as a private hire vehicle and insured to carry seven passengers. The operator agreed to carry a lady and her friends from their place of work to their homes on a daily basis. The lady paid the total sum and then recovered the share from each of the other passengers. The decision of the Justices that there was no case to answer was upheld on appeal on the basis that (1) the Justices were entitled to conclude that there was not sufficient evidence that the vehicle was adapted to carry 8 or more passengers; and importantly that (2) the vehicle was being used for carrying passengers for hire or reward and carrying passengers at separate fares. The Transport Tribunal found that "separate fares" should be given a wide definition.

<sup>13</sup> 2014/031 James Fleming

<sup>14</sup> 2015/023 Balwant Singh Uppal t/a Chauffeuring Services & PCS Ltd in which the Upper Tribunal approved of the traffic commissioner's finding that an 'advert' was merely a device.



26. An act is taken to be done 'in the course of a business' if it is part of the activities of a business.<sup>15</sup> 'Business' means anything which is an occupation, trade or profession.<sup>16</sup> Carriage 'for hire or reward' involves the carrying of passengers beyond just mere social kindness and which amounts to a predominantly business activity.<sup>17</sup> A payment will amount to a fare if it results in a right to be carried, for one or more journeys, whether or not the right is exercised.<sup>18</sup> A vehicle will be treated as carrying passengers for hire or reward if payment is made for or includes the carrying of passengers.<sup>19</sup> An excursion or tour is defined in the Transport Act 1985 as a service for the carriage of passengers by road at separate fares on which the passengers travel together on a journey, with or without breaks, from one or more places to one or more places and back. Fares can include a sum payable in respect of a contract ticket or season ticket. Payments made to the owner, even indirectly, have been held to constitute separate fares.<sup>20</sup> An ex gratia payment to the driver may not amount to a fare<sup>21</sup> as a journey made by a vehicle in the course of which one or more passengers are carried at separate fares will not be treated as made in the course of a business of carrying passengers if:

- a) the fare or the aggregate of the fares paid in respect of the journey does not exceed the amount of the running costs of the vehicle for the journey; and
- b) the arrangements for the payment of the fares by the passenger or passengers so carried were made before the journey began.

The Tribunal has concluded that a traffic commissioner was right to refuse an application where that applicant had previously been operating unlawfully.<sup>22</sup> The Upper Tribunal has also confirmed that, whilst taking account of s.81(1) of the 1981 Act, a traffic commissioner is entitled to pursue reasonable enquiries of the relevant parties so as to identify who was actually operating.<sup>23</sup>

### *Main Occupation*

27. The Upper Tribunal has confirmed that the starting point for the meaning of occupation is the definition found in the Oxford English Dictionary:

*“The state of having one’s time or attention occupied; what a person is engaged in; employment, business; work; toil. .. A particular action or course*

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<sup>15</sup> *Havering London Borough Council v Stevenson* [1970] 3 All ER 609, [1970] 1 WLR 1375, DC; *Wycombe Marsh Garages Ltd v Fowler* [1972] 3 All ER 248, [1972] 1 WLR 1156, DC

<sup>16</sup> *Re Williams' Will Trusts, Chartered Bank of India, Australia and China v Williams* [1953] Ch 138, [1953] 1 All ER 536

<sup>17</sup> *Albert v Motor Insurers' Bureau* [1972] AC 301, [1971] 2 All ER 1345, HL

<sup>18</sup> *DPP v Sikondar* [1993] Crim LR 76, [1993] RTR 90, DC; *Rout v Swallow Hotels Ltd* [1993] RTR 80, 157 JP 771, DC

<sup>19</sup> *Drew v Dingle* [1934] 1 KB 187, where a charge was made for carrying goods to market and passengers accompanying the goods were carried without further charge.

<sup>20</sup> *Osborne v Richards* [1933] 1 KB 283, DC; *Hawthorne v Knight* 1962 SLT 69; *Aitken v Hamilton* 1964 SLT 125; *Wurzal v Addison* [1965] 2 QB 131, [1965] 1 All ER 20, DC; *Vickers v Bowman* [1976] RTR 165, DC are concerned with previous legislation.

<sup>21</sup> *MacLean v Fearn* (1954) SLT 37, Sh Ct

<sup>22</sup> 2009/527 *Lisa Rafferty t/a 1<sup>st</sup> Class Limos*. This gives examples of the type of enquiries which might be made in order to ascertain any links between the drivers and the operator. In any event the vehicles did not have a Certificate of Initial Fitness to be used as a PSV.

<sup>23</sup> 2003/062 *The Tachograph Centre Ltd* - at all times the onus of establishing good repute remains with the operator

*of action in which a person is engaged, especially habitually; a particular job or profession; a particular pursuit or activity*".<sup>24</sup>

28. This definition must then be considered in the context of Section 13(3) of the Public Passenger Vehicles Act 1981, which sets out the restrictions that an operator must fulfil and continue to fulfil, to be entitled to a restricted rather than a standard PSV licence. The Tribunal explored the indicators of hours and income that must be considered in order to establish "main occupation". The operator is required to satisfy the traffic commissioner that any particular activity other than PSV operation is an "occupation" from which income is generated and that overall, the PSV operation is not the "main occupation". The Upper Tribunal has also asserted that in determining "main occupation" a "*bare assertion will not do*" and proceeded to detail the types of evidence<sup>25</sup> that an operator will "*need to produce in order to establish that a particular activity is not only an occupation but their main occupation.*"<sup>26</sup> The Tribunal has offered the following guidance in that they:

*"do not consider that activities such as the pursuit of a hobby, charitable work or other activities which do not generate an income can fall within the definition of "occupation". Neither do we consider that the receipt of investment or other income which does not require the operator to dedicate anything more than a minimal amount of time to it, can be considered to be an "occupation". Each case will of course be fact sensitive."*

29. An applicant for a restricted PSV operator's licence should provide a complete statement of all sources of income and amounts received. They must ensure that these are consistent with and supported by annual accounts, tax returns and bank account statements in the name of the applicant to demonstrate how the total of such income received is reasonably expected to continue to exceed that from the operation of the vehicle(s) if a licence is granted.<sup>27</sup> The operator will be required to supply similar evidence for the time spent operating the vehicle(s) under the licence. This will enable the traffic commissioner to carry out an assessment of the evidence and make findings of fact.<sup>28</sup>

### *Incomplete Applications*

30. If an application for a PSV licence is incomplete or an applicant fails to satisfy a traffic commissioner that the requirements are met, Regulation 6 of the Public Service Vehicles (Operators' Licences) Regulations 1995 allows a traffic commissioner to refuse the application upon a finding that the application or the applicant's conduct is frivolous or unreasonable.<sup>29</sup> The legal definition of frivolous was clarified by the Upper Tribunal<sup>30</sup> by reference to the Court of Appeal when they said a claim could be frivolous where: "*examination of the facts*

<sup>24</sup> 2017/002 Mohammed Akbar t/a Choudhury Transport

<sup>25</sup> See General Requirements under the Statutory Directions below

<sup>26</sup> 2016/073 Pauline Marion Hukin t/a Red Fox Travel

<sup>27</sup> 2017/033 Paul Andrew Nimmo t/a P&N Travel. A list of relevant documents is detailed below in Directions

<sup>28</sup> In the case of school contracts, any proposed earnings should be contrasted with the indication in the Upper Tribunal decision of 2015/050 Ibrar Anif t/a Local Minibus Travel that an operator can potentially earn up to £500 per week

<sup>29</sup> 2013/083 Ahmad Yusuf Kasam. The Oxford Dictionary definition of *frivolous* refers to an adjective with the following meaning: "not having any serious purpose or value"; *unreasonable* is defined as: "not guided by or based on good sense; beyond the limits of acceptability or fairness"

<sup>30</sup> 2016/055 Raymond Kyle Heard t/a Kyle's Executive Travel

*demonstrates a high probability of failure*<sup>31</sup>. The Tribunal went on to remind applicants that they are not entitled to draw any inferences from the period of time an application has been under consideration. The Upper Tribunal made clear that there is only so much the Office of the Traffic Commissioner can reasonably be expected to do to assist applicants.<sup>32</sup> As with all decisions, the reasoning (upon which a finding that the applicant has been frivolous) should be disclosed.<sup>33</sup>

31. A traffic commissioner may make an order pursuant to Section 54 of the 1981 Act for the payment of costs by a party to an inquiry when that party has been responsible for frivolous, vexatious, improper or unreasonable conduct in relation to the inquiry. The maximum amount of costs that may be ordered to be paid under such an order is £125 in respect of each day or part of a day on which the inquiry is held or would have been held if it had not been cancelled or postponed at short notice due to the act or default of the party against whom the order for payment of costs is made<sup>34</sup>.

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<sup>31</sup> R v Special Adjudicator ex parte Paulino & Edoukou [1996] IAR 122

<sup>32</sup> See General Requirements under the Statutory Directions below

<sup>33</sup> 2016/069 Chigwell Taxi Co. Ltd

<sup>34</sup> Regulation 8 of the Public Service Vehicles (Traffic Commissioners: Publication and Inquiries) Regulations 1986

## DIRECTIONS

32. The Senior Traffic Commissioner for Great Britain issues the following Directions to traffic commissioners under section 4C(1) of the Public Passenger Vehicles Act 1981 (as amended). These Directions are addressed to the traffic commissioners in respect of the approach to be taken by staff acting on behalf individual traffic commissioners and dictate the operation of delegated functions in relation to the licensing of smaller Public Service Vehicle operations, including limousines and novelty vehicles.

### Basis of Directions

33. The Upper Tribunal has been addressed on the law. The Department for Transport has also issued a circular to local authorities advising that they should not decline to license 1-8 passenger seat limousines.<sup>35</sup> It is not necessary for traffic commissioners to consider the wider public policy when reaching individual decisions. The current legislation and case law means that some small vehicles can, in limited circumstances, be licensed as PSVs; however most of the limousine operations involving small limousines are likely to fall under the category of private hire and will not be a genuine PSV. It will be for an applicant to satisfy a traffic commissioner on the balance of probabilities that all the requirements are met.

### General Requirements

34. These Directions should be read in conjunction with those relating to the general criteria required to be shown in order to obtain a PSV licence and the requirements on the holders of PSV licences.<sup>36</sup>
35. In addition, as the majority of applications involving limousines and novelty vehicles are for restricted licences, traffic commissioners will also need to be aware of the provisions of section 13. A PSV operator's licence may be either a standard or a restricted licence. A restricted licence authorises:
- i) the use of public service vehicles not adapted to carry more than 8 passengers, and
  - ii) public service vehicles not adapted to carry more than 16 passengers, when used for a passenger carrying business or where the main occupation is not the operation of PSVs adapted to carry more than 8 passengers.

There are additional provisions relating to public authorities.

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<sup>35</sup> DfT's Taxi and Private Hire Licensing: Best Practice Guidance, issued March 2010, previously at: <http://www.dft.gov.uk/pgr/regional/taxis/stretchlimousines.pdf>.

<sup>36</sup> Those responsible for the financing of this type of vehicle may be assisted by the content of the Statutory Guidance and Statutory Directions on Finance, and the Statutory Guidance and Statutory Directions on Impounding and may wish to make the following enquiries: have checks been made to ensure that there is an operator's licence (such as on the publicly available database), is there a record of those checks and how regularly will the existence of the operator's licence be checked?

36. The main occupation is to be determined by reference to the entity<sup>37</sup> which has applied for the licence; for instance:

- **Sole traders** – if the licence application is made by a single individual then the main occupation of that individual is considered. Applicants are expected to be able to satisfy a traffic commissioner that they do not fall foul of the main occupation rule, usually this will be by producing their last P60 Certificate showing their income in the last tax year but wage or salary slips will also be useful. Self employed applicants are expected to produce copies of tax returns, disclosing taxable income. Traffic commissioners may take into account both the income and the hours worked. Evidence may include payslips showing hours worked or current contracts of employment etc.
- **Partnerships** - the business of the partnership (rather than the individual partners) is considered and the evidence listed above should be requested. If a licence/application is in the name of a partnership then either the deed forming the partnership or other evidence will be required to satisfy a traffic commissioner that the use of 9-16 seat vehicles is not the main occupation of the partnership. It should be noted that whilst sometimes the hours worked by individual partners and other factors are disclosed, the partnership itself must satisfy the main occupation rule, and not the individual partners.
- **Limited Liability Partnership (LLP)** - although these applications are rare, similar considerations apply as to limited companies.
- **Limited Companies** – if the licence application is made by a limited company then the main occupation of that company is considered and not the hours and income of the directors. Evidence which might be relied upon will include, for example, the memorandum of association, a declaration to the taxation authorities, or audited accounts. Accordingly the documentation setting up the limited company will need to be assessed against the relevant criterion.

37. In order to demonstrate that the “main occupation” requirement is satisfied, operators or applicants for a restricted PSV licence may be asked to provide the following clear evidence<sup>38</sup> to show that an activity is their “main occupation”:

- self-employed applicants should supply the latest Self Assessment tax return which discloses taxable income or accounts and evidence of actual income from this source over the last 12 months;
- applicants who are an employee should provide the latest P60 form, payslips for the past three months and details of the hours/days worked in the role;
- main occupations which involve driving should provide details of the hours/days driven;
- a business plan outlining: the purpose of the business, an estimate of income from the operation of Public Service Vehicles and who will be driving for the operation.<sup>39</sup>

<sup>37</sup> See Statutory Guidance and Statutory Directions on Legal Entities.

<sup>38</sup> 2017/002 Mohammed Akbar t/a Choudhury Transport (As Above)

<sup>39</sup> 2017/033 Paul Andrew Nimmo t/a P&N Travel

38. The above might also be supported by:
- wage slips for the last 3 months;
  - audited accounts (in the case of limited companies);
  - bank statements for the last 3 months;
  - tax returns disclosing taxable income;
  - P60s for the last tax year.
39. Similar evidence will also be required to show the level of income received and the time spent operating vehicles under the licence or in the case of an applicant, a detailed business plan outlining these proposed figures in order that they can be contrasted to the figures indicated by the Upper Tribunal. An applicant may be asked to explain the basis of any figures or calculations relied upon.
40. The main occupation rule is a continuing requirement throughout the life of a restricted licence. The undertakings signed by applicants require them to comply with the law and to notify the traffic commissioner of a material change including where the main occupation requirement is no longer met. If the operator's status changes then it will not have authority to operate and should inform the traffic commissioner no later than 28 days following that change with a view to applying for a standard PSV operator's licence.
41. Where limousines and novelty type vehicles are not to be operated applicants often provide an undertaking to that effect and/or not to operate vehicles with 8 passenger seats or less without informing the traffic commissioner first. Where an applicant does seek to operate limousines and/or novelty vehicles under a PSV operator's licence further enquiries may be required, as suggested below.

## Types of Vehicle

42. As per section 1 of the 1981 Act, a small vehicle or small limousine is a vehicle adapted to carry 8 or fewer passengers. A large vehicle or large limousine is a vehicle adapted to carry 9 or more passengers. Issues may therefore arise when considering the operation of limousines as small PSVs. A 400mm benchmark has previously been employed for the size of a seat but each case must now be considered on its merits.
43. Stretch limousines with more than 8 passenger seats should not be licensed as PHVs. Due to historic issues which might impact on safety, it is important that checks are carried out.
44. The Individual Vehicle Approval (IVA) scheme should verify that a converted vehicle is built to certain safety and environmental standards. A licensing authority can therefore confirm that an imported vehicle was tested by DVSA before being registered and licensed (taxed) by DVLA via the V5C (Registration Certificate) which should record this in the "Special Note" section; or by contacting DVSA. However, a number of limousines are currently operating with registration details which do not match the actual position.
45. Responsible applicants are keen to ensure that they comply with the requirements of the licensing regime. A substantial number have therefore offered undertakings to assist in future compliance. An example is as follows:

*Limousines and novelty type vehicles used under the licence shall have nine passenger seats or more and a valid certificate of initial fitness or equivalent.*

46. Whether or not a vehicle is a smaller one (i.e. 8 or less passenger seats) or a larger one (i.e. 9 to 16 passenger seats) has significant implications. A small vehicle (i.e. 8 or less passenger seats) can be driven by someone who only holds an ordinary car driving licence. This contrasts with a larger vehicle (i.e. 9 to 16 passenger seat) where the following applies:
- the driver carrying passengers for hire and reward is required to have a vocational (PCV or passenger carrying vehicle) driving licence;
  - the vehicle requires a tachograph to be fitted and used;
  - a different category of MOT certificate applies;
  - the main occupation rule applies for restricted licences;
  - a Certificate of Initial Fitness (COIF) is required.

### Separate Fares

47. It is not sufficient in order for a vehicle to be legitimately licensed as a PSV solely, for separate fares to be charged for that vehicle; further conditions must also be met. The effect of the legislation is that, where a small vehicle is made available for exclusive hire to an individual or group, it falls to be licensed as a PHV. A small vehicle will normally qualify as a PSV only if separate fares are paid and one of the following two qualifications is met:

#### Qualification 1:

The service must have been advertised to the public, so as to create a *genuine* opportunity for members of the public to be carried *on the particular journey in question*, i.e. the journey is not an exclusive hiring for an individual or group. Advertisement at a place of worship, a place of work, a club or other voluntary association for the information of people present at those places, or in periodicals circulated wholly or mainly among such persons, does not count as advertisement to the general public.

#### Qualification 2:

The service was not advertised as per condition 1, but the arrangements for

- (i) bringing together the passengers, and
  - (ii) the payment of separate fares, were initiated by the driver, operator or owner of the vehicle, or some other intermediary who is paid for doing so – not by the passengers themselves, or any other party. This condition might be met where the transport provider has identified a number of people each wanting to make the same journey, and has suggested to them that they might want to travel together and split the cost.
48. If neither condition is met, then the vehicle is unlikely to qualify as a PSV in relation to the journey in question and should be licensed as a PHV. A vehicle used to operate an “excursion or tour” qualifies as a PSV only if one of the two conditions described in the first qualification is met.

## “Dry Hiring”

49. If the hirer drives the vehicle him/herself, as under a typical car rental agreement, then the hire company will not be operating the vehicle. Similarly if the hire agreement allows the hirer to employ the services of a chauffeur, selected by the hirer, entirely independently of the hire company, then the hire company is unlikely to require an operator’s licence. In an attempt to avoid operator licensing requirements, some vehicle keepers will ‘dry hire’ limousines, which involves leasing out a vehicle without a driver, a process which requires the hirer to pay for the use of a driver in addition to the vehicle hire.
50. Some businesses might portray ‘dry hire’ arrangements as a way to circumvent the operator licensing requirements. Customers should be aware that this can result in an absence of proper checks regarding the driver’s driving or criminal record. Sometimes a hire company will require or encourage the hirer to employ the services of a particular driver (or company who provides drivers), or perhaps offers a limited selection of drivers who may be used. Where that connection exists between the hire company and the driver (it does not need to be a formal written contract), it is likely to result in a requirement for the hire company to hold a PSV operator’s licence.
51. In considering applications from operators staff acting on behalf of the traffic commissioners will anticipate the following questions which the traffic commissioner might ask:
  - What is the relationship between the hire company and the organisation or individual selecting the driver?
  - Is there a premium or deposit to be paid for choosing one’s own driver or for driving it oneself? There will be a need for a PCV driver licence to drive these vehicles and any rental of the vehicle should reflect the insurance cost. If there are attempts to tie in a premium for self drive, this will be an important indicator that it might not be a genuine self drive hire arrangement.
  - Is there a premium or deposit to be paid for choosing one’s own driver, if so what is the sum? The higher the figure the less likely it will be a genuine “dry hire”.
  - If a system of premiums or deposits is required, on how many occasions is this taken up? Additionally, what is the proportion of occasions when this is taken up? Note that the lower the number of occasions where any premium or deposit is taken up, the less the likelihood of this being a genuine “dry hire” arrangement.
  - Are there any other restrictions on the driver such as age restrictions or limiting the driving to those with previous experience of driving limousines (as opposed to those who have passed the relevant PCV test)? Additional restrictions often indicate that it is not a genuine “dry hire” arrangement.

## Local Services

52. Most limousine services will be exempt from registering routes and timetables with the traffic commissioners, for one of the following reasons:
  - because they are “excursions or tours” (see above) which do not run at least once a week for a period of at least six consecutive weeks; or



- in the case of smaller limousines, because they operate as PHVs (not PSVs).

53. The 15-mile rule is relevant only when deciding whether a service is a local service.

### Applications

54. To assist operators to comply with this complicated area of law, the Senior Traffic Commissioner has determined that the following undertaking must be sought when determining applications from limousine and novelty vehicle operators:

*The operator will provide an audit trail to prove, upon request, to DVSA, the police or any other enforcement body, compliance with PSV requirements, namely paperwork to show in respect of any service:*

*Separate fares were paid and one of the following two conditions was met.*

*Condition 1: The passengers must have been brought together for the purposes of making the journey by the driver or owner of the vehicle or by some other intermediary who is paid for doing so. In addition each journey must have been advertised to the public, so as to create a genuine opportunity for members of the public to be carried on the particular journey in question, i.e. the journey is not an exclusive hiring for an individual or group, notwithstanding that separate fares are paid. Advertisement at a place of worship, a place of work, a club or other voluntary association for the information of people present at those places, or in periodicals circulated wholly or mainly among such persons, does not count as advertisement to the general public. Finally, in the event that there are multiple destinations, there should be differentiation of fares for the journey based on distance or time.*

*Condition 2: The making of the agreement for the payment of separate fares must have been initiated by the driver or owner of the vehicle, or by some other intermediary who is paid for doing so – not by the passengers themselves, or any other party. In addition, as in condition 1, each journey must be advertised to the public beforehand as being open to passengers to be carried at separate fares*

*Additionally:*

- *on each journey the driver will carry a paper copy of the advertisement;*
- *the advertisement will show where and when the advert was placed;*
- *the advertisement will show the start and finish - and this must be more than the mere town - it will include either the road or a postcode;*
- *the advertisement will show the pick up time and the return time.*

55. The applicant should understand that should the application for an operator's licence be granted, any failure to comply with the above undertaking is likely to result in revocation of the licence and potential disqualification.

### Existing Holders of Restricted PSV Licences

56. Where it proves necessary to consider an existing licence (or application), in addition to checks regarding the general requirements, traffic commissioners may also wish to request documentary evidence of the number of passengers to

be carried in each vehicle; the V5 forms for each vehicle; MOT certificates for each vehicle (unless less than 3 years old and are not required); the main occupation; how journeys are recorded including start/finish odometer readings and, postcodes of the start of a journey and the furthest point and how separate fares are recorded for each journey.<sup>40</sup>

## Queries from Members of the Public

57. As indicated in the introduction above, licensing and other staff members acting on behalf of the traffic commissioner may be contacted by potential customers and/or passengers of limousines and novelty vehicles. The law can be complicated in this field. The Office of the Traffic Commissioner cannot accept liability for any advice given. However the following bullet points have been prepared by way of general assistance:

- do not get into a vehicle that is unlicensed; it should be licensed (1 to 8 passenger seats) either by a local authority or by a traffic commissioner;
- if you are told that the operator does not need a licence, be sceptical;
- carrying passengers for hire and reward requires an operator's licence. Be careful of arrangements to hire the vehicles and driver separately as you may find yourself involved in unlawful activities. If there is an accident there may be no insurance cover;
- unlicensed limousines may have defects which render them potentially dangerous; and the likelihood that there may have been no checks carried out on the driver's previous convictions or conduct is that much greater;
- if you use a licensed PSV operator, make sure that there is a vehicle disc in the windscreen and check that the name on the disc is the same one that you believe to be the operator;
- if you hire a 9 to 16 seat limousine or novelty vehicle it must have a Certificate of Initial Fitness. You are entitled to ask about this;
- if you respond to an advertisement for hire of a limousine, you should insist on knowing who the operator is. You should know who is licensed and therefore insured;
- if you are hiring a 1 to 8 passenger seat vehicle from a PSV operator for a special occasion, be aware that it is likely to be operating illegally as it is unlikely to have complied with the strict requirements for separate fares;
- if you have a concern, contact an enforcement body. This could be your local authority's private hire department, DVSA or your local trading standards department or the police;
- despite the obvious concerns of regulators and enforcement bodies, there are good and responsible operators who provide a service to the public either under a valid local authority Private Hire Vehicle Licence or operating under a Public Service Vehicle Operator's Licence granted by a traffic commissioner.

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<sup>40</sup> The lead traffic commissioner wrote in March 2010 to all operators with historic restricted PSV operator's licence explaining the expectations on them.