



## Valedictory Report of the TC for Wales to the Welsh Government

Statute requires all TCs to produce an annual report to the Secretary of State, a Memorandum of Understanding (MoU) provides for a separate additional report to the Welsh Government. Section 4 of the Public Passenger Vehicles Act 1981 provides for traffic commissioners to be appointed to their 65th birthday or to the eve of their 66th birthday, should the Secretary of State so approve. I am 66 years old on 1<sup>st</sup> October 2019, hence this is my final report but it should be read in conjunction with my final report to the Secretary of State in which I attempt to report on progress in the establishment of the traffic area..

### BACKGROUND

#### Creation of a single traffic area in Wales

Historically operator licensing for North Wales was administered from the North West of England, with South Wales administered from an office in Birmingham. The creation of a single traffic area for the whole of Wales followed the establishment of the Welsh Assembly and the Welsh Government

The TC for Wales role was part-time, the post holder sharing responsibility for the West Midlands as well. Administration for Wales was also conducted from the Birmingham office.

#### Creation of a dedicated post to allow Wales to have its own full-time TC

Historic disparities between licensing, enforcement and regulation within Wales and between English traffic areas has been an issue of concern to various stakeholders. These are outlined in my previous annual reports to the Secretary of State.

These issues emerged against the suggestion that Wales did not justify the appointment of a full-time TC (measured largely on the basis that both the number of hearings and the number of licences were less than in other traffic areas).

In the case of PSV licences, Wales has a similar number of operator licences to that in the West Midlands, despite the much smaller population. This reflects the preponderance of family businesses operating within Wales, compared with most parts of England where the “big five” operators have a larger presence.

In 2016, ministers in Westminster and Cardiff agreed on a MoU to appoint the first full-time TC for Wales. Essentially the wording of the MoU ensures protection for the TC for Wales, the Welsh Government and DfT. Soon I retire as the first full time TC for Wales.

## **CURRENT STATUS**

### Staffed offices and public inquiry (court) accommodation

Currently all other TC areas have a small team of staff with a co-located room for hearings, the MoU sets out an expectation that the TC for Wales will sit in various locations across Wales, this to ensure both local and accessible justice.

Most hearings for North and Mid Wales utilise the Welshpool Justice Centre; local staff are helpful in accommodating me and it also assists in their local court sitting figures.

Arranging hearing venues in South Wales has proven more more problematic as the Cardiff Civil Justice Centre is now usually unavailable. Cardiff Magistrates Court was until recently only available on limited days of the week. As this note is written the only suitable venue that is occasionally available is the Cardiff Crown Court building.

In the medium to longer-term sittings in South Wales will be accommodated in a dedicated tribunal facility provided for within the new Transport for Wales (TfW) headquarters building at Pontypridd. It will have a fully equipped tribunal room/training suite where the TC for Wales will have first option on its utilisation. Additionally secure storage is being provided by way of a retiring room with office accommodation. I congratulate the Welsh Government and its officials in their far-sightedness in ensuring that the new TfW premises will have suitable accommodation for hearings.

An administrative facility has also has been made available for me (and my successor) in St Mary Street, Cardiff. The accommodation is sufficiently large for it to also serve as a base for some staff. Even with a base in Caernarfon the new TC for Wales will need a base in central Cardiff for meetings. The accommodation in St Mary Street will serve this purpose very well.

The base in Caernarfon will initially accommodate three administrative support staff. There is scope to increase the room size in the event of other functions being administered. The administration of bus registrations in Wales is an attractive proposition, but there are a number of other potential options too.

Bilingual staff are being recruited. They will be based in Caernarfon although they will not be fully trained before my successor takes up his/her post. This will require the continuation of administrative support from England for the short term.

An important feature of the accommodation in Cardiff, Caernarfon and Pontypridd is that they are controlled by the Welsh Government. This is important as it ensures

both control and flexibility to suit Wales. This contrasts with the position in England and Scotland where all TC accommodation is held by the DVSA, in a number of instances this has caused very real difficulties for TCs and their staff. TC accommodation elsewhere within Great Britain is held by the DVSA. My input has assisted in ensuring that any leases etc for accommodation for the TC in Wales is held in the name of the Welsh Government; this allows for maximum flexibility for the future, including devolution.

The different approach to sourcing and funding accommodation has contributed to a delay in securing suitable TC accommodation in Wales but the Welsh Government has been wholly supportive to me in this. I should comment that the lease costs involved in the accommodation by the Welsh Government is very good value, certainly the sums involved are significantly less than equivalents in England and Scotland. The different approaches to accommodation is illustrated by some eye watering figures quoted in the past couple of years by DVSA estates when considering simple adaptations of proposed accommodation.

#### Work undertaken with view to assisting the Welsh Government

It was always envisaged that a properly resourced full time TC in Wales would be able to perform a range of functions that would be of value to the public sector in Wales, unfortunately the delay in ensuring a suitable staffed office has made it more difficult for me to progress initiatives. I have sought to acknowledge this by accepting a request from the Welsh Government to be the Chair of an independent panel of experts advising the Welsh Government on addressing NO2 pollution in Caerphilly and Cardiff. Strictly this role involving addressing air pollution is not within a TC remit, however I am grateful to the Welsh Government for asking me to take up the role of Chair. I acknowledge that the Senior TC and civil servants in DfT have also been supportive in this respect.

The work of the Panel has confirmed the importance of both active travel and of the need to make it easier for people to make a conscious decision to travel by bus, rather than drive. I use this opportunity to record the following observations:

- People are exponentially more likely to opt to use a bus if the journey is quicker and easier than using a car.
- Use of bus lanes is an invaluable tool in ensuring that it is quicker and easier by bus -but only if bus lanes are enforced
- Using Cardiff as an example, consideration might be given to ensuring that there are sufficient park and rides accessible from the M4.
- Those who live in places such as Monmouthshire do not have much in the form of realistic alternatives to car use when accessing Cardiff, hence the need for park and ride schemes
- Most current park and rides do not have a bus lane into the centre of Cardiff, only partial bus lanes, accordingly there isn't that much of an incentive to use a bus
- If park and ride schemes were properly thought out they could form transport hubs to serve not just City centers but housing and industrial estates too
- For understandable environmental reasons there is a reluctance to build more roads. However priority should be given to providing for bus priority, if necessary by use of bus-ways to bypass traffic bottlenecks

The evidence considered by the panel of experts advising on NO2 has highlighted the fact that the primary cause of the NO2 pollution is the use of old diesel cars but whilst modern engines are far cleaner there may be no incentive to change. There are many factors to consider but one interesting idea which has emerged is how to use residential car parking permits, which might differentiate between cleaner engines and more polluting ones.

Local authorities currently allow taxis to use many of the bus lanes, this to reduce reliance on private cars. Consideration might be given to limiting that use to those using cleaner vehicles.

### Human resources

Original plans for office accommodation in Wales envisaged bilingual staff in Cardiff, however there were a number of difficulties relating to both accommodation and finding sufficient suitable fully bilingual staff on the grade advertised. A contributory factor was the issue of staff pay, see my comments below.

At that stage it was envisaged that the Senior Team Leader currently based in Birmingham would line manage staff in Cardiff, in the same way that he currently does so for both the West Midland and Wales teams that are based in Birmingham. I now foresee it as almost inevitable that there will be a need for a management post in the new office in Caernarfon. The principal outstanding issue is the role and grade.

I have advised the Welsh Government that whilst I am of the firm view that there is a need for such a post, the actual grade and post should await decisions as to other functions that might be serviced from Caernarfon. I have also commented that my successor is likely to want an input into this.

The MoU sets out that the Welsh Government will provide financial resources for any additional posts. This is offset by the sums currently expended on staff servicing Wales.

### Training and seminars for operators

As a result of considerable Welsh Government logistical support, I have been able to facilitate seminars for PSV operators who have registered bus services or school contracts, assistance has also been provided by Business Wales.

There are far more HGV operators than PSV ones in Wales, however TC training and seminars for HGV operators will need to await the provision of resources and a fully staffed office in Caernarfon would make this easier.

For the avoidance of doubt local TC seminars across Great Britain ceased a number of years ago, this for financial reasons. In the case of Wales the Welsh Government has recognised the benefits in training and developing those who operate commercial vehicles. The MoU also recognised the benefits of the TC working with public bodies in Wales.

## THE FUTURE

Although I have sought to provide the basis of an efficient TC office in Wales, the timing of my compulsory retirement by reason of age means that it will be for my successor to come to a view on a range of issues, I recognise that he or she may not wish to pursue matters where I have expressed a view. It has been my intention to facilitate resources and flexibility for my successor.

The Welsh Government input into the recruitment exercise for my successor has enabled the next full time TC for Wales to be both bilingual and a lawyer, this will make it far easier to introduce some of the potential reforms whereby the future TC role could have relatively extensive appeal functions.

Working with the Welsh Government and Ministers has resulted in me being asked to provide views on a range of issues including:

- arrangements for dealing with bus registrations in Wales within the new OTC in Caernarfon. Existing resources in Leeds do not allow for this to be undertaken to the standard required, I refer to my existing published comments, including my response to the consultation paper on public transport;
- the potential for PSV operator licensing to be dealt within Caernarfon (although the Welsh Government understands that fees would necessarily continue to be processed in Leeds). This reflects both the inadequate existing staffing levels in Leeds for this function, and additionally, separate needs and roles within Wales;
- suggestions for a line manager for administrative staff who support me (currently in Birmingham, but soon to be located in Caernarfon). This will need to address both the existing inadequate grade levels, and additionally, the additional functions that are likely to be sought for the TC for Wales with an increased appellate jurisdiction; and,
- potential synergies for road transport in the event of devolution of the DVSA functions to Wales. The good cooperative work taking place between the DVSA and Highways England may offer a model. It is to my knowledge that both those working within the Welsh Government and the DVSA in Wales suffer as a result of a lack of similar opportunities for synergies. For the avoidance of doubt, I envisage a good case being made for devolution of DVSA's commercial vehicle enforcement - but there is unlikely to be a strong case for devolving any MOT function.

### Future reforms

I have also provided a relatively full response to a consultation exercise on improving public passenger transport in Wales. This includes comments on:

- Mechanisms for public funding including Bus Services Operators Grant and concessionary fares;
- Registration of bus services;
- Safeguarding generally and DBS checks;
- Reform of the law relating to taxi and private hire licensing in Wales;

- Community transport and section 19 permits; and,
- Joint Transport Authorities.

My analysis of the requirements for effective bus registrations within Wales is that if the administrative function is undertaken by the TC for Wales, two members of staff would be able to perform this role to a satisfactory standard, see comments below.

It is understandable that the PSV industry seeks the administration of the PSV operator licensing role to be devolved in view of long-standing issues, mostly relating to resources. Again, subject to comments below, my view is that another two members of staff would ensure that this function is performed to a satisfactory standard.

I have referred above to potentially four additional staff being appointed, an option would be to increase the team in Caernarfon from the existing three staff to seven staff. If and when this comes about then there will be substantial synergies which would allow for improvements in other areas of service, including:

- the provision within existing resources for someone to provide a secretarial function for the TC. When I was based in the Birmingham OTC an individual was allocated to this task but she has since left the organisation. Until a few months ago secretarial services were carried out by a member of staff in the Bristol OTC, but she has since retired and has not been replaced. There would be substantial benefits for my successor as TC if the administrative support also provided secretarial services within Wales, as opposed to a remote function in England.
- Seminars for both the PSV and haulage industries with view to improving standards. Over the past three years seminars have been held for some within the PSV industry, but this was only possible with clear support from the Welsh Government. Local authorities were asked to supply addresses for operators who either have registered services or who have school contracts, this provided a list of potential attendees. It appears that there were some significant gaps and there are a substantial number of operators who have claimed that they had not been invited. When I was first appointed as a TC in 2007 there was a modest budget for each TC to have local seminars to bring about improvements in standards, this ceased as result of budget issues and the perception amongst some that it was for the enforcement body, the DVSA, to undertake this role. The seminars run over the last three years have addressed not merely standard issues relating to road safety, with assistance from Business Wales, training has included substantial specialist business support which is not within the DVSA function. Aside from an obvious need to reach out to all SME entities within the PSV industry, I remind myself that for every PSV operator there are about nine goods operators. Often when sitting in public inquiry dealing with individual sectors, I reflect that specialist seminars would exponentially improve road safety and provide business support for Welsh industries. The two primary roles of a TC relates to road safety and fair competition, specialist seminars for the two industries that TCs regulate would bring about considerable improvements. Too often when sitting in North Wales dealing with an honest farming family, I reflect that so much could be achieved if I had 20 or 30 similar farming families in the room.

There are various other sectors where specialist seminars could be run including:

- skip and waste disposal businesses
- scaffolders
- ground works operations
- other good operators that do not have a legal requirement for a transport manager because they do not carry goods belonging to others, but where the standards of compliance are exactly the same - it is also an issue of both public safety.

### Current and future arrangements for TC supporting Wales

TCs do not actually manage any members of staff, but delegates specific tasks to be undertaken on their behalf. The delegation of functions and allowing access to relevant data is a matter for an individual TC. Historic problems and tensions have stemmed from the fact that it is the Chief Executive of the Driver and Vehicle Standards Agency (DVSA) who is the accounting officer for the related trading fund, but the agency also retained responsibility for recruitment, retention and performance management of staff. It is also responsible for ensuring that processes are in place and for reporting on the work carried out by those staff. Each of the three individuals who have held CEO posts within the DVSA have at various times suggested that they ought to be both the licensing body (which is currently a TC function) as well as the organisation that carries out the enforcement, equivalent to the police.

Tensions between TCs and the Agency resulted in a formal legal Framework Document which clearly set out an acceptance of both the law and good practice. Unfortunately, the Framework Document is not always well understood leading to inconsistency and difficulties in the relationships with DVSA management. It is vital that DVSA demonstrates that it knows how to treat independent regulators who exercise tribunal functions.

One of the features that is most obvious to those who deal with staff working for TCs is that they are almost paralegals with varying degrees of delegated responsibility. As someone who is both HR and legally qualified it is manifest that there is an urgent need for a comprehensive review of grades for staff.

Theoretically the administrative support for TCs comes from fees incurred by applicants and operators. There continue to be repeated calls for greater transparency and accountability in the way operator licence fees are expended and the cost of services provided to TCs by DVSA. I have for several years when talking to industry events involving both the PSV and HGV industries, referred to the obvious disparity, which cannot support an effective PSV service. This has not resulted in major disquiet, usually operators will shrug and accept that the fees that they are charged are very modest when compared with a standard repair for a specialist HGV. In the case of the larger operators the fees can be minuscule when compared with the operating costs. Many transactions undertaken by staff are simply not charged for currently, this exacerbates the position.

Ideally stakeholders should be able to see transparency and accountability the way in which fees are gathered and have been spent and for what intended benefit. Unless there is structural change, I do not envisage any improvement on this.

AMs and ministers in Wales have over the years suggested that they should have greater control. Whilst currently it is DVSA which provides administrative support for all TCs across GB, the law provides for a potentially different arrangement. Paragraph 7 of Schedule 2 to the Public Passenger Vehicle Act 1981 states that: “Subject to the approval of the Treasury, *the Secretary of State may appoint such persons to act as officers and servants of a traffic commissioner (TC) as he considers appropriate.*”

One of the functions that has previously been agreed should be devolved to Wales (but not implemented) relates to registration of bus services which are currently administered in Leeds. Other public documents from me have described the pitifully low staffing levels and hopelessly inadequate grades applicable to this function. The hopelessly inadequate resources for both bus registrations and permits has resulted in my repeatedly referring to the function as being little more than a postbox. Too often staff will only be able to address an issue when the relevant local authority refers to a specific problem. The one positive under current arrangements is that staff dealing with bus registrations and permits are both dedicated and professional in their approach, they have my respect.

The fact that there are different legal notice provisions between Wales and England (outside London) in relation to bus registrations exacerbates problems. Whilst I have been critical historically on general issues of regulation of the industries, I have recognised that within Wales there is a long-standing desire to improve standards for the travelling public, this is illustrated both by the work undertaken by Traveline Cymru (with far more comprehensive information than that produced by its counterpart in England) - and additionally - work undertaken by the specialist bus compliance officers in Wales who have been effective in ensuring higher standards of timetable compliance within Wales when compared with England (outside London).

Although I have expressed longstanding concerns about DVSA administration and costs, I do emphasise the exceptional level of professionalism demonstrated by local examiners and their managers, often in the most difficult of circumstances. I thank them and the relevant OTC caseworkers for their dedication.



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