

## **Second Annual Report to the Welsh Government by the Traffic Commissioner (TC) for Wales**

### **Foreword**

I have pleasure in enclosing my second Annual Report to the Welsh Government. My first report was written on the anniversary of my appointment as full-time TC for Wales, however most annual reports refer to financial years. It details both positive and negative features. As I proof-read this report prior to publication, I note that the Welsh Government has issued a consultation document on Improving Public Transport, this is not intended to be any response to that exercise. I have previously set out areas which might potentially be devolved<sup>1</sup>.

As with all other TCs I produced a report to the Secretary of State for the financial year April 2017 to March 2018<sup>2</sup> and I ask that my report to the Welsh Government be read in conjunction with my other report.

I am grateful to the Welsh Government for confirming that it will ensure that this report is translated so that it is available in Welsh. When the new Office of the Traffic Commissioner (OTC) is opened in Wales with bilingual staff, this will hopefully avoid the need for such a request to be made.

### **Issues raised in my first Annual Report**

My first report to the Welsh Government referred to potential use of HGVs in bus lanes. This had been discussed at a forum involving various interested users and I also raised the subject at a meeting of the Wales Road Transport Advisory Group.

The resulting media coverage and commentary on this issue revealed that some people inaccurately thought I had suggested HGVs should share bus lanes with cyclists. For the avoidance of doubt, the outcome of the various discussions confirmed that HGVs might sensibly use bus lanes in strictly limited circumstances, typically on a bypass or link road.

If HGVs seriously impeded the flow of PSVs in bus lanes then this would defeat the whole object of having a bus lane and would be discouraged. Furthermore, any shared use of a bus lane should be considered on its merits. It is difficult to envisage both HGVs and cyclists sharing a bus lane safely.

My first report also referred to prospective office accommodation in Cardiff or North West Wales. I deal with the lack of progress on this later in my report but I was perplexed to see various press reports suggesting that I am still based in Birmingham. This has not been the case since September 2016. The administrative support for my public inquiry and driver conduct hearings comes from Birmingham, with work also undertaken by staff in Bristol and other locations within the OTC including Eastbourne.

As a Traffic Commissioner, I have actually been working from home while the search for office accommodation continues. Although this affords me a view the delightful black

<sup>1</sup> 1st Annual Report to the Welsh Government from Nick Jones as full-time Traffic Commissioner for Wales

<sup>2</sup> Traffic Commissioners' Annual Report to the Secretary of State 2017/18

mountains of Wales, it is no substitute for having a permanent office base and adjacent administrative support. There are practical disadvantages too, especially when this has been ongoing for more than two years. I have been heavily reliant on IT, a feature which was especially problematic when I lost nearly 18 months of work due in part to changes imposed by the Driver and Vehicle Standards Agency (DVSA).

## **Equipping Welsh operators for the future**

### *Seminars held in 2018*

A substantial proportion of bus operators in Wales are SMEs. Following the 2017 Bus Summit there was recognition of the need for potential financial support and guidance for family businesses within the bus industry. Support from Business Wales was an essential feature of the workshops and seminars that followed. Eight separate workshops (or listening exercises) were held. This will have assisted the Welsh Government in its work on evaluating stakeholder views on:

- information including customer relations, marketing, fares integration and technology
- accessibility, safety and infrastructure, delivery reliability and congestion
- environmental, planning regulations and land-use planning
- funding arrangements including better targeting of Bus Service Support Grant (BSSG)

Aside from sessions on compliance led by myself and senior DVSA staff, some excellent presentations were facilitated by Business Wales. I took particular interest in watching the interaction between operators and a professional bid writer whose ordinary day job includes writing bids or training others to do so. On several occasions he commented that the PSV industry appeared to be treated differently to other industries and that this led to some contracting organisations funding solely on the basis of price. Aside from exacerbating what might be viewed as a race to the bottom in terms of quality and of safety, there may also be questions as to the probity of such decision making by some local authorities.

It is clear that an urgent lesson of the seminars and other interaction within the PSV industry and stakeholders is that the existing arrangement, whereby 22 local authorities issue contracts or tenders for services, leads to considerable difficulties. Training has now been provided for PSV operators, but it is clear that whilst some local authority staff have a high degree of expertise, this is not necessarily the case across all authorities. I would suggest that there is a real need for support to assist in both compliance with the law and best practice for those officials who deal with contracts. Existing arrangements may continue to cause substantial difficulties. At the very least, there is a need for local authorities to work on a consortia basis. This would both recognise the fact that much public transport is based on a region rather than on a specific local authority, and additionally, reflect the benefits of sharing and developing expertise.

### *Seminars planned for 2019*

Plans are in hand for further training being offered for PSV operators including specialist safeguarding training, it being apparent that both the knowledge and skills of SMEs operating PSVs can be lacking. The programme for 2019 will also provide opportunities for specialist business development training.

I have previously commented on the need for training for the various sectors of the HGV industry in Wales. This will only be possible with an established and staffed office for the TC in Wales.

## **Challenges facing Welsh operators**

### *Difficulties in recruitment of HGV and PSV drivers*

The Welsh Government has at various times referred to concerns expressed by local authorities and operators about the difficulties recruiting vocational drivers. Various statistics have been quoted as to the ratio of male to female drivers within the HGV industry; only 1% to 2% are female. Figures for the PSV industry are slightly better, but nothing to instil confidence. The figures above are reflected across the whole of GB.

As someone with a long-standing background in challenging inequality and promoting diversity, I am particularly troubled by the lost opportunities to promote professional driving as a career. I am pleased that within Wales some collaborative work is being undertaken with the Department for Work & Pensions (DWP) which will seek to work with key stakeholders in Wales including operators in a pilot scheme in North West Wales. This could involve funded training of potential recruits to the industry. Transport managers from participating operators will be asked to attend a workshop on equality and diversity and to commit to improving access to employment for females and minority groups.

Whilst this is a long-standing problem, I am delighted that those working in Wales are seeking to take initiatives to make a difference. The difficulties in the recruitment and retention of suitable vocational drivers has been a barrier to long term sustainability across Wales (and England).

### *Addressing potentially fraudulent concessionary fare and BSSG claims.*

A high profile fraud case involving concessionary fares has been concluded, enabling me to now comment. Features include both the very high level of fraud that was proved in a court, and additionally, the apparent ease with which it occurred.

My previous reports have referred to the much higher ratio of state funding in Wales when compared to England & Scotland, as a proportion of PSV operator income. A consistent and clear comment from listening to industry is that there is a need for vastly improved controls. The monies defrauded in two separate cases involving North Wales operators is exponentially higher than the likely costs of implementing reasonable controls to prevent such fraud taking place.

As someone who is not involved in the concessionary fares process, I comment that it is for others to reflect on use of improved technology together with effective systems for monitoring claims for reimbursement. It is clear to me that, at the very least, local authorities should work on a consortia basis when dealing with matters such as concessionary fares and BSSG. There is also a need for greater clarity and training in the control/audit process.

Notwithstanding the urgent need to address frauds involving public monies, I recognise that there is some good expertise within the 22 local authorities. Problems sometimes arise as a result of expertise becoming diluted or lost.

## **The role of the regulator in Wales**

### *Environmental issues with HGV operating centres.*

One of the functions of a TC is in relation to jurisdiction on safety and environmental issues for HGV operating centres; there is no TC jurisdiction over environmental issues for PSV operating centres.

There is a list of statutory bodies who are able to object to the planned use of sites for the parking of HGVs, including local authorities. Additionally, people within the immediate vicinity also have a right to make representations within prescribed time limits.

It is one of our functions which is ripe for reform and indeed TCs on a GB wide basis have suggested that in the next general review of our work this be considered by the UK Government (it is not devolved).

I note that on at least one occasion a question has been posed by an AM on an environmental issue, which received a standard response from the centralised licensing team which deals with all such applications within GB.

### *Meetings and communication with AMs and MPs*

Throughout my career as a TC I have welcomed AMs and MPs contacting me with individual queries. Most stakeholders appreciate that I may not always be able to respond personally, if it could prevent me from sitting on an individual case. I will always try to meet with the AM/MP if I can address the issue. This enables me to more fully explain my role, including any limitations of the jurisdiction.

### *Accommodation for the TC and staff in Wales*

Other TC offices in England and Scotland have dedicated public inquiry facilities and office accommodation, however that is not the case in Wales. As a result, the TC and Deputy TCs in Wales use court and tribunal accommodation provided by the Ministry of Justice (MoJ). Historically this has not been a problem as there were many potential sites available. An unfortunate consequence of understandable efficiency initiatives by the MoJ is that finding suitable court or tribunal accommodation is now far more difficult, with many courts and tribunal buildings having closed. Within Cardiff, it is increasingly difficult to find suitable and convenient sitting days.

The Welsh Government is looking to address the lack of tribunal facilities in the medium term through its new purpose-built accommodation in Pontypridd for Transport for Wales (TfW). This accommodation will also have dedicated facilities which will be suitable for traffic commissioner hearings. I remain grateful to the MoJ for allowing the use of its Justice Centre in Welshpool for my hearings in North Wales.

At the time of finalising this report, I was very pleased to have been told that the provision of accommodation for the Office of the Traffic Commissioner in Wales in Caernarfon is progressing well. This office will take over the work currently undertaken in Birmingham and elsewhere to support my public inquiry and driver conduct work. As with all TCs across GB, licensing matters remain centralised in an office in England (Leeds)..

The building in Caernarfon will also have the facility to hold some public inquiries. This will allow for hearing centres in both Welshpool and Caernarfon for north-east and north-west Wales.

In addition, the Welsh Government is providing an office for the TC for Wales to use in Cardiff so that he/she can be accessible both to the Welsh Government and to the Assembly and its members; this will be very helpful.

### *Staffing of the Welsh Office*

On my giving evidence earlier this year to the Assembly's Economy, Infrastructure and Skills Committee<sup>3</sup>, it was suggested to me that perhaps a contributory factor in the difficulties in recruiting suitable Welsh speaking staff in Cardiff could relate to pay scales.

The three administrative support staff to be based in Caernarfon will be paid on the civil service Executive Officer grade, equivalent staff in England are paid on the lower Administrative Officer grade. It has been suggested to me that the rationale for the slightly higher grade in Wales was the fact that the three posts would not have a resident line manager, it being envisaged at that time that if the office was in Cardiff then line management might be based elsewhere.

This contrasts with my view, which has always been that the posts should be the slightly higher Executive Officer grade to reflect the person specification requirement that the post holders be fluent in both English and Welsh.

It was not envisaged that the OTC in Wales would be self-sufficient, with shared line management support being provided from another OTC. As the office for the TC for Wales is to be based so far from other TC offices, my advice to the Welsh Government is that the grade for any line management post be postponed until consideration is given as to what other posts might also be based in the office. This in turn will depend upon future decisions on potentially devolved matters. It will be for whichever Agency has responsibility for supporting TCs to justify the grade and location of the manager for the Caernarfon office.

### *Bus registration for Wales*

A function which has received long-standing approval in principle for devolution is the registration of bus services. I have consistently described our role in this activity as being little more than a post box exercise, under existing arrangements. It was enlightening to accompany a Welsh Government official on a visit to the centralised bus registration team in Leeds, where 3.4 full time equivalent (FTE) posts undertake bus registration work for the whole of England and Wales outside of London. There are about 11,000 transactions a year, with circa 1000 transactions for Wales.

During the peak summer holiday period and prior to school start times being finalised, there are often over 300 applications a day, most with several tens of pages of paperwork. Although there is an IT system for bus operators to use, it is not compulsory and in any event is one whereby only part of the information is capable of being extracted for use by OTC staff. All members of the small administrative team are on Administration Officer grade and are line managed by an Executive Officer who is also responsible for processing all the section 19 and section 22 community transport permits across the country.

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<sup>3</sup> Economy, Infrastructure and Skills Committee Transcript 29/11/2017

It is evident that the team must be heavily reliant on local authority officers contacting them to point out concerns or problems with registrations. As a result, the opportunities for genuine scrutiny are very small. Many of the changes to registrations by operators refer to an “amendment to timetable”, with the team being responsible for checking and verifying the details, if there is time to do so.

I must emphasise that whilst the above paragraph might appear critical, it is of the structure and system that has been put in place by DVSA, not the staff. The centralised licensing office in Leeds has been subjected to sustained “efficiency” cuts over the years, the outcome is a very significant reduction in staff numbers since centralisation in 2006. The individual members of staff are dedicated and endeavour to be as professional as resources allow; I hold them in high regard.

If the Welsh Government seeks to assume responsibility for bus registrations in Wales then it should consider what it wants to achieve. Previously I have commented that there are various alternatives to bus registrations being with a traffic commissioner, indeed the Buses Act 2017 provides for registrations to be undertaken by local English authorities in certain circumstances. Currently the work undertaken on bus registrations for Wales is only half of one FTE member of staff. If this work is devolved, then consideration should be given as to staff numbers, if it is to be performed at a standard that will be acceptable to the Welsh Government.

## **Looking forward**

### *Appointment of my successor*

The reasons why I face compulsory retirement in 2019 by reason of age, together with concerns as to recruitment of a suitable successor, are set out in a submission that I made to the Commission on Justice in Wales<sup>4</sup>.

The Memorandum of Understanding (MoU) signed on behalf of both Welsh and Westminster ministers sets out that Welsh Ministers will be consulted on the process of appointing the TC for Wales, including the composition of any appointment/interview panel. The stated justification is the funding support provided by the Welsh Government to enable a full-time post holder.

My submission to the Commission on Justice in Wales suggested that consideration be given to the future TC for Wales being part of the Welsh Tribunal Service. It would inevitably require a review of the MoU. I am content to elaborate on why that would be in the interests of both Welsh operators and the general public in Wales, not least among them is the inability of DVSA management to understand the legal limits of its support role to commissioners. Any move to the judiciary would also assist in genuine promotion of equality of opportunity.

Early decisions on the above points are recommended.

### *Accountability for the cost of support*

Under the current support arrangements for traffic commissioners, it is difficult to provide an entirely accurate assessment of the true costs of the work currently undertaken by TC

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<sup>4</sup> Submission to the Justice Commission from the Traffic Commissioner for Wales

support staff who are employed by DVSA. First, many of the transactions undertaken by operators (eg. vehicle changes) are not chargeable. Second, but perhaps more importantly, there is a lack of transparency over fees and charges generally.

Aside from general concerns<sup>5</sup> around governance arrangements with the existing DVSA support for TC functions, there is a real question as to whether the current fee structure for operator licensing is capable of supporting the regime that is required to deliver it. As referred to above, a large number of transactions are not charged and the one size fits all fees hits small and medium-size enterprises more disproportionately. For the last eight years or so I have been candid at both PSV and HGV industry events, describing how the HGV industry has been subsidising PSV fees. As the actual fees charged are very modest as a proportion of running costs, this has contributed to the lack of concern from industry, however it is legally questionable.

In line with my concerns about financial support, I would recommend that the Welsh Government give consideration to what functions it envisages the OTC in Wales performing. Currently it is for the DVSA to determine both grades and volume of staff, hopefully this will change, at least for Wales if not for GB as a whole.

As someone with professional qualifications both as a lawyer and in HR, I recommend that grades for staff within Wales be subject to an independent objective review. A number of potential devolved functions for the medium and long term have been identified. Two separate considerations arise: first, it would be for the Welsh Government to decide whether any new delegated function is carried out in the OTC in Caernarfon or by another public funded body such as the Welsh Government itself, TfW or another body. Secondly, the level of supervision will also depend on the seniority sought for the office manager. Prior to the centralisation of the TC licensing functions each TC had a member of staff who had a level of seniority which afforded that individual to undertake higher level policy and administrative support, freeing up the TC to work more efficiently and effectively.

The number of chargeable transactions involving bus registrations considerably exceeds the cost of staff currently employed to undertake this task for Wales. If bus registrations were addressed in a way that met the level of scrutiny and service standard that I anticipate the Welsh Government would expect, this might not still be the case. Whilst the fees recovered for this task are circa £60k a year and pending legislation setting out chargeable fees in Wales, a more flexible option might be to not charge a fee for a registration and instead ensure that BSSG is configured so that those operators who do not meet the Welsh Government's service standard receive a lower level of BSSG.

I have previous experience as a public-sector chief officer involved in both capital procurement and PFI schemes. I am grateful to both the Welsh Government and Gwynedd Council for the work undertaken in what is likely to be my office accommodation for staff in Caernarfon. That accommodation appears to offer very good value for money.

This contrasts with costs associated with what was to have been an office provided elsewhere in Bangor; the sum quoted by the DVSA for what amounted to little more than putting up a dry wall was what I would describe as surprising.

This illustrates an area where there is significant room for improvement. For a number of years TCs have been calling for greater transparency and accountability from DVSA for the manner in which it expends the fees collected on behalf of TCs. The fees charged are

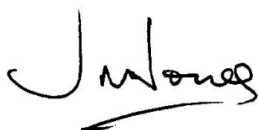
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<sup>5</sup> Select Committee on the Constitution – Judicial Appointments Process: oral and written evidence (pp. 321-323)

for the statutory purposes set out in the legislation and should not be used to subsidise other schemes of DVSA.

*Future reporting*

In view of my pending compulsory retirement on 30 September 2019, I recommend that the Welsh Government ask for my third and final report to be produced by 01 September 2019.

A handwritten signature in black ink, appearing to read 'Nick Jones', with a long horizontal flourish underneath.

**Nick Jones**  
**Traffic Commissioner**  
**Comisiynydd Traffig dros Ardal Drafnidiaeth Cymru**

**December 2018**