

THE AJTC's RESPONSE TO THE CONSULTATION

PUBLIC CONSULTATION ON THE DRAFT GUIDANCE FROM THE SECRETARY OF STATE FOR TRANSPORT TO THE SENIOR TRAFFIC COMMISSIONER

The Administrative Justice and Tribunals Council (AJTC) welcomes the opportunity to comment on the draft guidance to the Senior Traffic Commissioner.

The AJTC is a non-departmental statutory body responsible for keeping under review the administrative justice system and the operation of listed tribunals, under the provisions of the Tribunals, Courts and Enforcement Act 2007 (TCE Act). The Act defines 'administrative justice system' as the overall system by which decisions of an administrative or executive nature are made in relation to particular persons, including the procedure for making such decisions, the law under which such decisions are made, and the systems for resolving disputes and airing grievances in relation to such disputes. Traffic Commissioners are listed tribunals for the purposes of Schedule 7 of the TCE Act and as such are under the oversight of the AJTC.

The AJTC suggests that this aspect of the legislative background, and in particular the oversight role of the AJTC, should be included in the introduction to the guidance.

The AJTC supports the underlying aims of the Department for Transport to encourage the consistent application of the Traffic Commissioner functions across Great Britain. It is equally important that those affected by TC decisions can reasonably predict what those decisions will be in similar circumstances. The AJTC considers it important to preserve and protect the continued independence of Traffic Commissioners both individually and collectively in judicial or quasi judicial decision making. Commissioners spend much of their time exercising discretions either in relation to paper submissions or presiding over hearings. They have to weigh evidence, consider issues of safety, act fairly and proportionately, be transparent, consider the needs of communities affected by proposals and be aware that the decisions they take affect the livelihoods of transport operators and the amenity of others, all in the public interest.

The AJTC also supports the underlying objective of delivering a transparent, modern, consistent, responsive service, which applies best practice and pursues continuous improvement. Such an approach will inevitably also include consideration of the best and most efficient use of financial and human resources. Clear judicial leadership is an important element of achieving that. The appointment of a statutory Senior Traffic Commissioner equates to best practice and is, in principle, an appropriate way of providing leadership. Consideration may need to be given in future to the tenure of the Senior Traffic Commissioner to ensure an appropriate level of independence, and while we are not suggesting that future appointments should be made by the Judicial Appointments Commission, there may be some merit in adopting similar practices for future appointments.

In order for the STC fully to discharge his leadership role it will be important that the roles, responsibilities and accountabilities of all those involved are clear and understood. A

Framework Document in addition to what is already proposed would be helpful in this respect.

Whilst it could be expected that much of what the Senior Traffic Commissioner is charged with achieving will be done on a collaborative or collegiate basis, the new arrangements proposed are most likely to bed down effectively if there is an explicit compact between all those involved as to respective roles, responsibilities and accountabilities.

It will be particularly important to ensure that the Senior Traffic Commissioner has adequate personal and budgetary support to deliver the agenda implicit in the consultation document. The Senior Traffic Commissioner is being invited in effect to overhaul the entire decision-making process. The size of the task on the ground should not be underestimated. It is not clear, from looking at the Service Level Agreement between the Office of the Traffic Commissioner and VOSA, how the Senior Traffic Commissioner will be provided with dedicated resources which will enable the task to be undertaken effectively, given that the Service Level Agreement seems to focus heavily on the day to day business of processing applications. It should be clear from the SLA how users will be provided with information about the work of TCs, including the maintenance of a website, and how user liaison will be supported. Information should be readily available explaining to operators and others affected how hearings work and what has to be demonstrated to Commissioners to engage their support. In that respect it is particularly important to consider the needs of people in communities whose amenity may be affected by transport proposals so that they can participate fully.

The Senior Traffic Commissioner should also be resourced to monitor activities undertaken in the name of Commissioners. The AJTC understands that currently the great majority of applications are processed centrally and decisions are made in the name of Commissioners under delegated powers. This will enable him to review, and in collaboration with VOSA to make proposals from time to time about the most efficient and customer friendly way of processing applications to appeal.

In relation to the questions raised by the consultation paper:

Q.1 Do you support the flexible deployment of traffic commissioners across Great Britain?

Yes, insofar as it is necessary to promote the effective use of resources, meet customer demands and support the development needs of commissioners. However, it is important to recognise the value of local knowledge and history.

Q.2 Do you agree that the STC should publish guidelines about how he proposes to use the powers to deploy traffic commissioners?

This appears to be more an internal matter for the Senior Traffic Commissioner, who would no doubt expect to consult colleagues from time to time.

Q.3 Do you agree that the STC should use these powers of deployment so as to ensure TC resources are used efficiently and effectively, without excessive recourse to the use of DTCs?

Yes, but the deployment of DTCs seems to be a matter of managerial and judicial judgement depending on circumstances and having regard to matters like availability of full time commissioners, appropriate skill levels and experience required, cost of travelling and subsistence etc.

Q.4 Do you agree that the senior traffic commissioner should specify performance standards for traffic commissioners to ensure they are performing efficiently and effectively?

The AJTC would expect the Senior Traffic Commissioner to ensure that effective appraisal arrangements are in place, to develop practice proposals and procedures collaboratively, and to manage and monitor the use of judicial resources to ensure that is effectively deployed using measures of performance.

Q.5 Do you agree that the use of DTCs by TCs should be the subject of a direction from the STC?

The STC should consider the need for such a direction.

Q.6 Do you agree that the STC should determine a clear policy on how and in what circumstances he uses his powers to issue Directions and Guidance?

This again seems to be a matter for the STC.

Q.7 Do you agree that the STC should review existing practice directions? Are there any new directions or guidance that you believe the STC should consider issuing?

Yes. No doubt that would in practice be a collaborative and consultative process.

Q.8 Do you agree that the STC should issue statutory guidance on the due process for dealing with regulatory cases?

It is not clear what "statutory guidance on due process" means in this context but the AJTC agrees that there is a need for procedural guidance to be given from time to time.

Q.9 Do you agree with the list of data that the STC should obtain? Do you have any suggestions for other data that could be included in the list?

The AJTC has no comment other than to suggest that the list seems somewhat too prescriptive. The data needed will no doubt be a matter that changes from time to time.

Q.10 Do you agree with the key principles that the senior traffic commissioner should bear in mind when issuing guidance to the traffic commissioners about how they should prioritise their workload?

Whilst the AJTC has no disagreement with the principles listed it believes that the STC should be able to respond flexibly to changing circumstances and priorities in respect of which he would no doubt consult appropriately at the time.

Q.11 Do you agree that the senior traffic commissioner should issue guidance about the circumstances in which a public inquiry might be appropriate, and directions about the due processes to be followed at such inquiries, with a view to ensuring that inquiries are confined to cases that cannot be resolved by other means?

The AJTC believes that the STC should explore opportunities to use other forms of early and other dispute resolution techniques such as mediation but not so as to disenfranchise individuals who have a legitimate expectation to participate.

Q.12 Do you agree that the STC should monitor the outcome of appeals against the decisions of TCs and DTCs and issue additional guidance or directions as considered necessary?

There is a difference between guidance that may be issued from time to time and other directions, which may or may not impinge on the independent exercise of discretion.

Q.13 Do you agree that the STC should strive, so far as is possible within his powers, to minimise successful appeals?

Of course.

Q.14 Do you agree that the STC should issue guidance and directions on the use of support staff and specialist expertise?

Yes, but this is a largely internal matter. The comments made earlier concerning resources and the terms of the current SLA are relevant.

Q.15 Do you agree that there should be a Service Level Agreement between the STC and VOSA regarding the performance level expectations of support staff? Do you agree with the proposed procedures for resolving any issues that arise?

See Q14.

Q.16 Do you agree that the consistency of DTC decision-making should be monitored by TCs?

Consistency of decision-making generally needs to be monitored by the STC and TCs in respect of DTCs so that learning and feedback on an individual basis can take place. In well managed environments this is done routinely on a case by case basis through appraisal, at commissioner development days and by the issue of guidance produced collaboratively and issued from time to time.

Q.17 Do you agree that the senior traffic commissioner should have a business and budget planning role as proposed in the guidance?

Yes, if he is adequately resourced, but if the intention is to combine a judicial and operational role, proper consideration needs to be given to the STC's support needs. As indicated above, there seem to be gaps in the current Service Level Agreement. The STC has many responsibilities related to his judicial leadership role and needs access to dedicated support and advice on his operational responsibilities, including business planning and finance.

Q.18 Do you agree with the policy on the acceptance of gifts, benefits and hospitality by the traffic commissioners?

Given the judicial function exercised by TCs it is appropriate for the Senior Traffic Commissioner to look to judicial models, such as the Terms and Conditions for Tribunal Judiciary recently published by the Lord Chancellor, for relevant guidelines. The General Principles relating to Conflicts of Interest in the Tribunals Judiciary Terms and Conditions seem appropriate to include in any Guidance to ensure that the acceptance of any gifts or hospitality do not undermine, or appear to undermine, the independence of the TCs and DTCs.

Q.19 Do you agree that it is appropriate for each TC and the STC to record the amount of time spent on the exercise of their statutory functions?

It is not clear what is meant by statutory functions in this context. It would be valuable for the Annual Report to provide generic information on the use of Commissioner time to demonstrate value for money and monitor whether resources are sufficient to match caseloads. The AJTC is not convinced of the need to publish detail for individual Commissioners.

The document does not contain any explanation for the suggestion that the STC should devote no more than 60% of his time to his exclusive duties, nor has an exercise apparently been carried out to evaluate the likely resources needed to match the requirements of his office. See earlier comments about the importance of ensuring that he is adequately supported in his roles.

Q.20 Do you agree that there is a need for the STC to develop a communications and stakeholder strategy?

The benefits of this seem clear provided it is adequately resourced.

Q.21 Do you agree that the STC should consider issuing directions and guidance on data protection and privacy laws issues?

Again the need for such guidance seems clear. The STC would need adequate financial and professional support to ensure guidance properly reflects the Commissioners' judicial role (for example in the use of exemptions).

Q.22 Do you think that the guidance on Public Service Vehicles is appropriate and helpful?

No comment.

Q.23 Do you agree that the draft guidance from the Secretary of State to the STC should refer to the powers of the traffic commissioners, when considering the conduct of large goods vehicle and passenger carrying vehicle driving licence holders?

No comment.

Administrative Justice and Tribunals Council