



## THIRD PARTY COMPLAINTS PROTOCOL FOR TRAFFIC COMMISSIONERS AND DEPUTY TRAFFIC COMMISSIONERS

This policy has no statutory basis and is issued with and is subject to the agreement of the traffic commissioners (TCs) for Great Britain & the Secretary of State for Transport.

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Senior Traffic Commissioner

# 1. Introduction

- 1.1 All traffic commissioners seek to maintain the highest standards of personal and professional conduct. A complaint that a TC has fallen short of these standards is taken seriously.
- 1.2 This document sets out the procedures for dealing with complaints by third parties about the personal conduct of traffic commissioners and deputy traffic commissioners [hereafter referred to as TCs] in relation to their judicial and their administrative functions, subject to the qualifications set out in the protocol.
- 1.3 The protocol described below is designed to ensure that the complaints process is readily understood. It also communicates the process to ensure that any complaint is dealt with consistently, fairly and efficiently. The protocol is to be read in a way which is consistent with the Legal Framework. It shall not be implemented in a way which interferes with the TCs statutory protections under the Public Passenger Vehicles Act 1981 and the Health & Safety at Work etc. Act 1974 and similar provisions. This document also sets out the scope of the protocol, the principles which govern its operation and the roles and responsibilities of those involved in handling complaints<sup>1</sup>.
- 1.4 This protocol only applies to those TCs that are in post at the time of the complaint being made. If a TC vacates their post during the course of a complaint it is not possible to proceed with a complaint under this protocol.

## 2. Key features

- 2.1 The principles of fairness, transparency and consistency require a clear process. The process to be followed will not be materially amended save in exceptional circumstances.
- 2.2 The procedures exist to address complaints that arise when it might be considered that a TC's conduct may not have been in accordance with the Guidance on Traffic Commissioners' Conduct:

<https://www.gov.uk/government/publications/administrative-policy-guidance-for-the-traffic-commissioners>

- 2.3 It is not possible to describe every ground which might lead a person to lodge a complaint about a TC's personal conduct. Complaints may concern personal behaviour at a public inquiry or driver conduct hearing. Some examples of personal conduct which could be viewed as inappropriate are:

- the use of racist, sexist, offensive or otherwise inappropriate language
- rude or offensive conduct
- falling asleep in a public inquiry or hearing
- misusing public status for personal gain or advantage

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<sup>1</sup> It is intended that these procedures align, as far as possible, with the equivalent rules for the judiciary, details can be found at: <https://judicialconduct.judiciary.gov.uk/rules-regulations/>

- allegations of a conflict of interest
- 2.4 These procedures apply to all complaints about TCs made in accordance with the procedures set out in this document. All such complaints shall be brought to the attention of the Senior Traffic Commissioner (STC).
- 2.5 The protocol recognises the judicial independence of each TC. Complaints relating to judicial decisions made by TCs or to the reasoning processes underlying a decision or the case management prior to such a decision, including the decision to call an operator or an applicant for an operator's licence to public inquiry<sup>2</sup> or similar disposal may form grounds of appeal to the Upper Tribunal Administrative Appeals Chamber, or exceptionally the Administrative Court (High Court) or Court of Session.<sup>3</sup> Vocational driving licence holders and applicants for vocational licences have a right of appeal against the decision of the TC to the magistrates' court or Sheriff court. If the matters complained of are in essence a ground of appeal, then they do not fall to be considered under this Protocol.
- 2.6 Complainants should consider in the first instance whether a complaint about a TC's judicial decision should be submitted to the appropriate appeals body. Examples of where this is appropriate include (but are not limited to):
- a TC's decision or ruling
  - the evidence that has or has not been considered or how that has been allowed to be set out
  - the right to be represented at the hearing
  - allegations of bias in respect of a hearing
  - a refusal to allow an adjournment
- 2.7 Persons who are dissatisfied with a TC's decision or any related procedures should take independent legal advice and may appeal to a higher court if so advised.
- 2.8 Any complaint made that falls to be considered under this protocol, will not be addressed whilst any related matter remains subject to decision in a higher court.

### **3. Role and responsibilities of the Senior Traffic Commissioner**

- 3.1 The STC has the overall responsibility for the investigation and adjudication of complaints concerning other TCs.
- 3.2 The STC shall make such arrangements as are necessary to ensure that complaints can be dealt with in the absence of the STC including the appointment of another TC to act on behalf of the STC in this regard. A TC who is the subject of a complaint clearly cannot deputise for the STC in that respect.

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<sup>2</sup> See paragraph 101 of *Al-Le Logistics ad Ors v The Traffic TC for the South Eastern and Metropolitan Traffic Area 2010*] EWHC 134 (Admin) for confirmation that pre Inquiry determinations are judicial not administrative

<sup>3</sup> See paragraph 107 of *Al-Le Logistics ad Ors v The Traffic TC for the South Eastern and Metropolitan Traffic Area 2010*] EWHC 134 (Admin)

This publication was withdrawn on 22 February 2021

## 4. Making a complaint

- 4.1 All complaints regarding the conduct of a traffic commissioner must be made in writing and either:
- sent by post to the Office of the Traffic Commissioner, Traffic Commissioners' Corporate Office, Hillcrest House, 386 Harehills Lane, Leeds, LS9 6NF or
  - delivered by email to [tcco@otc.gov.uk](mailto:tcco@otc.gov.uk)
- 4.2 Complaints sent by post should be marked 'Confidential'.
- 4.3 Correspondence will not be considered as a complaint unless it is received by these means. It is possible that a person may seek to complain directly to a TC, such correspondence will not be deemed as a formal complaint to be considered under this protocol. Where a TC receives a complaint directly that cannot be resolved informally he/she should direct the complainant to the provisions in this protocol.
- 4.4 The STC (or those acting on the STC's behalf) will acknowledge receipt to the complainant within seven days of receipt enclosing a copy of the Complaints Protocol or a link from where it can be downloaded.
- 4.5 The STC will arrange for a copy of the complaint and any supporting documents to be sent to the relevant traffic commissioner within seven days of receipt.

## 5. The complaints process

- 5.1 All complaints received under this process will be considered using a two stage process. Stage one of the process considers whether a complaint meets the requirements to be deemed admissible on administrative grounds. These grounds are set out in Annex A.
- 5.2 Once a complaint is deemed admissible it will progress to stage two where it will be investigated and the STC will provide a determination on how it is proposed that the complaint will be disposed of. All complaints considered in stage two will be subject to an investigation.

## 6. Stage One – Validity of complaint

- 6.1 To be deemed admissible a complaint must satisfy the requirements set out in Annex A. Staff supporting the STC will make an assessment of a complaint against the criteria and provide a written report to the STC within 14 days of receipt of the complaint that sets out whether the complaint satisfies the criteria to be considered valid.
- 6.2 The STC must dismiss the complaint, or part of the complaint, if it does not satisfy the relevant criteria.

- 6.3 Subject to availability, the STC will consider the report and provide a determination to the subject TC and complainant within 14 days.
- 6.4 If a complaint is considered invalid, the complainant will be notified in writing that the STC proposes to dismiss the complaint stating the reasons. Complainants will then be given seven days to make further representations to the STC as to why the complaint should be regarded as valid.
- 6.5 The STC will consider any further representations and issue a final determination on the validity within 14 days of receipt.

## **7. Stage Two – Investigation**

### **Formal investigation of a complaint**

- 7.1 Any complaint that meets the criteria set out in Annex A will result in the STC invoking the formal investigation process and procedure.

### **The investigating officer**

- 7.2 The STC will appoint an official from within the Office of the Traffic Commissioner to investigate.
- 7.3 The purpose of the investigating officer is to advise the STC:
- a) as to the facts of the complaint;
  - b) a recommendation on whether the complaint is substantiated or not;
  - c) a recommendation on whether the findings of the investigation are such that the Secretary of State may wish to consider whether the matters are contrary to the traffic commissioner's terms of appointment;
  - d) as to any other matters relevant to the investigation.
- 7.4 The STC may provide case management instructions to officials as to how the complaint is to be investigated.
- 7.5 The investigating officer will maintain confidentiality at all times and not disclose details of the complaint to any person save for the STC or nominated member of staff employed within the Traffic Commissioners' Corporate Office.

### **Procedure of investigation by investigating officer**

- 7.6 Subject to any specific case management instructions directed by the STC the investigating officer:
- i. will invite the subject TC to make representations about the complaint;
  - ii. may invite the complainant or any person whom he/she considers can assist the investigation to give relevant information about the complaint;
  - iii. may take oral information if he/she considers it necessary to do so, arranging for any evidence given orally to be recorded in a transcript or a digital recording;

- iv. disclose any evidence obtained under paragraph b) to the TC and must invite him/her to make representations on the evidence. Any representations must be received within 14 days of the invitation;
- v. obtain a recording of any relevant public inquiry or hearing.

7.7 Representations are sought for the purposes of assisting the investigating officer to discharge their responsibilities to the STC. Evidence received by the investigating officer is not disclosable to any other party other than the circumstance set out in point iv. above.

7.8 Where the investigating officer considers that it is necessary to disclose evidence obtained during the course of an investigation to any person other than the STC, he/she must first invite:

- a) the person who provided the evidence, and;
- b) the subject TC

to make representations about the proposed disclosure. Any representation must be received within 14 days of the invitation.

7.9 Evidence and representations must be provided to the investigating officer within 14 days of the invitation under paragraphs a) or b).

#### **The report of the investigating officer**

7.10 The investigating officer will provide a report to the STC within 14 days of the latest date for the receipt of any evidence provided in 7.6.

7.11 Subject to any specific terms of reference, the investigating officer may decide the form and content of his/her report.

7.12 The report must contain a factual summary of the allegation and the evidence provided by the complainant and the subject TC along with a summary of any further evidence relied upon.

7.13 The report will include a recommendation as to whether the complaint should be dismissed on any of the following grounds:

- the action complained of was not done or caused to be done by a TC
- it is frivolous or vexatious (i.e the complaint has been made habitually and persistently and without any reasonable ground<sup>4</sup>)
- it is without substance
- it is untrue, mistaken or misconceived
- it raises a matter which has already been dealt with, whether under this Protocol or elsewhere, and does not present any material new evidence
- it does not set out sufficient detail of the allegation

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<sup>4</sup> The principle of refusing unreasonable or vexatious applications is recognised under the PPVA 1981

- for any other reason it does not relate to misconduct by a TC

## **8. Consideration by the Senior Traffic Commissioner**

- 8.1 Upon receipt of a report from the investigating officer the STC will, wherever possible, within 21 days provide a determination to the complainant and subject TC. This period will only be extended if circumstances exist that warrant doing so, e.g. annual leave or other work priorities.
- 8.2 The determination of the STC will set out the finding on whether the complaint is a valid complaint or that the complaint is not made out.
- 8.3 A copy of the draft determination will be sent to the subject TC providing the opportunity for representations on the factual findings only. Any representations must be received within seven days of the invitation.
- 8.4 The STC will consider any representation made by the subject TC and issue within seven days a final determination to the complainant and the subject TC.
- 8.5 If the STC considers that the complaint is valid the determination will set out the course of action to resolve the complaint. The resolution could include:
- a) referring the matter to the subject TC with a recommendation for action on part of that TC;
  - b) proposing that the subject TC's performance is formally appraised;
  - c) proposing that the subject TC undergoes re-training and setting out what this may include;
  - d) issuing formal advice to the subject TC;
  - e) taking no action as the matter in itself is not severe enough to warrant intervention;
  - f) in serious cases, referring the matter to the Department for Transport (DfT) for further investigation or action.
- 8.6 Referral to the DfT will only occur in those cases where a TC's behaviour or performance could lead to issues affecting their future appointment as a traffic commissioner. Such instances may include:
- serious allegations of non-compliance with the Equality Act
  - where there is a history of similar or related complaints
  - any other significant complaint for example allegations of fraud, misfeasance in public office or other criminal offences

## **9. Withdrawal of a complaint**



- 9.1 A complaint may be withdrawn at any time. The complaint will be treated as withdrawn if correspondence is not responded to by a complainant within 21 days of receipt. Where a complaint is withdrawn the TC who is the subject of the complaint shall be notified in writing within seven days of the withdrawal.
- 9.2 Special circumstances may apply where the complaint raises serious concerns about a TC's conduct, but a complainant does not respond to correspondence within 21 days, as it may be contrary to the public interest to ignore any serious cause for concern. An investigation may be carried out on the basis of any other available information, even if the complaint has been withdrawn, subject to the requirements of natural justice.

## **10. Complaints about the Senior Traffic Commissioner**

- 10.1 Any complaint relating to the STC acting in his or her role as a TC or STC should be received in accordance with section 4.
- 10.2 Complaints received about the STC acting in his or her role as a TC, or as STC on non statutory matters as agreed by all TCs or in accordance with their statutory powers will be referred to the DfT who will appoint another full time TC currently in post to act as Decision Officer in accordance with these procedures. This will usually fall to the TC with seniority.
- 10.3 Complaints received by the STC about the STC in that function shall be referred by the STC to the DfT who shall nominate an appropriate<sup>5</sup> person to investigate and record such complaints in accordance with these procedures.
- 10.4 Where the DfT (on behalf of the Secretary of State for Transport) receives a complaint directly about the STC acting either in his or her role as a TC or in respect of his or her role as STC, the complaint shall be processed in accordance with these procedures and the STC shall be notified within 14 days of the receipt and details of the complaint.

## **11. Review on behalf of the Department for Transport (Secretary of State)**

- 11.1 In the event that either the complainant or the subject TC is dissatisfied with the conclusion and recommendation of the report they may apply to the Senior Traffic Commissioner for leave to request that the DfT (acting on behalf of the Secretary of State) review the handling of the complaint.
- 11.2 Requests for a review can only be made on the following grounds:
- that a procedural error with the Protocol has occurred
  - that the decision made by the STC does not meet the test of reasonableness, i.e. no other similar office holder would have come to the same conclusion

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<sup>5</sup> In determining if a person is 'appropriate' the Department shall have regard to the Legal Framework.

11.3 On reviewing the request the STC will consider either:

- granting the request for review
- refusing the request for review
- in the case of a procedural error consider whether to set aside the determination and restart the process

11.4 If the STC grants leave for the complaint to be reviewed they will arrange for the relevant papers to be transferred to the relevant official in the DfT.

11.5 The review may cover:

- a) any finding of fact;
- b) any decision or recommendation as to the conduct of a TC;
- c) any action which has been proposed or taken;
- d) the procedures which have been used to deal with the case, but only so far as necessary to enable the review body to deal with the matters in subparagraphs (a) to (c) above.

11.6 The DfT will consider whether it is appropriate to appoint a current or retired judicial office holder to conduct the investigation. This decision will be taken on the degree of complexity and seriousness of the allegations.

11.7 The decision of the reviewer shall be final (subject to compliance with the requirements of the Public Passenger Vehicles Act 1981 which governs the appointment of traffic commissioners).

11.8 The provisional review decision shall be sent to the TC in the first instance for comment and the final decision sent to the Secretary of State and TC as soon as practicable thereafter.

## Criteria for a complaint to be consider valid

**1. The complaint must be made in writing, be legible and the identity of the complainant must be disclosed.**

If the complaint is made orally, the complainant will be told that the complaint can only be investigated if it is put in writing. Complaints may be sent by post or email and they must specify both the full name of the complainant and their correspondence address.

**2. Complaints must contain one or more detailed allegations of misconduct on the part of a named or identifiable traffic commissioner.**

The complaint must state the date, or dates the alleged misconduct took place. A complaint is to be accompanied by the documents within the control of the complainant on which they seek to rely. General complaints will not be investigated. An example of a general complaint might be a statement that all TCs are not impartial.

**3. The complainant must consent for the complaint and accompanying documents to be disclosed to the TC.**

The STC must not accept a complaint as valid if the complainant does not consent to full disclosure to the TC. When a complainant states that the subject matter is confidential the initial response will explain that the complaint can only be taken forward if it is disclosed to the person who is the subject of the complaint. If the complainant does not reply within 28 days, then the complaint will be treated as withdrawn.

**4. Complaints are not about a judicial decision or judicial case management.**

Some complaints, concerning personal conduct, may give rise to possible grounds of appeal to a higher court. Others are made while a case is continuing. In light of the overriding principle of fairness referred to above and the importance of the STC not being perceived as interfering in independent judicial decision making, it may not be appropriate to intervene. The STC wishes to discourage what might be seen as 'tactical' complaints which might undermine the overriding principles. Accordingly, this type of complaint will not normally be considered during the course of proceedings and the complainant will be asked to contact the STC once the case has been concluded. Even then if the matter complained of could have been made as part of an appeal to the Upper Tribunal then the STC is likely to decline to intervene.

**5. A complaint must relate to a TC in their professional capacity.**

A complaint about the private life of a TC which could not reasonably be considered to affect their suitability to hold judicial office will be deemed inadmissible.

**6. Complaints must be lodged as soon as possible.**

A complaint must be made within three months of the latest substantive event or the matter complained of. Where the complaint relates partly, or in full, to correspondence then the relevant date for the purposes of this section shall be a matter for the STC to determine having regard to the specific circumstances.

A complaint relating to a continuing state of affairs may be made at any time until three months from the last occurrence. It becomes more difficult to investigate a complaint as time passes and it is unreasonable to expect a TC to recall events after a long passage of time, particularly where a transcript of a hearing or paper or electronic file may no

longer be available.

The STC may extend the time limit for making a complaint in exceptional circumstances upon a written request to do so from the complainant. Any request must be accompanied by the reasons as to why it could not have been made within the three month period.

The STC has an absolute discretion to reject any complaint which is, in his or her opinion, so out of time as to prevent an effective investigation.

Where the STC extends the relevant time limit they must notify both the complainant and the TC who is the subject of the complaint of the reason for the extension.

This publication was withdrawn on 22 February 2021