

1st Annual Report to Welsh Government from Nick Jones as full-time Traffic Commissioner for Wales

I have pleasure in enclosing my first Annual Report to the Welsh Government as the full-time Traffic Commissioner for Wales. The report follows the establishment of new full-time role to serve Wales, under a Memorandum of Understanding (MoU) between the Secretary of State for Transport and the Welsh Government. I have been encouraged to set out my emerging thoughts on the future of operations within Wales. The MoU did not set out the reporting period and so I am producing this, my first report towards the end of a calendar year in my new role, in addition to the annual report to the Secretary of State for Transport for financial years commencing 1st April, produced jointly with my colleagues. I am of course content to produce future reports for whatever reporting period which best suits the Welsh Government

Accommodation and Staffing

The MoU establishes that the Welsh Government will provide accommodation for me in my new role, this has been identified in St Mary's Street in Cardiff, although at the time of writing this report it has yet to be fully configured and ready for use. The MoU also makes provisions for fully bilingual staff who are fluent in both English and Welsh. Unfortunately the siting of the office in Cardiff has made the task of recruitment more challenging. Institutions such as the BBC, the Welsh Assembly, the Welsh Government and the Welsh Language Commission recruited bilingual staff years ago, leaving a relatively small remaining pool of suitable and qualified staff. If recruitment is unsuccessful, consideration will need to be given to providing a base in North West Wales instead although there is a clear advantage in my being based in the capital and more readily accessible to Government and civil servants.

A feature of the MoU is that my annual report should be in both English and Welsh. As I do not yet have any Welsh speaking staff, I am publishing this in English in the first instance in order that it can be circulated without further delay, with a request to the Welsh Government for assistance for a translation in the Welsh language. I am hopeful that my next report will be fully bilingual as intended and as per the MoU.

Historically administrative support for public inquires and driver conduct hearings in Wales has been provided from Birmingham, it is understandable that the decision to provide a bilingual office in Cardiff has resulted in some staff seeking alternative secure employment in Birmingham, currently work for my hearings in Wales is undertaken by staff in both Bristol and Birmingham. Eventually, when my new team in Cardiff is in place I will be able to undertake more constructive engagement and to run specialist seminars with view to improving compliance in both the PSV and haulage industries. I am grateful to the Welsh Government for confirming support for this.

Bus registrations

Announcements were made some time ago confirming that devolution would include service registrations being undertaken in Wales. Current legislation requires local bus services to be registered with the traffic commissioner but there are potentially more effective and efficient options available with devolution. Before deregulation in the 1980s, traffic commissioners had power to determine if there was a need for a particular service. Whether and how often a service should run is now a commercial decision for the bus operators. If there is to be an impediment to that, surely it is for elected local authority members to determine?

My current responsibilities for bus registrations can feel little more than acting as a post-box, and a relatively inefficient one at that. Too often complaints and queries are received from people or organisations that obviously do not appreciate that under existing provisions, the traffic commissioner only has decisions to make in a tiny number of instances - essentially where an application is made without the proper 56 days' notice. It can feel that it is only by historical

accident that bus registration remain with me as Traffic Commissioner for Wales. This could be undertaken by alternative bodies and I hope that the outcome of the devolution of this function will result in no more than referrals if there is a need to make a decision.

The existing arrangements for bus registrations are not well supported by IT, as a result Traveline Cymru and other organisations often need to duplicate the work undertaken. Devolution of the bus registration function need not be a replication of existing systems administered in Wales; there is a clear opportunity to have a more efficient effective registration service that meets the needs of the travelling public in Wales. Currently the chargeable fees for bus registrations adequately meets the administrative costs and there are opportunities for Wales to provide a better service at less cost if proper systems are put in place. I have suggested that fees might be set at a level whereby there is a heavy discount if service standards are met as set by the Welsh Government, this would include matters such as liaison with local authorities where appropriate, and additionally, use of IT.

Any benefits in bus registrations being put to a traffic commissioner are more than offset by the disadvantages. Devolution provides an opportunity for reform.

Taxi and private hire law

The Law Commission review on taxi and private hire legislation made a number of recommendations which might be possible to implement as a result of the Wales Act. Importantly, changes can be introduced that suit the people of Wales, including a closer alignment of taxi and private hire vehicles licensed by local authorities and PSVs licensed by a traffic commissioner.

Current approaches to regulation by the two licensing regimes is sometimes at contrasting purposes, a feature which does not always assist the travelling public, and is sometimes used by rogue operators to their own advantage.

There is a category of PSV licence called a special restricted PSV, where there may be obvious scope for reform. Special restricted PSV licences are granted by traffic commissioners to holders of local authority private hire licences who want to run registered local bus services. On considering whether to grant these licences, traffic commissioners are currently unable to take into account factors relating to the applicant's reputation and/or finances. Effectively, the legislation assumes that these matters have been addressed by those who issue private hire licences. Devolution of taxi and private hire legislation to Wales would enable this to be addressed.

A significant role undertaken by all traffic commissioners relates to reviewing the conduct of professional drivers and determining whether they are fit to hold a vocational driving licence. Before the DVLA was set up, traffic commissioners were the licensing body and the people who determined whether individuals could or should hold PSV or HGV driving licences. Now, we make decisions on referral from the DVLA and those decisions are binding on the Secretary of State. There might be greater clarity if, in the new devolved structure, the Traffic Commissioner for Wales was an appeal body determining fitness for private hire and taxi drivers, as well as PSV and HGV vocational licence holders.

DBS checks

Listening to industry it is apparent that one of the frustrations for operators is that they often have to have separate DBS (formerly CRB) checks on drivers for each and every local authority area where they operate. The lack of transferability presents a significant regulatory burden and can lead to inconsistency; indeed local authority officers have pointed out to me what they consider to be considerable inconsistencies of approach.

A potential solution, which I have mooted with both the PSV industry and with local authority representatives, is that there be a new pan-Wales body to administer appropriate checks on behalf of all licensing bodies within Wales, with authorisations being required for anyone who drives one of several categories of vehicle. Suggestions include: taxis; private hire; other (including app-

based models); section 19 permits; and, PSV registered services. The appeal body could be the Traffic Commissioner for Wales (who currently determines fitness of PSV drivers).

Most members of the travelling public assume that DBS checks are carried out on all bus drivers, but that is because where there are specific contracts with local authorities there will almost always be checks conducted as a contractual requirement, it being a matter of safeguarding. Contrary to the general public perception, there is no requirement for DBS checks for PSV drivers, this has resulted in unsuitable individuals having been found to be driving PSVs. Occasionally this results in PSVs being driven by individuals who should not be driving them, including paedophiles. The rationale for not having DBS checks for all PSV drivers has traditionally been the need to avoid unnecessary red tape. It may be that the Welsh Government will wish to consider whether it has the power to require a DBS check for a PSV driver on a registered service as a condition of BSSG payments, or that it be paid at a far lower level. For the avoidance of doubt, whether or not DBS checks are compulsory for PSV drivers is not a devolved matter, however payment or otherwise of BSSG is devolved; potentially, Wales could lead the way on this.

Financial constraints on PSV operators

Legislation requires PSV operators to meet minimum standards in relation to financial standing and for this to be an ongoing requirement. Concern has been expressed in a number of quarters in relation to the number of decent family PSV operators that have ceased trading as a result of financial difficulties within the last few years. In one case before me within the last year I was faced with a formal request from a county council that I not revoke a PSV operator's licence on the basis that other local PSV businesses had failed and there was no obvious alternative available; revocation would result in significant problems for the travelling public.

In another case before me in North Wales, there was considerable publicity as a result of my revoking a PSV business. That business thrived as a result of it putting commercial considerations above road safety and was operating in a manner that had a significant adverse effect on the local PSV industry and bus users. The DVSA, the enforcement agency, subsequently commented that in that case a number of good family businesses that were not a prior cause for concern to the DVSA had ceased to exist as a result of their failing to obtain contracts; the number was perhaps as many as 10 to 12. Some were second and third generation family businesses.

Similarly, Welsh Government, Welsh Assembly members and others have also expressed concern that a number of family run PSV operators had ceased to operate in the past few years. I am concerned at the link in some instances to the contracting of passenger transport services, the outcome can be what has been described as "a race to the bottom". In such cases, good compliant family businesses may not be prepared to bid so low, knowing that they would struggle to comply with safety legislation.

As a result of my concerns about local authority contracts, I met with and had a very good discussion with Association of Transport Co-ordinating Officers (ATCO), representatives from local authorities that make decisions on the award of contracts. I am grateful to ATCO for its full cooperation in my conducting a survey of its members. The following key points emerged:

- Most, although not all of the 22 local authorities, responded to a request for copies of criteria for the award of contracts. Comments from ATCO members suggested that where there was a lack of response it was usually as a result of tendering being undertaken by a separate local authority procurement team.
- Both written and oral pleas were made to have central guidance and clarity of advice.
- In some areas local authorities endeavour to work collaboratively and to use the same criteria as neighbouring authorities, this joint working can both improve efficiency and provide greater transparency.
- Some but not all local authorities award contracts using both quality of service and price. A typical authority might contract on the basis of 30% quality and 70% price, although other authorities will reverse this ratio and award contracts on the basis of, say, 70% price and 30% quality. In a number of instances the ratio is 60:40.

- A feature of particular concern is that a number of authorities award contracts solely on the basis of price, this is where there is an increased likelihood of there being the “race to the bottom” referred above.
- Some authorities award contracts solely on the basis of both tenders and reverse auctions. Again, I have limited sympathy with those authorities which find themselves in difficulties as a result of their good family businesses opting to cease trading.
- In some cases officers from authorities that award contracts solely on the basis of price have indicated that they deal with problems by ensuring appropriate penalty clauses for failures. Whilst I accept that there will be a need for arrangements to ensure a contract is carried out satisfactorily, I have grave concerns where the sole criteria for the award of a contract is price.

In the specific case referred above where a number of good compliant family businesses had ceased trading, there was a significant gap in the market as a result of my closing the seriously non-compliant business. This was addressed by the Welsh Government providing additional funding of circa £300,000. I suggest that if authorities continue to issue contracts based solely on price that there should be an expectation that standards will be reduced for the travelling public and local authorities will be more likely to go cap in hand to the Welsh Government to bail them out.

My discussions with the PSV industry reveal that another feature that creates concerns for them is that cash flow problems can arise from irregular local authority payment practices. There seems to be an absence of service level standards in relation to payment of reimbursements such as concessionary fares. In the case of small and medium-size businesses this can create real difficulties and I have considerable sympathy with those PSV operators who would like to see agreed standards. PSV operators will be expected to pay their bills with a degree of promptness, I do not consider it unreasonable that they should also expect that their income streams are not held back arbitrarily.

I applaud the Welsh Government in its initiative involving Business Wales, who are planning workshops for PSV operators and providing valuable advice on finances. However I am clear that the two most significant features that would assist small and medium-size operators would be to:

1. Introduce service standards to ensure PSV operators are not financially disadvantaged by late reimbursement of moneys such as concessionary fares; and,
2. Commence a review of criteria for the award of contracts by local authorities. This should consider both whether cooperative regional working might be more effective, and additionally, the review should ensure that the award of contracts does not solely consider issues of moneys but considers quality too. The safety of the travelling public especially schoolchildren, is too important to allow the award of contracts on price only.

Bus Service Support Grant

One of the features where Wales is already different to England is in the grant rebate for bus operators. The existing arrangements in Wales have the early stages of a scheme whereby there is a weighting to take into account issues relating to the quality of the bus service provided. It may be perceived by some as relatively crude scheme but is benefiting from the input of the Confederation of Passenger Transport (CPT), the trade association for the bus industry. The principle is a fine one.

It is surely an anomaly if all registered local bus services receive the same level of support grant and it therefore seems eminently sensible to decide how limited resources are allocated to address the needs of its people. Paying all operators the same flat rate of BSSG does not obviously assist in the targeting of limited resources. Often I hear of representations made in relation to e.g. cuts in rural services where, although relatively few people may be adversely affected, the lack of a bus service has a very significant impact on the lives of the individuals concerned.

One of the suggestions that has been mooted relates to whether BSSG can be configured so that it addresses the needs of the travelling public e.g. a slightly higher rate in remote rural areas in

appropriate circumstances. There is a limited pot of money available for BSSG, in basic terms it is about £25 million a year.

The Welsh Government might therefore wish to consider an extension of the existing scheme so that there is greater emphasis on quality of service provided by an operator on a registered service; I accept that quality of service is a feature of existing provisions. However options are available which could determine that there be a specific BSSG element that was capable of being withdrawn in certain circumstances, examples include:

- Referrals by either a local authority or Bus Users Cymru for failures to run to the registered timetable;
- Referral by the Welsh Language Commissioner for failure to adhere to Welsh language standards as set out in existing devolved legislation. Within a few years all those who register services will be required to meet the standards set by the Welsh Language Commissioner;
- Referrals from DVSA or the police in relation to road safety or fair competition issues; and,
- Referrals from organisations prescribed by the Welsh Government in relation to failures to comply with new standards required for registering bus services (this would be an incentive to utilise IT as set out by the Welsh government – and - to liaise appropriately and cooperatively with local authorities).

Other options are also potentially available and theoretically a higher rate of BSSG might be available on particular routes as determined by the Welsh Government. An obvious impediment to an effective BSSG is the fact that the sums currently distributed by the Welsh Government are relatively low, especially in comparative terms when contrasted with concessionary fares.

Concessionary Fares

I have discussed concessionary fares with a range of individuals from a number of different backgrounds and it has been suggested that I set out issues with the intention that perhaps there might be a debate within the National Assembly for Wales on this subject. I emphasise that I am not making any specific recommendation, instead it has been suggested that I set out some key facts which might facilitate a constructive debate. Ultimately any decision to change the status quo would be a political one and I regard that as something which I should properly avoid.

The existing concessionary fares scheme was introduced towards the beginning of the century to address the mobility needs of those who were retired. At that time the normal retirement age for many people was 60. I understand that in early 2010 the Welsh Government confirmed that the age of eligibility for older people in Wales would not rise in line with changes to the state retirement age, but would remain at 60. It is because of more recent changes to state retirement ages that it has been suggested that there should be a further review. Increases in retirement ages results in an increasing proportion of those who commute to work utilising concessionary passes. It is for political representatives to determine whether those monies might be better spent on something else, one suggestion being increased subsidies in rural areas.

At present approximately 760,000 bus passes have been issued within Wales, to put this in context the population is circa 3 million. The Welsh Government's consultation document on Bus Services Policy issued in March 2017 indicated that bus passenger numbers had declined, however there has been a significant increase in the number of concessionary journeys undertaken. The extent of proportionally greater use by concessionary pass holders within Wales is illustrated by a table produced in the above consultation document, which shows concessionary fare journeys undertaken in Great Britain expressed as a percentage of all bus journeys. The latest published figures are for 2014/15:

- England 34
- Scotland 36
- Wales 46

Most concessionary fare journeys are validated by use of a card however not all operators have the equipment to utilise the card. In these cases operators will manually count the number of

concessionary pass holders. I have concerns at the potential scope for mistakes and or worse and note that there has been at least one prosecution for a major fraud. If funds are limited it is important that they are not misused and are appropriately targeted. There is a case for requiring operators to use equipment, if necessary supplied by the Welsh Government. Again, it might form part of the eligibility for BSSG to require use of IT at the specification set from time to time by the Welsh Government.

Using rough figures, for every £1 spent on BSSG, £3 is spent on concessionary fares. Monies available to the Welsh Government will always be finite, the more that is spent on concessionary fares, the less that is available for BSSG. If it is the view that BSSG might be used to shape and target funding for bus services in Wales to address the transport requirements of those who need local bus services, additional funds might be needed from some other source, or alternatively, consideration could be given to reducing concessionary fare expenditure.

As indicated above it would be inappropriate for me to offer a settled view and research might be required to understand the impact if concessionary fares in Wales were at the same levels as those in England. I am acutely aware that in the event of a shift to match concessionary fare arrangements with those in England, there will need to be a carefully planned transition and that existing pass holders do not lose out. I reflect that the WASPI campaign has revealed potential significant disadvantages if a major change is not planned, executed and communicated well.

Community Transport

As this report is dictated I am conscious that there is some debate taking place within both the PSV and community transport sectors in relation to the demarcation between the two regimes. As a traffic commissioner I do not feel that it would be helpful for me to become embroiled in this debate. The Department for Transport has already announced that a consultation will follow in the autumn. The Welsh Government will no doubt fully engage with the process, there are potential opportunities for reform.

Currently the issue of community transport permits is undertaken by a hotch-potch of organisations with an almost complete lack of transparency and/or accountability. New permits are granted for five years but there could be old permits still in use because regulations were never introduced as anticipated by legislation, to bring them to an end. There are three types of body that grants permits:

1. Traffic Commissioners - the existing system is not very effective and, as mentioned above, we have become little more than a post box with very few referrals to traffic commissioners as a result of the current legislation. Another licensing body recently told me that where it had refused a permit, the organisation reacted by successfully obtaining the same type of permit from a traffic commissioner. Curiously the reverse has also happened, so where a traffic commissioner sought to introduce a form of seminar to train potential permit holders prior to issue, applicants decided to withdraw their applications and obtain them from an alternative licensing body.
2. Local authorities - they are the most likely to grant permits inappropriately and there is a lack of consistency. In fairness to local authorities in Wales, complaints about a lack of consistency have been made in England, I am unaware of there being any special problem in Wales.
3. Designated bodies - there is a sundry list of about 60 bodies that have authority to issue permits. The list of bodies able to authorise section 19 permits would result in surprise at how and why certain organisations have been given those powers. One of these designated bodies is strikingly different as it has far more effective control than any of the others. It is the Community Transport Association (CTA).

I spoke to the last AGM of the CTA in Wales and noted that there was no obvious dissent from the suggestion that if there was only one licensing body, with a single coherent rulebook, that might leave the Traffic Commissioner for Wales to be the appeal body. If this came about there ought to be a process whereby bodies such as local authorities and the CPT could be able to object to applications for permits and/or their continuation.

Currently the CTA issues permits to a wide variety of organisations, paradoxically this includes the issue of permits to organisations on the list of designated bodies. There is the potential for a future designated body to recognise that the CTA provides training and whilst that designated body might well be a worthy cause, it doesn't necessarily have the expertise of the CTA.

Whilst the CTA is regarded by many as the principal issuer of community licences amongst the list of designated bodies, it has also been described by some as a trade association, this reflects how highly it is regarded and is also a recognition of its invaluable training role. Constitutionally it would be logical to ensure that any future organisation that issued community permits, could not also be a trade association.

The Impact of Congestion on Bus Services

I did not respond to a formal consultation exercise on the above subject as it included a period when purdah applied, pending the General Election to the Westminster Parliament. The Economy, Infrastructure and Skills Committee has subsequently produced a report which sets out key issues, I would not wish to contradict anything in it. As regulator for both the PSV and the HGV industries I would wish to add to the conclusions.

The crux of the problem is that at peak times there is avoidable congestion especially in urban areas and this has a significant impact on both the economy and environment. This is especially the case during school terms, as evidenced by the considerable reductions in traffic during school holidays. The provision of timely bus services can have a significant positive effect on both congestion and the environment.

I point to the fact that there have been instances across Great Britain where the introduction of bus lanes has had the effect of a negative public reaction with a degree of hostility. This is especially so if a bus lane has not been properly planned and where there is ineffective enforcement action in relation to those who transgress.

Any new bus lane might sensibly include consideration as to the scope of vehicles that are entitled to use that specific stretch of road. In some parts of the country local authorities have allowed HGVs to use bus lanes where the roads are planned so that this is facilitated. It is a recognition of the fact that HGVs are essential for the economy and the provision of services, indeed alternatives to using HGVs usually result in a considerable number of unregulated large vans thereby increasing congestion and causing far greater environmental damage. As the regulator for the HGV industry I also point out that a single modern efficient HGV will produce far less pollution than a traditional five-year-old family diesel car. I am not suggesting that HGVs should use all bus lanes, I merely point out that each case should be considered on its merits and that there might be occasions when allowing HGVs to use a bus lane will improve traffic flow.

In parts of central London where there is an acute shortage of road space, there are circumstances where only PSVs are allowed to use bus lanes and taxis are excluded from using them. My point is that where a bus lane is introduced, thought should be given to who is allowed to use it.

Good planning is required and unintended consequences should be avoided. I am conscious that some cities that have introduced separate road spaces for bicycles for understandable safety reasons have had problems when emergency vehicles have had their access limited as a result of ordinary cars and other vehicles being unable to pull over and leave sufficient space. This can create unintended problems for emergency services.

I am also conscious that use of road space needs special care when it is used by both HGVs and bicycles. A number of excellent initiatives have taken place involving specialist training for HGV drivers to better understand the needs of cyclists, and vice versa. Specialist cycle awareness is not yet to my knowledge one of the modules for HGV CPC, although this might change in the future.

Liaison and communications

I am endeavouring to set up pan-Wales forums with view to improving communications within both the haulage and PSV industries. Whilst I appreciate that much of this report focusses on PSV issues, the majority of licences, the majority of vehicles and the majority of hearings concern HGVs. Preliminary meetings have been held, with the first formal one due in October 2017.

Whilst I seek to communicate effectively with all relevant organisations in Wales, I am clear that there are some where there would be considerable mutual advantage if we met to discuss potential synergies. It is difficult to bring this about without any staff based in Wales to assist me, hopefully this will be addressed soon.

The Welsh Government has already indicated support for my holding regular seminars with view to both educating and communicating with operators, thereby improving road safety and assisting in achieving a level playing field for operators. Again, once I have staff in Wales to assist, this can be addressed.

Other

This, my first annual report for the Welsh Government, is very different in its nature to that produced for the Secretary of State for Transport. Whilst I have received every support from Welsh Government officials, I would still welcome constructive comment on both the contents and format of this report so that I may continue to best serve the communities of Wales.



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