



Office of the Traffic Commissioner

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Transport Committee

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Thank you for your email of 13 December 2023 requesting information on the role of the Traffic Commissioners for Great Britain in relation to the Public Service Vehicle Accessibility Regulations 2000.

I will respond to each of the questions posed in turn.

You asked for information on:

- the role of the Traffic Commissioners in enforcing PSVAR and other accessibility regulations

The Traffic Commissioners for Great Britain are not an enforcement body. Traffic commissioners are appointed under section 4 of the Public Passenger Vehicles Act 1981 by the Secretary of State for Transport as specialist regulators for the transport industry. They have responsibility for the licensing and regulation of the operators of large goods and public service vehicles and those that drive them. They are a non-Departmental Public Body Tribunal. When fulfilling their tribunal functions, they sit alone.

Commissioners share common objectives of ensuring road safety and maintaining fair competition across the industries they regulate.

Commissioners are supported by staff, employed by the Driver and Vehicle Standards Agency, with staff members being deployed to the Office of the Traffic Commissioner (OTC). The OTC is not a statutory body.

Holders of operator licences must satisfy a traffic commissioner that they meet the requirements to hold a licence. These requirements include that appropriate arrangements are in place to ensure that vehicles are roadworthy and that legal requirements are met.

Commissioners rely on evidence of non-compliance being referred to them from enforcement agencies, most commonly the Driver and Vehicle Standards Agency but can also include the police and others.

On receipt of a case a traffic commissioner must consider whether the level of non-compliance is such that it requires intervention. In making the determination, the traffic commissioner will have regard to the Statutory Guidance and Statutory Directions issued by the Senior Traffic Commissioner. However, the law requires the decision maker to adopt a proportionate approach in determining the appropriate regulatory intervention.

In more serious cases, a traffic commissioner will convene a public inquiry (tribunal hearing) at which the operator may make representations to challenge any adverse evidence and as to why their operator's licence should not be revoked, suspended or the number of authorised vehicles be reduced.

Where the Secretary of State has concern over the fitness (by way of conduct) of a driver who holds a Large Goods Vehicle and/or a Passenger Carrying Vehicle driving entitlement, the driver may be referred to a traffic commissioner to consider whether that entitlement should be retained. Cases are referred on the Secretary of State's behalf by the Driver and Vehicle Licensing Agency or the Driver and Vehicle Standards Agency.

In a similar process to operator licensing, a traffic commissioner may call a driver to a hearing to consider the entitlement and what action might be taken, based on the evidence before the commissioner.

- the regulatory powers that the Transport Commissioners have in relation to accessibility (are there administrative and/or financial sanctioning powers?)

Section 26 (1)(bc) of the Transport Act 1985 provides that, where it appears to a traffic commissioner that an operator, without reasonable excuse, has failed to comply with a requirement of regulations made under section 181A of the Equality Act 2010, a traffic commissioner may attach a condition to:

- (a) the operator's licence in question;
- (b) any other operator's licence held by the operator;
- (c) where the operator is an undertaking, any licence held by a group undertaking in relation to that undertaking.

These conditions are —

- (a) a condition prohibiting the holder of the licence from using vehicles under the licence to provide any local service of a description specified in the condition;
- (b) a condition prohibiting the holder of the licence from so using vehicles to provide local services of any description.

Additionally, a failure to comply with PSVAR requirements would constitute a breach of section 155 (1ZE) of the Transport Act 2000 which states:

Where a traffic commissioner is satisfied that the operator of a local service has, without reasonable excuse, failed to comply with a requirement of regulations made under section 181A of the Equality Act 2010, the traffic commissioner may make one or more orders under subsection (1A)(a) or (d).

Subsection (1A)(a) is an order that the operator pay a penalty of a maximum of £550 multiplied by the number of vehicles the operator is authorised to use across all PSV operator's licences issued to him. Subsection (1A)(d) adds flexibility for the SoS or devolved administrations to make an Order of a certain description.

Furthermore, the circumstances of some cases may result in a traffic commissioner considering whether the matter affects the good repute of the operator or transport manager. Good repute is a continuing requirement for holding a PSV operator's licence and any finding that the operator is not of good repute leads to the mandatory revocation of the operator's licence.

The Public Service Vehicles (Conduct of Drivers, Inspectors, Conductors and Passengers) Regulations 1990 places a requirement on a driver to assist the boarding and disembarking of vehicles and the safe carriage of passengers in wheelchairs with relation to PSVAR. Any breach can be reported to a traffic commissioner to consider that driver's vocational entitlement, in accordance with the Road Traffic Act 1988. As for an operator's licence a traffic commissioner will consider each case on its individual merits when determining the appropriate level of intervention. The more serious or repeated incidences could result in action depriving the driver of the benefit of that entitlement either for a defied period or indefinitely.

- at what point the Traffic Commissioners will be drawn into action

A case must be referred to traffic commissioner and there must be appropriate level of evidence before the commissioner can consider taking regulatory action against an operator or driver.

It is important to note that there are property rights vested in an operator's licence and, therefore, before a traffic commissioner can interfere with those rights s/he must be satisfied that the action is proportionate. Otherwise, any action may be subject to legitimate challenge in the higher courts.

Regulatory intervention will generally be targeted at those cases which demonstrate serious or serially non-compliant behaviour by the operator or driver. However, the evidence provided by the enforcement agency must be to the appropriate standard of proof and should address any reasonable excuse which might be raised. There is case law relating to 'reasonable excuse', but it does not provide an exhaustive definition. It may include evidence of vehicles being unavailable in circumstances that could not be foreseen or planned for. Traffic commissioners must consider arguments of an operator's running a non-compliant vehicle as part of their legal balancing exercise.

- what enforcement action the Traffic Commissioners have taken on accessibility over the past five years

We reiterate the previous comment that the traffic commissioners are not an enforcement body and, therefore, do not take enforcement action.

Regulatory cases are most often multi-faceted. Whilst findings under individual sections of the legislation are recorded, we do not retain statistics for specific areas of non-compliance. We understand that DVSA have provided statistics to aid the Select Committee, within their evidence.

I hope this answers your questions. Of course, we are willing to assist further if required.

Yours sincerely

By email

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