

DfT consultation on Strengthening Local Delivery – Modernising the traffic commissioner system – a *pteg* response

1. Introduction

- 1.1 **pteg** represents the six English Passenger Transport Executives (PTEs) in England which between them serve eleven million people in Tyne and Wear ('Nexus'), West Yorkshire ('Metro'), South Yorkshire, Greater Manchester, Merseyside ('Merseytravel') and the West Midlands ('Centro'). Transport for London (TfL) and Strathclyde Partnership for Transport (SPT) are associate members of the group.
- 1.2 The PTEs plan, procure, provide and promote public transport in some of Britain's largest city regions, with the aim of providing integrated public transport networks accessible to all. The PTEs (including SPT) have a combined budget of more than a billion pounds a year of which about £300m is capital expenditure, and are funded by a combination of local council tax and grants from national government. The PTEs are responsible to Passenger Transport Authorities (PTAs) made up of representatives of local councils in the areas they serve.
- 1.3 PTEs fully support the concept of independent regulation of the UK bus system. It is vital that standards of operation are upheld that promote public confidence and safety in the use of local bus services. We deal with Commissioners on a regular basis and see their role as complementary to that played by PTEs and PTAs in managing bus services to meet public needs. We are pleased to have the opportunity to offer our views on the way in which their role should be strengthened to promote better bus services.

2. General comments

- 2.1 The DfT paper offers its analysis of the current situation in Part 2 of the consultation paper. DfT's concerns with the current approach regarding bus services may be summarised as:
- Low public awareness of the role played by the Commissioners, particularly in improving bus service delivery;
 - Need for more effective action in improving bus punctuality
 - Inefficient use of resources in the licensing of national operators;
 - Consistency of decision-making across different regions;
 - Degree of control by Commissioners over VOSA resources;
 - Concerns about the appointment of Commissioners and period of tenure in office;

- Need for an expanded role for Commissioners.
- 2.2 We recognise that the Government is concerned about inefficient use of resources but would welcome further evidence of this problem. We value the local relationship we have with regionally-based operators and feel that the evidence offered should better justify the change in structures being proposed.
- 2.3 We question whether the concerns about consistency of decision-making justify the major changes in structure that are being proposed. We would be particularly concerned if the work of the Traffic Commissioners were to be fragmented along the lines of ‘specific functional specialisms’. This could mean that different Commissioners would have responsibility for various (but inter-related) components of the effective delivery of better bus services in each PTE area. Given the challenges and complexities involved in a transition from the current deregulated environment to one of more effective public/private partnerships (either via more comprehensive quality partnerships or quality contracts) the need for consistency, expertise and local knowledge at each regional level will be critical. However we fully support the new formal role of a senior Commissioner, and believe that strong guidance from him, framed in consultation with his fellow Commissioners, should result in more consistent decision-making.
- 2.4 However, although there is a need to avoid wholly inconsistent decision making between regions there is also a need to allow for some differentiation between regions in the way standards are applied. For some areas, a low minimum service standard consistent with public safety requirements may well be adequate. In the PTE areas, where there is generally a commitment through statutory documents, notably the LTP, to improve bus services beyond the minimum standard in order to use them as a tool of transport policy, we believe that it is may be appropriate for higher standards to be applied by the local Commissioner. This point is made not to undermine local operators in those areas, but merely to reflect local democratically-driven policies, where there may be sound, value-for-money reasons for requiring a higher quality of service delivery. Operators would be free to adjust to this higher standard in the way they chose to register commercial services and set fare levels. Thus, we would propose that in applying standards, Commissioners should take into account the local policy context set out by the Local Transport Authority (LTA).
- 2.5 We explain our views on the specific issues raised by the paper below, and summarise our responses to the specific questions that are set out in Part 3 of the paper at the close of our submission.

3. Specific comments

General structure proposed (Option 2) and functions

- 3.1 The proposed structure would appear to be tackling a number of different issues:

- a) Day-to-day registration of services and operators – the administrative function;
 - b) Acting on reports from VOSA on operator maintenance issues, and calling operators to account where appropriate;
 - c) Monitoring of service delivery both qualitatively and quantitatively, and acting where standards fall short of the appropriate level;
 - d) Forming Approval Boards to consider applications for Quality Contracts;
- 3.2 We question whether it is necessary to try and combine all these functions within the same structure, and we also question whether a new national 'office' responsible for bus regulation can deal with these issues as effectively as the current, decentralised approach. However, we would agree with the Government's view that there is a need to strengthen current arrangements and deliver more effective regulation.
- 3.3 Dealing first with the issue of Quality Contracts, we have already argued in our response to the draft Local Transport Bill, that the Approvals Board is an unnecessary element within the revised process. However, if the Government persists in its view that the Board is required as part of the process, then we would view this as best dealt with through an ad hoc arrangement with Panels convened from lists of suitably qualified people as the need arises.
- 3.4 The Government has already promoted a degree of centralisation of the general administrative function. We fully support the achievement of greater efficiency in this process through the use of electronic services registrations and storage of all bus supply information from one central national database, enabling the Commissioners, Transport Direct, Traveline, operators and LTAs to fulfil their information requirements from a single reliable source. In some cases, LTAs may be able to make a business case for running this service at a local level on an agency basis, within the context of a national database. We believe this may be an appropriate solution in some areas, and would encourage a framework that allows those who rely most on the quality of the information – local operators and transport authorities to take responsibility for maintaining an up to date and high quality database.
- 3.5 By harnessing new technology (such as GPS and electronic registrations) there is considerable potential for achieving greater efficiency and cost savings. Quality will also improve if operators are required to provide accurate and timely registrations.
- 3.6 We also believe that very often service monitoring can be carried out most effectively at the local level. Passengers who are unhappy about their services often turn to their local authority or PTE first to sort out the problem. In many areas, PTEs operate well-managed customer relations systems to ensure that the public gets a response from the right body in response to their concern or complaint. PTEs also support a variety of user forums in their areas as an additional mechanism for reflecting and capturing passenger

views on service provision. Given the very local nature of bus services we believe that these local systems should be built on, rather than replaced, or duplicated, by a new national body. If it is decided that a separate body is to be established for dealing with passenger complaints and to act as a 'voice' for bus passengers (similar to that which Passenger Focus provides for rail users) then given the local nature of bus services, it would need to be regionally based to have any credibility. The case for a body independent of the local transport authority would also be strongest where a QC was in place.

- 3.7 In terms of bus reliability and punctuality, much investment has been put into automatic vehicle locations schemes primarily to provide real-time information for passengers. This data provides a vast store of information on the way in which services are delivered and needs to be summarised effectively to allow overall performance to be reported. Again, LTAs and operators are in a strong position to undertake this role. Local agreements may be required to ensure that there is comprehensive reporting to both the local Commissioner and to the travelling public of summary information, and to ensure that this data is used to drive improvement in performance. Again we would make the case for local solutions drawing on partnership between operators and LTAs, but with the Commissioner having the power to require delivery of timely information.
- 3.8 All these proposed approaches support the need for a strengthened Commissioner operating in partnership with operators and LTAs. We feel this is best delivered through the existing network of Commissioners with their responsibilities for individual regions left intact.
- 3.9 One area where we continue to be concerned is the area of maintenance and public safety. There continues to be regular reports of poor practices by some operators, where systems of maintenance and management of driver scheduling are clearly inadequate. For passengers to have confidence in bus services, it is essential that these basis elements of service delivery are put right. We would strongly urge the deployment of greater resources in this area to ensure the basics of sound operation are delivered across all operators.

4. Changes to current functions - Quality Partnerships

- 4.1 We would like to see further strengthening of the proposals to protect Quality Partnerships. In particular we would like to see the Commissioners given the powers to refuse registrations where new services could undermine a quality partnership agreement and thus result in a net disbenefit to passengers.
- 4.2 This includes registrations by low-quality operators running in parallel with services meeting the quality standards within the Scheme. Otherwise on a route where a QPS was in place, a low quality operator might be barred from using features of the QPS (such as bus lanes) causing confusion for passengers, negating some of the value of the public sector investment in a QPS, and undermining the overall credibility of the QPS.

- 4.3 However, we also believe that the problem is not only one of low quality competition. With the commercially finely balanced partnerships that may emerge from the more widely specified Schemes (including frequency, timetables and fares), partnerships may be undermined by any new incursion into the market. We would be in favour of the Commissioner being given a role that allowed him to protect partnerships, particularly newer ones, from new entrants who may destabilise the market and generate unsustainable competition. Thus the new powers that are being proposed should extend to all services provided by operators outside the original partnership agreement. These new powers would give the Traffic Commissioner the ability to refuse new registrations on a route/service when the SQP scheme specified frequencies/timings. This should be where the Traffic Commissioner, after having consulted the LTA that made the Scheme, reasonably believes that additional services may undermine or destabilise the provision of existing services.
- 4.4 **pteg** would also like the DfT to consider allowing local transport authorities the power to register with the Commissioner certain agreements made between the LTA and an operator where such agreements contain undertakings given by operators not to deregister services. These voluntary partnership agreements (VPA) can set out the network that an operator agrees to operate and may specify, for example, that except in certain specified circumstances, the operator will not reduce the frequency of services without the agreement of the LTA. Where agreed in the VPA such undertakings (and any conditions attached) could be registered with the Commissioner who would then be bound not to alter the registration of service covered by the agreement except in accordance with the VPA terms. This would give a level of protection to an LTA that enters into a VPA, where, for example, it has invested in infrastructure works in return for the operator undertaking.
- 4.5 We can also see the need for the Commissioner to be available to arbitrate in the case of a failure of a local partnership, or a potential breakdown. Some partnerships are developing with the aid of a local independent mediator or arbitrator to ensure that partnerships run smoothly, and this is to be welcomed, but the Commissioner may still have a role to play as an agreed appeal mechanism should this arrangement break down.
- 4.6 Similarly with voluntary partnerships, consideration should be given to Commissioners acting in a supportive role, calling all parties to account for any failure to deliver in line with the partnership agreement.

5. Changes to current functions – on the road competition

- 5.1 We fully support the proposal for Commissioners to take pre-emptive action where, unsustainable bus wars are threatened by new entrants or current operators initiating a major increase in service which appears to be predatory or likely to lead to unsustainable competition. Clearly such actions should be judged according to the public interest, and an appeal mechanism may be required. The PTEs would like to be a consultee in any deliberations to be undertaken by the Commissioner.

5.2 There is also a need to strengthen Traffic Regulation Conditions (TRCs) in order to control the effects of aggressive and excessive on-road bus competition within city centres and at key points on major bus routes. Legal advice to Manchester City Council suggests that TRCs can only be introduced when bus-related traffic congestion is already occurring. Clearly this is undesirable when local transport authorities will have pre-knowledge of likely bus-related traffic congestion via registration notices. Amending the legislation to allow TRCs to be introduced to 'prevent' rather than 'reduce' congestion would help in this regard.

6. Changes to current functions – regulation within and in the run up to quality contract schemes

6.1 Again, the arrangements sketched out in the paper for amending QC Schemes and allowing additional services operating across the boundary of a QC Scheme are supported. We believe that, as in London, there is scope for a permit scheme to allow such services to be introduced or changed. A key issue, amongst others, would be commercial impact on services supported under the QC Scheme, but PTEs would welcome services that met new markets and added to the local public transport 'offer'. However, it should be for the PTE/LTA to determine whether or not additional services are appropriate taking into account the effect on the QC scheme.

6.2 As set out in our response to the Local Transport Bill (para 2.12 to 2.15 – http://www.pteg.net/NR/rdonlyres/0713DBDA-936E-40C3-A236-93280779036E/0/pteg_response_Draft_Local_Transport_Bill_20070907.pdf) we strongly support the Department in the concern it expresses over transition arrangements for new QC schemes. There is, in our view, a careful balance to be struck in allowing the new, or retained, services in the QC to be protected, whilst allowing an unsuccessful incumbent operator to withdraw from the area in an orderly manner. We believe the key concern in this issue is to protect the customer during this period by achieving a smooth transfer of services. Our preference would be to achieve this by negotiation with the withdrawing incumbent (for example though use of 'de minimis' where appropriate). However, both sides need an alternative option, and the Commissioner may have a role to play here. We believe that allowing an unsuccessful incumbent operator to phase their withdrawal is reasonable. However this should not be done in such a way that makes it unduly difficult or costly for the promoting authority to maintain services during the transitional period prior to the implementation of a QC scheme. Thus any de-registrations or new registrations should be tested by the Commissioner to ensure that either:

- services similar to those currently available can be restored through the addition of tendered services, or
- the change should facilitate the introduction of the services that the QC scheme will specify.

6.3 Thus, for example, an operator could reduce his service frequency from 15 to 30 minutes (allowing the promoter of the contract to put back a 30 minute service in parallel, giving an integrated 15 min minute service in total), but not

from 15 to 20minutes (unless, for instance, the promoter was proposing a 10 minute service). Similarly, an operator could remove a whole route, but not part of that route.

- 6.4 We also believe it is necessary during this transition period to increase the time period for de-registrations from the present 56 day period to allow alternative arrangements through tendered contracts or use of de minimis payments to be put in place. We would welcome further discussion through the Bus Partnership Forum on this issue, along with others the Department proposes to raise.

7. Funding and resources

- 7.1 We have pointed out in this note that whilst there may be opportunities for reducing costs, there may be others where additional resources are required. We are not clear where the balance between these increases and reductions lies. We also believe that there may be overlapping functions that take place between different parties and would want to exploit the advantages of new technology to drive efficiencies. Taking all these factors into account, we believe that it may still be worth spending slightly more on regulating the bus industry and better resourcing the Commissioner to undertake his enhanced role. We do not believe these costs would be great, and realise that in increasing the charges for regulation on operators, those costs will, to a large degree end up being borne by LTAs. We would welcome further discussion on the balance of efficiencies and additional resources, so that all parties can understand the choices the government is considering. Part of the solution may come in raising the cost of registrations that introduce minor changes. These can have a disproportionate impact upon the costs of promoting the service that are borne by the LTA.

Specific questions posed by the consultation paper

- *Do the proposals strike the right balance between local accountability (e.g. through the current regional traffic commissioner structure) and national consistency?*

No, we believe there is a 'third way' that provides improved consistency, but also responds to local needs. The 'third way' would allow the senior traffic commissioner to provide guidance for regional traffic commissioners to ensure a consistent framework and standard for decision-making. However, each regional traffic commissioner would be strengthened and would have the expertise, resource and authority to assist in the transition to new formats of public/private partnership and higher service standards. In doing so they would be able to take into account local aspirations and circumstances. In some areas (including the PTEs) this could include the Local Transport Authority/PTE undertaking some services for the Traffic Commissioner in order to deliver higher quality standards. This could include operator performance monitoring.

- *What are your views on the resource implications of the proposed changes?*

We are unclear as to what the full implications are and would welcome an open discussion about the additional costs which stronger regulatory input might cause and understand how these might be transferred to local authorities via operator charges. We would not want to rule out the possibility of higher charges if there were significant gains to passengers as a result.

- *Should the terms of appointment for future traffic commissioners be fixed?*

We can see merit in fixed term arrangements.

- *Do you think the proposals in this paper give the traffic commissioners a strong enough role in representing passenger interests? If not, what changes would you like to see.*

As we argue above, we see locally driven solutions being the best way forward. We consider the proposals for a national agency to deal with passenger complaints to be flawed, and would propose to build on existing local arrangements.

- *Would limiting the terms of appointment compromise the impartiality of the Traffic Commissioners?*

As long as the terms allow for a medium-term appointment, we do not consider this to be a significant problem.

- *What are your views on allowing the traffic commissioners powers to refuse or modify an application to register a service on the grounds that a quality partnership scheme is in operation in the proposed area of the service?*

See Section 4

- *What are your views on allowing the traffic commissioners powers to refuse or modify an application to register a service on the grounds that such a service may lead to aggressive and excessive on road competition?*

See section 5

- *What are your views on the proposal to allow for the operation of additional services in an area where a quality contracts scheme is in place? Do you favour local authorities being granted such a power or should this power be conferred upon the traffic commissioners (subject to the application having the support of the local authority responsible for the scheme)?*

See section 6.1

- *What are your views on the proposal to allow traffic commissioners to allow or refuse dispensations to the 56 day rule in the pre-contract transitional period for a quality contracts scheme in order to protect bus passengers?*

See section 6.4

- *Do you agree that separate traffic areas be retained for Scotland and Wales?*

We can see benefit for a regional approach throughout Great Britain, but have no specific remit to comment on the issues for Scotland and Wales.

Summary

We would urge the Department to take this opportunity to reform the role of the Commissioners in the forthcoming Local Transport Bill, strengthening their powers and increasing the resources available to them where required, but also adopting locally relevant solutions where these are appropriate. These principles are fully in line with the rest of the Bill, and may be linked with the review of governance procedures in PTA areas, where this is appropriate.

With regard to the future use of the Government's new proposals for Partnership and Franchising arrangements, we believe that it is essential that much of the detail discussed in the consultation paper, and this response, is critical to the delivery of these options, and we would welcome further discussion of these in order to get the details of legislation, regulations and guidance right.