

Passenger representation and information
display consultation
Buses and Taxis Division
Department for Transport
Zone 3/11
Great Minster House
76 Marsham Street
London SW1P 4DR

2nd Floor, Whittles House
14 Pentonville Road, London, N1 9HF

w www.passengerfocus.org.uk
t 0300 123 0860 f 020 7713 2729
e info@passengerfocus.org.uk
direct 0300 123 0850
e anthony.smith@passengerfocus.org.uk

8 October 2009

Our Ref: Let1660/Consultation-buses&coaches/AS/ad

Dear Colleague

Extension of the remit of Passenger Focus to bus and coach issues and the requirement to display information: consultation document

We have pleasure in responding to the consultation, much of which has very direct implications both for individual bus, coach and tram passengers and for the future of this organisation.

Summary

We welcome the consultation, which we believe contains a sensible set of proposals for securing the statutory representation of bus, coach and tram passengers.

We agree with the proposals that we should represent passengers of buses, community transport and scheduled coach services. We would be pleased to take on the role of representing tram passengers if asked to do so; we believe we can add real value. We will cooperate with passenger organisations in London, Scotland and Wales to offer a joined-up, one-stop service to passengers.

We support the proposed power to obtain information from operators and local authorities, although we consider that it needs strengthening. We believe the Traffic Commissioners are best placed to arbitrate in the event of a dispute. We also support the right to refer the matter to the Traffic Commissioners or the Secretary of State if we are unable to achieve a satisfactory outcome.

We recommend that the Traffic Commissioners should be asked to enforce tram passengers' rights.

Our research suggests a potentially high level of passenger dissatisfaction with complaints handling by the bus industry. The industry should be given 15 months to improve. We will work closely with the industry, with Bus Users UK and the Bus Appeals Body over this period to help them to achieve a step change. At the end of 15 months, Passenger Focus will carry out further



research to establish what improvement there has been to the handling of complaints and appeals, and to quantify the number of appeals following the introduction of the new publicity requirements. If there has been no significant improvement in the handling of complaints and appeals, Passenger Focus would be prepared to take on the appeals role, but only if funded to meet the level of appeals presented (the volume of appeals following the introduction of the new publicity requirements should be clearer by then). Such funding would not necessarily have to come from Government: for example, the industry could be required to pay a levy to support an independent appeals-handling service. Taking on the appeals role would be a significant addition to our responsibilities and the commitment to encompass it would, in our view, require specific direction from ministers and agreement on resourcing the requirement.

We support the proposed requirements for operators to display a notice on their buses, coaches and trams advising passengers how to complain. Information should also be displayed at bus and tram stops and in stations. We also agree with the proposals for requiring operators to provide a contact for complaints handling, a description of how their complaints system works and contact details for appeals if passengers are not satisfied with the way their complaint has been handled. The Traffic Commissioners should be asked to enforce this requirement.

Operators should be required to report annually on the number of complaints they have handled, the speed of responding to them and the action they have taken as a result.

Questions

Question 1: Should Passenger Focus be the statutory representative for tram passengers?

Passenger Focus would be pleased to take on the role of representing tram passengers if asked to do so. We feel we can add real value by adopting an evidence-based approach and by using the experience gained from representing the users of other modes.

As the consultation document makes clear, Passenger Focus already has powers, encompassed in the wording of our rail remit, in respect of certain tram systems, where those systems do not run mostly on rails on a road – in practice, the Tyne and Wear Metro is the only light rail/tram system in England outside London that fits this definition. The five other systems – Blackpool Tramway, Manchester Metrolink; Midland Metro; Nottingham Express Transit and Stagecoach Supertram (Sheffield) – are not included in our remit at present. We believe it would be easier for tram passengers to understand and accept that all tram journeys outside London should be treated in the same way, rather than having the right to representation and independent appeal determined by apparently arbitrary factors.

Bringing the representation of all tram passengers outside London under one roof also provides a unique opportunity to compare their performance. Passenger Focus has found that by researching passengers' priorities and experience of the service they receive, and talking to the operators about the results, we can help the industry to achieve improvements in their performance. We can also use research evidence to feed into policy debates and respond to any local or national consultations. And we can help passengers who are not satisfied with the



way in which their complaint has been handled by the operator, subject to the necessary resources being made available (see question 10).

It follows from what we have said above about consistency, that the arrangements for passenger representation on the five partly on-street tramways set out in the draft Rail Passengers' Council (Non-Railway Functions) Order 2010 should follow as closely as possible the arrangements for representing passengers of the Tyne and Wear Metro deriving from s.76 of the Railways Act 1993.

Passenger Focus would be happy to talk to the Department about the best way in which we can help tram passengers within the available resources.

Question 2: Do you agree that Passenger Focus' remit should include community transport services operated under section 22 permits?

Passenger Focus welcomes the proposal that our remit should include community transport services operated under section 22 permits.

A plethora of arrangements exist for transporting people in buses, particularly in rural areas where levels of demand are often unable to sustain a regular scheduled service. For example, certain school bus services which are registered with the Traffic Commissioners, volunteer driver schemes and demand responsive transport services which require advance booking. It makes sense for all of these services which can be used by any member of the public, and stop and pick up at bus stops or can be hailed on the street – they do not operate door-to-door – to be included within the Passenger Focus remit.

Question 3: Do you agree with the exclusions from the definition of 'road passenger transport services and facilities'? Are any other exclusions needed?

Section 112A in the draft Statutory Instrument proposes the exclusion of excursions and tours and of services granted a permit under section 19 of the Transport Act 1985. Passenger Focus agrees that it is sensible to limit our role to representing the passengers of scheduled coach services; however, excursions and tours cannot be regarded as 'public transport' in any meaningful sense.

We understand that certain school bus services are likely to fall within our remit (e.g. a local authority 'school bus' service which also carries fare paying passengers, including pupils not entitled to free school transport) and others outside it (e.g. school bus services where every vehicle used to provide the service is operated under a section 19 permit). This is determined by the wording of the amended Railways Act 1993 and it would require primary legislation to change it.

Question 4: Do you agree with the proposed arrangements for bus and coach matters partly or wholly operating in London?

The consultation document envisages any representation relating to local bus services, trams and community services in London being handled by London TravelWatch (LTW), as is the case now. Passenger Focus supports this position.



The document suggests that Passenger Focus represent domestic coach passengers within London but that LTW will retain responsibility for representing users of Victoria Coach Station. We understand that coach stops within Greater London are provided by Transport for London, which also owns or manages bus and coach stations, and that London TravelWatch is a statutory consultee on applications for London Service Permits. We agree that it makes sense for Passenger Focus to handle all domestic coach services, including commuter services such as Green Line and North Kent services. This would provide the same consistency that we are advocating in relation to tram services.

If this split of responsibilities is agreed, Passenger Focus will cooperate with LTW to establish common sense arrangements for working together on bus services which cross the London boundary, on coach facilities at Victoria Coach Station where these have a bearing on representations on particular coach services, and similarly on other stops and stations inside London which coaches call at.

Similarly, Passenger Focus will adopt a common sense approach to cooperating with our sister organisations in Scotland and (once established) in Wales on matters which span both jurisdictions. Passenger Focus currently has Board members who are also Board members of London TravelWatch and Passengers' View Scotland; where appropriate we will make use of these joint members to achieve a satisfactory outcome.

Q5: Do you agree that Passenger Focus should be able to request any information from a relevant party?

Passenger Focus supports the proposed power under section 112E to request information from operators and local authorities. We agree with the sentiment in the consultation document that it is better to obtain information by consent.

We have operated for some years with a similar power in the rail industry, contained within the operators licensing regime; we have only ever used the power as a last resort.

However, we believe the wording needs to be strengthened. Under the Freedom of Information Act 2000, local authorities are obliged to disclose information unless it falls under one of the exempt categories set out in the Act. Bus operators, which are in receipt of public money, should be under similar obligations to make information publicly available. Indeed, statutory passenger representatives should have rights to information over and above the public's entitlements.

The generic "reasonableness" test, set out in section 112E (3) should be replaced with a specific exemption drawn from the Freedom of Information Act 2000 so that information should be disclosed unless it would prejudice commercial interests and so long as the public interest in disclosure to Passenger Focus outweighs the interest in non-disclosure. (The Freedom of Information Act makes clear that to be genuinely commercially prejudicial, the release of information must be demonstrated to put a company at a commercial disadvantage to other organisations). It may also be reasonable to set a maximum cost threshold for the provision of information.



Q6: Should there be an independent arbiter for disputed information requests and if so, who should it be?

Passenger Focus supports the idea of establishing a mechanism to resolve disputed information requests, although this has not been included at this stage in the draft SI.

There is an argument that establishing a system of arbitration would be bureaucratic and that its existence would encourage operators and authorities to consistently refuse information requests, feeling that there would be no serious consequences. However, such a mechanism is available to us on the rail side of our operations, although in practice it has only been necessary to invoke our power on one occasion. We would certainly wish to avoid the need to go to an arbiter if at all possible, but we believe that reserving the right to do so could help to bring about a resolution.

The consultation document refers to two possible routes: the Traffic Commissioners or an arbiter appointed by the Chartered Institute of Arbitrators. The Traffic Commissioners would appear to be better placed to take on this role, and we understand they would be happy to do so. We believe this route would be cheaper and would offer consistency between decisions. Furthermore, the Traffic Commissioners have the detailed knowledge of the bus industry needed to judge the competing claims of both sides in the dispute.

Q7: Should Passenger Focus be required to conduct a 'value for money' test before making a representation? If so, what form should it take?

Passenger Focus has no objection to carrying out a 'value for money' test before making a representation, so long as the requirement is treated with a light touch as it is on the rail side, as a reminder of the need for broad proportionality. Passenger Focus has already articulated the principle of proportionality while operating in shadow form, e.g. in our response to the consultation on a proposed EC Regulation on bus and coach passengers' rights.

Any requirement to go further and produce detailed business cases would be a considerable drain on our resources, so we are pleased that it does not appear that this is being proposed. In any case, Passenger Focus would be unlikely to have access to all of the relevant economic data required to conduct a test in such detail.

In any case, the requirement to conduct a 'value for money' test should never apply to personal compensation claims, but only to investment decisions and policy implementation.

Question 8: How should operators and local authorities be expected to respond to representations made by Passenger Focus?

Passenger Focus would always seek to work in close cooperation with operators and local authorities in order to achieve improvements for passengers. We believe that the best way of helping passengers is to play a constructive role working alongside the industry, an approach we have adopted over the years with some success on the rail side.



However, we recognise that legislation has a role to play in clarifying how the bus industry is expected to respond to representations from Passenger Focus. It would seem appropriate to require operators to respond.

We understand the argument that elected bodies are already publicly accountable, but we hope that they would wish to engage constructively with Passenger Focus in any event.

Question 9: Do you think it would be appropriate for Passenger Focus to refer a matter to the Traffic Commissioners or the Secretary of State for them to exercise appropriate powers when it is unable to achieve a satisfactory outcome?

Passenger Focus supports the proposed new sections 112G(2) and 112G(3) of the Transport Act 1985 under which, where we had been unable to achieve a satisfactory outcome through making a representation, the matter could be referred to the Traffic Commissioner to take action against bus and coach operators under the Transport Act 1985 or to the Secretary of State to take action against the local traffic authority under the Traffic Management Act 2004. Whilst we would reserve the right to refer matters, we would only expect to do so in exceptional cases in practice. We have rarely had to invoke the corresponding powers in the rail industry.

As the consultation document points out, there are no powers to take action against local transport authorities if we are unable to achieve a satisfactory outcome.

Question 10: Who should act as the enforcer for tram services where Passenger Focus has not been able to achieve a satisfactory response?

As the consultation document points out, unlike bus and rail services there is no enforcement regime for tram services. Passenger Focus believes this is an unsatisfactory and inconsistent state of affairs, since all of the powers offered to passenger representatives in the draft Statutory Instrument would thus be unenforceable.

We recommend that the Traffic Commissioners should be asked to enforce the powers in this Statutory Instrument in relation to tram services. This solution would be simpler for passengers and would appear to be less bureaucratic and costly than setting up a separate institution. We believe the Traffic Commissioners have the necessary expertise, and would be happy to take on this role.

Question 11: Do you agree with the proposals about representations made by Passenger Focus to the Traffic Commissioners?

Passenger Focus supports the proposed new section 112H of the Transport Act 1985 which would enable us to refer on to the Traffic Commissioners a possible breach of licence or failure to provide a registered service. We accept that the final decision as to whether to exercise powers under the Transport Act 1985 should rest with the traffic commissioners, as set out in proposed section 112I.



Question 12: Do you agree that Passenger Focus' role in handling complaints should be determined after it has completed a review of the complaints system?

Our research – described in the accompanying reports¹ – suggests a potentially high level of passenger dissatisfaction with complaints handling by the bus industry.

It is the responsibility of the industry to address this issue and to improve the way in which complaints are handled. It is only fair that the industry should be given time to put things right. But it is not reasonable to expect passengers to wait too long before they see a significant improvement. We suggest 15 months would be an appropriate timescale.

We believe we have a contribution to make in improving complaints' handling by working closely with bus operators and local authorities. We will work closely with the industry, with Bus Users UK and the Bus Appeals Body over this period to help them to achieve a step change.

There is no reliable record of the number of complaints handled by the bus industry at present. Furthermore, it is hard to predict the volume of appeals that will be made once the Public Passenger Transport (Display of Information) (England) Regulations 2010 come into force next year.

At the end of 15 months, Passenger Focus will carry out further research to establish what improvement there has been to the handling of complaints and appeals, and to quantify the number of appeals following the introduction of the new publicity requirements. If there has been no significant improvement in the handling of complaints and appeals, Passenger Focus would be prepared to take on the appeals role, but only if funded to meet the level of appeals presented (the volume of appeals following the introduction of the new publicity requirements should be clearer by then). Such funding would not necessarily have to come from Government: for example, the industry could be required to pay a levy to support an independent appeals-handling service.

Taking on the appeals role would be a significant addition to the responsibilities currently foreseen and the commitment to encompass it would, in our view, require specific direction from ministers and agreement on resourcing the requirement.

Question 13: Do you agree that as there is currently no appeals body for tram passengers, Passenger Focus should also take on this role if it is given a tram remit?

Passenger Focus has not conducted a corresponding study of complaints handling in the tram industry.

In the absence of firm evidence, and without a body equivalent to Bus Users UK covering the tram industry, we are concerned that the role of handling tram appeals could divert resources away from core activities. However, if we can arrive at an agreement with the Department

¹ Two reports are attached: (1) a research report, *Complaints Handling Research*, from JMP and (2) a policy report, *Handling Complaints and Appeals from Bus Passengers*, from Passenger Focus



about resources for handling bus appeals, we are confident in our ability to handle tram appeals.

Question 14: Are there any other changes required to the constitution of the (Rail) Passengers' Council?

We appreciate that the name Passenger Focus is insufficiently precise to be used in legislation and support the proposed change in our operating name to the Passengers' Council – this seems sensible.

We would have no difficulty in honouring a request from the Traffic Commissioners to exclude the public before considering any matter supplied by them in confidence, although the instances when this applies are likely to be minimal. This clause mirrors the one in our existing rail remit. We would welcome clarification as to how this can be reconciled with our duties under the Freedom of Information Act (an issue which remains unresolved on the rail side).

Neither would we have any difficulties in establishing committees at the request of the Secretary of State should the need arise.

Question 15: Do you agree with the information that operators would be required to display on their bus?

The consultation document proposes that bus and coach operators would be required to display their name and details of where any complaints or comments should be sent. We agree that this is sensible. If PTEs become the primary complaints handling body in their areas, then clearly their details should appear on the notice. We would also like to see a requirement on operators to display on the bus – preferably on the poster – the registration number of the vehicle, given that operators may often ask for this information and there may be practical difficulties for passengers trying to note it down after they have got off the bus.

However, whilst it is in the interests of passengers that this information is kept clear and simple, it also needs to be accurate, and these principles may come into conflict. Complaints may need to be passed to the local authority if they concern matters such as routes, timetables, service levels, concessionary fares, stops and stations, bus priority measures and information.

It is in the passenger interest for complaints to be handled by the body best placed to do so and for information to be shared as widely as possible between interested parties. For example, local transport authorities may wish to monitor complaints about tendered bus services to help them decide what to do when contracts expire. If all complaints outside PTE areas are to be sent in the first instance to the operator, a protocol should be established between the various parties to pass correspondence quickly to the most appropriate body, to inform the passenger as to who is dealing with their complaint and to copy in interested parties for information.

Question 16: Do you think that providers of bus stops and bus stations should also be required to display such information?

As the consultation document makes clear, sections 139 and 140 of the Transport Act 2000 leave the best way of meeting local bus information needs to the discretion of local authorities.



Passengers may wish to complain about bus facilities, such as bus stops and bus stations. In these instances, complaints should be properly directed to whichever body is responsible for operating the facilities. They may also wish to complain if their bus does not turn up, since they will not be on the bus to see the operator notice.

In principle, we would support the idea of requiring local transport authorities and other bodies to provide information about how to complain at the bus stop and at the bus stations they own. However, some thought needs to be given as to what information should be displayed, and the practicality of displaying it.

Asking passengers to send all complaints outside PTE areas to the operator, who then copies and forwards them to the local authority as appropriate, has the virtue of simplicity and consistency. If this approach is adopted, the operator's name and contact details should appear on bus stops and at bus stations. Where bus stations are used by many different operators, careful thought will need to be given about how to display the information to fit it into the bus stop display and to avoid confusing the passenger.

Alternatively, providing the contact details of the local authority for complaints about bus stops and shelters has the virtue of getting more complaints to the most appropriate body first time. However, without very careful handling, it is likely to exacerbate the risks of confusion highlighted above.

Question 17: Do you think that operators of PSVs with fewer than nine seats which are being used to provide local services should be required to meet the information requirements?

Passenger Focus sees no reason why operators of vehicles with fewer than nine seats should be exempt from the information requirements. Passengers who have received a poor service have a right to complain irrespective of the size or shape of the vehicle, and need to be advised how they can do so. The principle that they can preserve their anonymity while doing so is important.

Question 18: Do you think that the providers of tram services should also be subject to the information requirements? If yes, who should enforce this?

For the same reason, Passenger Focus supports the idea that the providers of tram services should also be required to display a notice advising passengers how to complain.

We believe that the Traffic Commissioners should be asked to enforce this duty (see our answer to question 10 above).

Question 19: Should the location and design of information be prescribed in the regulations?

Passenger Focus would support the idea that operators are best placed to decide on the design and positioning of a notice in their bus. There is a risk of over-prescription. However, any notice needs to be positioned so that it is hard to miss and large enough to be read from some



distance on a busy bus. It would be sensible to test this out on passengers, including those with visual impairments.

It would be helpful if the DFT, working with Passenger Focus and the bus industry, could develop good practice guidelines in the same way as has been done previously in the publication *Better Information for Bus Passengers*. It would be helpful if this also covered the display of information at stops and stations.

Question 20: Do you agree with the information that operators would be required to display other than on the vehicle?

The proposed Regulation 5 would require operators to provide a contact for complaints handling, a description of how their complaints system works and contact details for appeals if passengers are not satisfied with the way their complaint has been handled. We support this proposal.

Contact details should also be made available for bodies handling appeals which are outside the remit of Bus Users UK and the Bus Appeals Body.

We regard the requirement to provide the complainant with a description of how the complaints system works as being very important. According to the research which JMP carried out on our behalf, only a relatively small proportion of operators and authorities make available their complaints procedures. Even where they do, many of these procedures are very simplistic. The best procedures, such as Metrobus' Complaints Policy, offer considerable guidance to staff about how to make the most of complaints as well as telling passengers what to expect.

As stated in our answer to question 10 above, it seems sensible to ask the Traffic Commissioners to enforce this requirement. We suggest that, in the first instance, the Department discusses with VOSA a practical way of handling enforcement of this Regulation.

In our response to the proposed EC Regulation on passenger rights, we called for a requirement on operators to report annually on the number of complaints they have handled, the speed of responding to them and the action they have taken as a result. Adding this provision would, we believe, complement the other requirements in this package.

I hope these comments are helpful.

Yours sincerely

A. J. C. 

Anthony Smith
Chief Executive

Enc