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SENIOR TRAFFIC COMMISSIONER

Statutory Document No.8

DELEGATION OF AUTHORITY

(THE DELEGATION OF FUNCTIONS TO STAFF, ARRANGEMENTS FOR MULTIPLE LICENCE HOLDERS & LEAD TRAFFIC COMMISSIONERS)

This document is issued pursuant to section 4C of the Public Passenger Vehicles Act 1981 (as amended). Representative organisations have been consulted in accordance with that provision.

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GUIDANCE

1. This guidance is issued under section 4C(1)(a) of the 1981 Act to provide information as to the way in which the Senior Traffic Commissioner believes that traffic commissioners should interpret the law in relation to the delegation of their functions
2. Operator licences are issued by the traffic commissioner for the geographical Traffic Area but traffic commissioners may choose, as a matter of practice, to delegate certain routine decisions to members of staff acting on behalf of the individual commissioner. Traffic commissioners might also delegate some of their functions to one of their deputy traffic commissioner colleagues.

Delegation

3. The Deregulation and Contracting Out Act 1994 allows the delegation of functions by traffic commissioners¹ to *any person in the civil service of the Crown who has been assigned or appointed to assist... in the exercise of his [her] functions*². The traffic commissioner may authorise an officer of his or her to exercise any function of his which is conferred by or under any enactment and to that extent will be treated as if the function had been carried out by the traffic commissioner in question.
4. The Secretary of State has of course delegated his functions in appointing VOSA to act as *officers and servants of a traffic commissioner*³.
5. The Human Rights Act 1998 guarantees the rights of individuals. Those rights cannot be interfered with, without the proper process of law. It is therefore important that all decisions, however trivial they may seem, are considered against this background and any doubts must be referred to the traffic commissioner. Notwithstanding the provisions of sections 69 and 74 of the Deregulation and Contracting Out Act 1994, members of staff acting on behalf of traffic commissioners are not permitted to take any decision which might be deemed to be judicial in nature and which should properly be taken by the commissioner exercising his or her power as a tribunal, nor any decision which might affect a person's rights and the limitations set out in section 71(1)(a) and (b) apply.
6. The power of delegation is a long accepted principle of public law:

"In the administration of government in this country the functions which are given to [office holders]...are functions so multifarious that no [office holder] could ever attend to them... It cannot be supposed that this regulation meant that, in each case, the [office holder] in person should direct his mind to the matter. The duties imposed on [office holders] and the powers given to [office holders] are normally exercised under the authority of the [the office holder] by responsible officials... Public business could not be carried on if that were not the case. Constitutionally, a decision of such an official is, of course, the decision of the [the office holder]. The [office holder] is

¹ Section 74(4)

² Section 79

³ Paragraph 7 of Schedule 2 to the Public Passenger Vehicles Act 1981.

*responsible. It is he who must answer... for anything that his officials have done under his authority, and, if for an important matter he selected an official of such junior standing that he could not be expected competently to perform the work, the [office holder] would have to answer*⁴.

7. The legal principle which permits delegation in this way is predicated on the proposition that the traffic commissioner is responsible for things done under his or her authority. The exercise of the delegation is dependant on two things:
 - the conferment of power must be permitted under legislation (see above); and
 - the existence of a person to whom the traffic commissioner can delegate without parting with ultimate responsibility⁵.
8. Traffic commissioners are in an analogous position to Chief Constables who are not the employers of the officers under their command but are legally answerable for them. The Carltona principle appears to apply readily in such a situation, with two well-established qualifications. One is that some functions are such that they cannot be delegated at all⁶ and the other is that any delegation has to be to somebody suitable. As Carltona demonstrates, who is suitable is for the office-holder to decide.
9. Parliament has conferred powers directly on a traffic commissioner because of the personal qualifications of the individual holder but allows the traffic commissioner to delegate those other functions for which qualifications are not required in their position at the apex of the hierarchical structure put in place to support him or her. Those functions relying on personal qualifications can only be delegated to equivalent office-holders. Whilst a member of staff may be described in an instrument of delegation as a proper and appropriate agent; that person does not become the proper and appropriate person⁷ as their actions under a delegation are those of the individual traffic commissioner. Delegations will need to be updated with each new post holder.
10. Section 4C(1)(a) of the Public Passenger Vehicles Act 1981 (as amended) provides the Senior Traffic Commissioner with a power to issue guidance, and section 4C(1)(b), the power to issue general directions. These are separate powers but both are directed at the traffic commissioners. Section 4(4) requires that traffic commissioners act under general directions of the Senior Traffic Commissioner and shall have regard to any guidance issued by the holder of that office. The terms are not specifically defined and therefore reference must be made to the following subsections: (2) provides a non-exhaustive list of what might be the subject of guidance and (3) provides a non-exhaustive list of what might be covered by general directions. Those lists are not exhaustive but the intention of Parliament is that those matters covered by subsection (2) should not be the subject of directions and vice versa for those matters listed in subsection (3).

⁴ Carltona Ltd v. Commissioners of Works [1943] 2 All ER 560, as Lord Greene MR

⁵ R (on the application of the Chief Constable of the West Midlands) v Birmingham Justices & Others [2002] EWHC 1087 (Admin)

⁶ R v. Chief Constable of Greater Manchester, ex parte Lainton (C.A. 28 March 2000, unreported)

⁷ R (on the application of the National Association of Health Stores & Another) v Department of Health [2005] EWCA 154

11. Directions cannot be used to dictate the meaning and operation of any enactment or instrument as this would suborn the responsibility of the judiciary⁸ and would risk inconsistency with case law⁹. Any Directions issued under section 4C(1)(b) regarding the manner in which members of staff will carry out functions on behalf of individual traffic commissioners are subject to these legal principles. The delegations described in the attached annexes exist at the discretion of the relevant traffic commissioner whose functions are exercised under the delegation.
12. The effect of a delegation is that the authorised member of staff may take decisions under the delegated powers. The attached Annex provides suggested levels of delegation. Delegations must be explicit and specific. Whilst the Upper Tribunal has suggested that there is no general principle preventing staff in the Office of the Traffic Commissioner from deciding to take no further action in respect of a matter reported to them, unless there is some clear restriction imposed on them¹⁰, this does not fully reflect the public law. The Upper Tribunal was not asked to and so did not consider the relevant case law on delegation and the doctrine of legitimate expectation¹¹. For the avoidance of any doubt on the part of applicants, operators, staff acting on behalf of traffic commissioners or others this document makes it explicitly clear that any delegation must be in writing and not based on a misunderstanding of any custom or practice which might have developed amongst staff in one or more traffic areas. It is open to a traffic commissioner to conclude that what purports to be an operator's licence is in fact *void*¹².
13. If a member of staff exceeds an explicit and clear delegation then their actions are not those of the relevant traffic commissioner and as a matter of public law that traffic commissioner cannot be considered liable for any prejudice/liabilities arising. Where a decision is not listed in the delegation it must be referred to the traffic commissioner. In particular any decision that would have the effect of revoking or suspending or curtailing a licence, whether of an operator or a driver, or limiting the use of a Certificate of Professional Competence by a transport manager, must be referred to the traffic commissioner for consideration but the principle extends to information obtained by individual traffic commissioners as a data controller, which cannot be disclosed to any party without explicit authority. That is not to say that every referral requires a formal written submission.

⁸ section 4D(2) of the Public Passenger Vehicle act 1981 and paragraphs 1.11, A7 and B6 of the Secretary of State's Guidance to the STC.

⁹ Al-Le Logistics Limited and Others [2010] EWHC 134 (Admin)

¹⁰ 2011/043 D A Lewis UPVC Installations Ltd & Another,

¹¹ i.e. where a decision-maker misunderstands the extent of his legal powers and offers to an applicant a benefit for which the applicant is not qualified under statute; a policy or procedure has been operated in such a way in the past so person can presume unless corrected that it will continue in the future; the decision-maker has promised a benefit and it would be unfair to break that promise, even if there are public interest grounds. In those circumstances a court may look at: Were the words or conduct ("promise/representation") which gave rise to the expectation clear and unequivocal? Did the person promising the benefit have legal power to grant it (or *ultra vires*)? Who made the promise and how many people stood to benefit by it? Did the person(s) to whom the promise was made take action in reliance upon it which has prejudiced them?

¹² 2012/200 Aluminium Shapes Ltd – the Upper Tribunal expressed an opinion that this might attract some difficulty it was not asked to consider the application of section 36 of the Goods legislation (the equivalent of section 49A of the PSV legislation) for instance.

14. Traffic commissioners will be aware of the expectation on them to engage in active case management¹³ by deciding promptly which issues need a full hearing and disposing summarily of the others. Issues such as minor changes or clarification of relevant legislative provisions should be dealt with by e-mail or in person, with a record of any decision made. Team Leaders and Senior Team Leaders are deemed competent to make amendments by way of clarification, such as ensuring that all matters at issue are covered by the listed legislation.
15. Staff cannot exercise delegated functions unless the individual has been specifically authorised in writing by the relevant traffic commissioner and only to the extent indicated by that instrument. On commencement of the Statutory Guidance and Statutory Directions all previous delegations cease. Annex 1 therefore provides a suggested instrument of delegation. Traffic commissioners will only grant delegations to named caseworkers, Team Leaders and Senior Team Leaders and other named staff, who are designated officers for the specified Traffic Area. As indicated above the traffic commissioners will wish to be satisfied as to the suitability of a member of staff before delegating functions, taking into account their relevant experience and training. Annex 2 provides a suggested starting point for delegations but individual traffic commissioners may choose to delegate further functions. Traffic commissioners may also remove delegations as they deem appropriate. The head of the Office of the Traffic Commissioner (OTC) and Licensing is required to keep and maintain a Delegation Register (which is to be updated every six months) and to ensure that the necessary audits take place.
16. Relevant members of staff may suggest draft undertakings and conditions but the decision on whether to impose those restrictions remains with the traffic commissioner. Annex 3 provides guidance on the drafting of conditions and undertakings. Annexes 5 and 6 describe similar arrangements as they apply to staff based in the traffic area offices.

Multiple Licence Holders and Lead Traffic Commissioners

17. The seven full-time traffic commissioners, as well as being appointed to geographical Traffic Areas, may exercise reserved functions (i.e. not devolved), anywhere in Great Britain as a deputy traffic commissioner for the relevant Traffic Area. Traffic commissioners can and do delegate functions from a particular Traffic Area to another colleague. The delegation of functions to other traffic commissioners does not require written authority because the qualifications of the individual holder are already known as the basis of appointment to the post of traffic commissioner. The arrangements for multiple licence holders were introduced on the initiative of the traffic commissioners in post at the time and exist by the agreement of the current occupiers of the relevant posts. Annex 4 describes how that agreement works.
18. The legislation enables an operator's licence to be subject to revocation, suspension or curtailment (or in the case of PSV operators, a reduction in the number of authorised vehicles). In deciding what action is appropriate the presiding traffic commissioner must have regard to the nature and circumstances of each case in deciding what action is proportionate. Any decision must relate only to those operator's licences which are subject of the

¹³ See Statutory Guidance on Case Management

consideration on the papers or at a public inquiry. When considering financial standing¹⁴, however, the operator must be able to demonstrate appropriate financial standing for the total number of vehicles which are authorised on all its licences. If it cannot then the traffic commissioner may revoke some or all of the licences, by reference to the financial evidence provided by the operator. A determination by the traffic commissioner that the operator has insufficient funds to operate at all must, however, lead to the revocation of all operator licences relating to that MLH.

19. When determining matters at public inquiry for a multiple licence holder a presiding traffic commissioner, having regard to the evidence produced, may decide to make a direction in respect of one or more of the licences. Even if all of a multiple licence holder's operator licences are before a traffic commissioner at a single hearing, the traffic commissioner may decide that it is proportionate to make a direction against one or more rather than all of the licences¹⁵. For example a multiple licence holder might hold licences in three Traffic Areas. The lead traffic commissioner for their licence is based in the area where the multiple licence holder has its headquarters and the majority of its operating centres. There might be a compliance record suggesting maintenance issues in all the relevant Traffic Areas and a public inquiry may be called for the lead traffic commissioner to determine whether any action should be taken against any, or all of the multiple licence holder's licences. This is within the discretion of the presiding traffic commissioner¹⁶. On the evidence before the public inquiry the lead traffic commissioner might decide to make a direction for instance under section 26 of the Goods Vehicles (Licensing of Operators) Act 1995 in respect of one or more of the licences but decides that all the relevant facts suggest that it is proportionate to remove only the operator's licence in one Traffic Area.

¹⁴ See Statutory Guidance and Statutory Directions on Finance

¹⁵ See Statutory Guidance and Statutory Directions on Case Management

¹⁶ As above

ANNEX 1 – INSTRUMENT OF DELEGATION

From: NAME OF COMMISSIONER
Traffic Commissioner for TRAFFIC AREA



I hereby confirm that

NAME OF MEMBER OF STAFF

Who, having been nominated further to Paragraph 7 of Schedule 2 of the Public Passenger Vehicles Act 1981 as an officer and servant of the traffic commissioner, as defined in section 79 of the Deregulation and Contracting Out Act 1994, is authorised by me under the provisions of Section 74 of the Deregulation and Contracting Out Act 1994 to act and make decisions in accordance with the guidelines set out in the Annexe to the Statutory Guidance on Delegations and Multiple Licence Holders in the Traffic Area up to and including the level of until such time as I withdraw all or any part of the delegation.

Signed Date
.....
NAME OF TRAFFIC COMMISSIONER
Traffic Commissioner for the TRAFFIC AREA

ANNEX 2 – SUGGESTED DELEGATIONS

1.	Matters which will not be delegated		
a.	Disciplinary/regulatory directions and decisions.		
b.	Decision to hold a Public Inquiry.		
c.	Decision to adjourn a Public Inquiry.		
d.	Decisions on stays.		
e.	Acceptance of surrender of licences where there are outstanding compliance issues.		
f.	Decisions on impounded vehicles.		
g.	Decision to review an operating centre.		
h.	Agreement that the requirement for professional competence be temporarily unfilled pending a new appointment as transport manager (TM).		
i.	Dispensation regarding the requirement of professional competence.		
j.	Agreement to early start, variation or cessation of commercial registered bus services.		
k.	Continuation of licence on death, bankruptcy etc. (Regulation 31 and section 57) ¹⁷ .		
	Matters which can be delegated		
2.	Unopposed Applications	GOODS	PSV
a.	Granting of licence applications without objections or representations which meet requirements on finance, professional competence, maintenance and repute and where there are no recorded convictions ¹⁸ or concerns about the applicant or the TM and there is no history (i.e. previous representations or objections or complaints) logged against the operating centre.	AO	AO
b.	Granting of major variation applications without objections or representations and which meet requirements on finance, professional competence, maintenance and repute, and where there no convictions against or recorded concerns about the applicant or the TM and there is no history (i.e. previous representations or objections or complaints) logged against the operating centre, and the applicant does not seek to vary or remove licence conditions.	AO	AO
c.	Granting of Interims where all the following are satisfied: <ul style="list-style-type: none"> • all mandatory requirements such as repute, financial standing and professional competence are met; • the period for making representations against the proposed operating centre has expired and no representations have been received; • the operating centre is already listed on another licence and there have been no recorded concerns or conditions imposed OR, if the operating centre is a new site, it is located in an established industrial area. 	TL	N/A
d.	Granting of Interims where all the following are satisfied: <ul style="list-style-type: none"> • all mandatory requirements such as repute, financial standing and professional competence are met; • the period for making representations against the proposed operating centre has not expired but no representations have been received; • the operating centre is already listed on another licence and 	STL	N/A

¹⁷ See Statutory Guidance and Statutory Directions on Legal Entities

¹⁸ See Statutory Guidance and Statutory Directions on Good Repute and Fitness with regard to spent convictions

	there have been no recorded concerns or conditions imposed OR, if the operating centre is a new site, it is located in an established industrial area.		
3.	Opposed Applications	GOODS	PSV
a.	Propose conditions and/or undertakings to all relevant parties if deemed appropriate. There must be no attempt to coerce parties into acceptance of proposed conditions or undertakings. If there is any doubt, or if this method does not seem suitable, the case is to be referred to the TC as early as possible.	TL (1)	N/A
b.	Grant of new or major variation applications with agreed conditions and/or undertakings as above provided both sides agree the same proposed in writing.	STL (1) NOTE (1) See Annex 3	N/A
4.	Other Matters	GOODS	PSV
a.	Refusal of new applications or major variations, which are incomplete.	TL	TL
b.	Agreement that an application shall not be treated as withdrawn when the prescribed payment date falls on a day when the office is closed and the fees are received on the next working day.	TL	N/A
c.	Direction that termination of the licence for non-payment of fees by the fee due date may be disregarded for "exceptional circumstances", provided the prescribed date falls on a day when the office is closed and when the fee is received on the next working day.	TL	N/A
d.	Propose to revoke licence on liquidation of a company or material change affecting the licence holder. Final revocation to be determined by the TC.	TL	TL
e.	Decisions regarding satisfaction of requirement regarding qualifications for professional competence.	STL	STL
f.	Agreement to less than 56 days notice to register, cancel or vary a registered service which is a tendered service, provided good reasons are given and the local authority/PTE supports the application and gives an assurance that there will be no competitive implications.	-	STL
g.	Acceptance of the surrender of a licence where there are no compliance factors.	TL	TL
h.	Acceptance of validity of advertisements if the wording is marginally incorrect provided that no person's interests are likely to have been prejudiced.	TL	N/A
i.	Agreement to Schedule 4 transfers provided there are no conditions at the operating centre, no known complaints and the review period will not be extended beyond three years	TL ¹⁹	N/A
j.	Issue of section 19 and 22 permits	-	TL
6.	Delegations specific to staff in the traffic areas offices of the Office of the Traffic Commissioner (See Annex 5)	GOODS	PSV
a.	Decision to issue a warning letter for a regulatory breach	Partial TL	Partial TL
b.	Decision to take no further action for a regulatory breach	Partial TL	Partial TL
c.	Propose undertakings, if deemed appropriate. Removal of a completed undertaking.	Partial STL	Partial STL
d.	Decision to take no further action with respect to holders of	AO	AO

¹⁹ See Statutory Guidance and Statutory Directions on Case Management

	vocational driving licences		
e.	Minor clarification of legal provisions for public inquiry	TL	TL
f.	Decision to issue a warning to holders of vocational driving licences (in accordance with the Statutory Guidance and Statutory Directions on Driver Conduct)	AO	AO
g.	Propose to revoke licence on liquidation of a company or material change affecting the licence holder. Final revocation to be determined by the traffic commissioner.	TL	TL
h.	Impounding – formal letter to VOSA advising that no application for return has been received.	STL	STL
i.	Section 9 and 43 statements	Partial AO	Partial AO

Key:

STL	Senior Team Leader	Higher Executive Officer	HEO
TL	Team Leader	Executive Office	EO
AO	Case worker or Clerk	Administrative Officer	AO

ANNEX 3 – FORMULATION OF CONDITIONS & UNDERTAKINGS

1. Guidance on format of conditions

- 1.1 Conditions must be:
 - 1.1.1 lawful and reasonable;
 - 1.1.2 unambiguous;
 - 1.1.3 capable of being monitored and enforced.

2. Road safety conditions/undertakings

- 2.1 Must prevent vehicles authorised to be used under a licence from causing danger to the public:
 - 2.1.1 at any point where vehicles first join or leave the public road when leaving or returning to the operating centre;
 - 2.1.2 on any road (other than a public road) along which vehicles are driven between such a point and the operating centre.

3. Examples of road safety conditions/undertakings

- 3.1 Authorised vehicles (including trailers) shall leave the operating centre by executing a right turn on to [] Road and shall enter by executing a left turn from that road.
- 3.2 Authorised vehicles shall enter and leave the operating centre in forward gear.

4. Environmental conditions

- 4.1 Environmental conditions must prevent or minimise adverse effects on owners or occupiers of land in the vicinity of the place used or to be used as the operating centre.
- 4.2 Conditions may relate to:
 - 4.2.1 number, type and size of motor vehicles or trailers;
 - 4.2.2 vehicle and trailer parking arrangements at or in the vicinity of any such centre; and
 - 4.2.3 the hours at which operations (including maintenance, loading and unloading) may be carried out.

5. Examples of environmental conditions

- 5.1 Authorised vehicles shall not exceed 7½ tonnes gross vehicle weight.
- 5.2 The engines of authorised vehicles shall not operate for more than 5 minutes before the authorised vehicles leave the operating centre.
- 5.3 There shall be no maintenance at the operating centre.
- 5.4 Authorised vehicles shall be parked within the area hatched on the plan attached to the licence.
- 5.5 The hours of movement of the authorised vehicles at, into or out of the operating centre shall be confined to 0700 to 1900 Mondays to Fridays.

6. Reasons for imposing conditions/undertakings

- 6.1 The reasons for the attachment of licence conditions or acceptance of undertakings must always be clearly stated.

7. Important exception

- 7.1 Where novel forms of conditions or undertakings are agreed between the parties the Traffic Commissioner (TC) should be consulted to confirm the legality and appropriateness of what is proposed.

8. Removal of variation conditions

- 8.1 Conditions or undertakings imposed at public inquiry or by the TC personally In-Chambers may only be amended or removed by the TC (or his/her deputy).
- 8.2 Applications to vary or remove conditions or undertakings which are contested may be determined only by the TC (or his/her Deputy) after the public inquiry as appropriate.
- 8.3 Otherwise conditions or undertakings may be removed or varied subject to either:
 - 8.3.1 written agreement of all parties originally involved;
 - 8.3.2 lack of response to advertisement or Applications and Decisions publication;
 - 8.3.3 change in the circumstances which caused the original imposition of the conditions whether road safety or environmental.

9. Reasons for removing conditions/undertakings

- 9.1 Reasons for deleting or changing undertakings or conditions must always be given.

ANNEX 4 – MULTIPLE LICENCE HOLDERS & LEAD TRAFFIC COMMISSIONERS

1. Introduction

1.1 This document summarises the agreement between the seven traffic commissioners in Great Britain which allows the holders of operators' licences in more than one Traffic Area (a multiple licence holder "MLH") to be dealt with by a Lead Traffic Commissioner (LTC).

1.2 Holders of operators' licences in more than one Traffic Area will be allocated to a Lead Traffic Commissioner (LTC) to whom all applications relating to those licences will be referred.

1.3 All matters of non-compliance relating to a multiple licence holder will also be referred to the LTC in the first instance.

1.4 The process below sets out how the LTC will be allocated and the basis of the delegation of functions to the LTC from other traffic commissioners in whose area(s) MLHs hold licences.

1.5 As bus operators tend to operate as separate companies in each Traffic Area, this guidance will be more applicable to the holders of goods vehicle operators' licences.

1.6 Bus operators whose licences are granted to a group of related companies or which form subsidiaries of a parent company may, however, request that a lead traffic commissioner be appointed to deal with any matters that arise out of their related operator's licences. The only exception relates to Scottish public service vehicle licences where devolved powers exist in respect of bus punctuality matters.

1.7 The procedure is designed to ensure a clear and consistent approach to administration.

2. The lead traffic commissioner and multiple licence holders

2.1 The identity of the LTC for an MLH will be determined in accordance with the following criteria:

- the location of the operator's correspondence address/business head quarters, provided the operator holds an operator's licence in that Traffic Area; or
- where that is not applicable the location and number of operating centres and the number of authorised vehicles in a particular Traffic Area;

2.2 The licence holder may make representations to be allocated to a different LTC but the final decision will remain with the traffic commissioners.

3. Multiple licence holders and the allocation of business between traffic commissioners

New and variation applications

3.1 All applications made by a MLH will be made to the LTC for that operator.

3.2 The LTC will decide whether he/she should deal with the application, or whether to allocate the case to the traffic commissioner in whose Traffic Area the (proposed) operating centre(s) is/are located.

3.3 To ensure that local views are reflected the LTC will normally allocate cases relating to operating centres to the traffic commissioner located in the Traffic Area in which the operating centre is located.

3.4 If necessary, a public inquiry will be held in the Traffic Area to which the MLH's application relates and will be heard by the local traffic commissioner or a deputy traffic commissioner.

3.5 Where the LTC considers applications for a MLH which relate to other Traffic Areas, the LTC will deal with all applications.

Multiple licence holders and non-compliance

3.6 All cases of non-compliance relating to an MLH will be referred to the LTC for that MLH who will then consider what action to take.

4. Process

4.1 Operators who hold licences in more than one Traffic Area have been allocated a Lead Traffic Commissioner (LTC).

4.2 The purpose of these directions is to provide a standard procedure for preparing a case submission to the LTCs. These directions should be read alongside all relevant Statutory Guidance and Statutory Directions. There should be sufficient finance to cover all relevant licences²⁰.

4.3 The overriding concern in preparing case submissions is relevance. If a traffic commissioner requires additional detail the LTC can request it.

4.4 Any case submission in relation to an operator should clearly state that the operator is an MLH and the submission is with the LTC for initial consideration. Unless otherwise directed, if the LTC is unavailable for whatever reason the submission shall be referred to a nominated traffic commissioner or deputy traffic commissioner.

4.5 If the LTC determines the submission should go to any other traffic commissioner, the LTC will e-mail a reply in those terms stating to which traffic commissioner the referral is to be sent and the reason for the referral.

²⁰ See Statutory Guidance and Statutory Directions on Financial Standing

4.6 An MLH case submission should normally include the following:

- details of the licence held in each area where relevant, including the number of vehicles and trailers, the name of the transport manager and details of the operating centres;
- a short compliance history for each licence covering the last five years with particular emphasis on relevance (e.g. any previous findings for similar breaches), if an application generates a National Intelligence Unit request or if the system shows a relevant compliance history;
- the reason for the current submission (to include the licence to which it refers, if it is not in relation to all licences held);
- an overall summary of the operator across their licences in narrative form. In particular consideration at this stage should be given to any jurisdictional issues; and
- the caseworker and the Team Leader's recommendation.

4.7 It is anticipated that referrals of existing MLHs will operate in the following way: investigations by VOSA will identify whether the operator is a Multiple Licence Holder. VOSA staff will carry out an investigation on the local licence in the usual way. If the investigation results in the recommendation to refer to a traffic commissioner OTC will obtain a report on all other linked licences. That report will have a breakdown of the compliance history including references to prohibitions, annual tests and any convictions and will require an overview of the operator's performance. The report will then be passed to the LTC via a submission from the relevant OTC with the usual recommendation. The submission should provide a summary of the 'local' licence where alleged non-compliance has been identified in addition to details of any relevant adverse history on the other linked licences.

5. Decision

5.1 The LTC will decide what action, if any, is to be taken in relation to each of the licences. If the LTC forms a view that only one licence area needs consideration, the LTC will indicate whether the submission should be referred to the traffic commissioner for the area in question to decide what action should be taken.

5.2 If the LTC determines that licences in more than one area may need action, the LTC shall make the decision on what action should be taken in relation to each licence. Any warnings will be actioned by the Lead OTC. If the decision is to hold a public inquiry, the LTC shall state in which area it is to be held and whether they or a different traffic commissioner shall hear the cases. In the case of an operator with a licence in the Scottish Traffic Area, the LTC (and staff when making recommendations) should be alive to jurisdictional issues and whether there should be two public inquiries and in these circumstances which Inquiry should be heard first.

ANNEX 5 – DECISION MAKING PROCESSES FOR OTC STAFF ACTING UNDER DELEGATIONS

The purpose of this document is therefore to provide a more detailed description of the type of casework, and at what level, the traffic commissioners may agree to delegate administrative decisions within the traffic area offices of the Office of the Traffic Commissioner. All members of staff working within the OTC must read and fully understand this document.

1. Guidance on exercise of delegations

1.2 Decisions must be:

1.2.1 lawful and reasonable;

1.2.2 exercised within strict parameters in accordance with STC's Statutory Documents and in particular Statutory Guidance on Delegations and Annex 3 of the Statutory Guidance and Statutory Directions on the Principles of Decision making;

1.2.3 reasoned and recorded;

1.2 Failure to act within these parameters and/or to record appropriate reasons may result in all delegations to that member of staff being withdrawn and may be treated as a performance issue.

2. Guidance on making decisions for regulatory breaches

2.2 Staff should be aware of the leading case law and principles. STC Statutory Document No.10 indicate the regulatory starting points. Annex 3 of Statutory Document No. 10 For action to be taken under delegations it must fall within the areas indicated as 'LOW'. However the leading cases set questions which might be paraphrased as: 'How likely is it that this operator will, in future, operate in compliance with the operator's licensing regime'? The following offer further pointers as to how staff acting under delegations should reach a qualitative assessment:

2.2.1 It is not sufficient to simply rely on a recommendation from a Senior/Examiner as staff members will be expected to justify any decision. If a PI is recommended this must be passed to the traffic commissioner (although the submission may, of course, recommend a different course of action).

2.2.2 The shortcomings must fall outside of the guidance in which a PI case should be considered or where the traffic commissioner is required to consider loss of repute;

2.2.3 The following should be referred to a TC:

i) where several different issues of non compliance are identified;

- ii) the operator / transport manager have been subject to a previous public inquiry;
 - iii) previous warning letters have been issued in the last five years;
 - iv) any PG9 which involves failings in the braking system, steering, loose wheel nuts or other safety critical components or one which is 'S' marked;
 - v) evidence of fraud or intentional deception, including the use of magnets.
- 2.2.4 No power exists to make a decision on any new conviction or Most Serious Infringement.
- 2.2.5 No delegation exists for staff to issue any warning letter or NFA for convictions;
- 2.2.6 Any notification of a conviction(s) or MSI must be placed before the relevant traffic commissioner. This includes 'historic' convictions uncovered during the preparation of the submission, which have **not** previously been considered by a traffic commissioner.
- 2.2.7 the circumstances of non compliance must not present an immediate risk to road safety and only involve shortcomings in paper systems or prohibition notices for defects of a non-recurring minor nature relating to items with no immediate risk to road safety.
- 2.2.8 The operator must have provided a full explanation for the incident and a repetition is considered unlikely due to the mitigation given and the steps taken by the operator.

3. Warning Letters

- 3.3 Warnings might be issued for a variety of reasons and when considering issuing a warning full consideration must be given to the items detailed below; If there is any question as to the involvement of the Transport Manager with a standard licence or Directors with a Restricted licence as to how they allowed any shortcomings to exist then a warning letter may not be appropriate.
- 3.4 The case must fall within the regulatory starting points detailed in Annex 3 of STC Statutory Document No. 10. The operator / transport manager must not have been subject to a previous public inquiry and no previous warning letters are to have been issued in the last five years.
- 3.5 Where the items of non compliance suggest a level of regulatory action higher than 'LOW' in Annex 3, a warning can only be considered if accompanied by further undertakings which fully address the identified shortcomings and future management of the transport operation. Any incident to be considered must not present a risk to road safety. The operator must have provided a full explanation for the incident and a repetition is considered unlikely, due to the mitigation given and the steps taken by the operator.

3.6 When considering whether a warning letter should be issued for **maintenance issues** the following offer pointers as to how staff acting under delegations should reach a qualitative assessment. If any of the answers to the questions below is 'Yes' a submission to the traffic commissioner is likely to be required;

3.6.1 Is the non compliance an immediate risk to road safety?

3.6.2 Has a PI or previous warning been issued in the past 5 years?

3.6.3 Is there any question over the involvement of the transport manager?

3.6.4 Is the operator's explanation/mitigation incomplete, incoherent and are no positive steps to ensure future compliance received?

3.6.5 Does the prohibition include brake/steering/loose wheel nuts?

3.6.6 Is the annual test history across the previous two years below the national pass rate average once Pass After Rectifications are removed? Consideration should be given to size and type of operator and the nature of the fail items. In certain cases especially where the operator has few vehicles or incidences of test the percentages may be exaggerated so this should be taken into account. Similarly, if the operator fails on items which are minor in nature and could have occurred on the journey to the test centre this should be taken into account. Any decision to disregard annual test history and issue a warning under delegation must be approved by the STL.

3.6.7 Are there outstanding undertakings to be completed?

3.6.8 Are safety inspection intervals exceeding the original agreement by 50% or more?

3.6.9 Is a variation application in progress to increase the number of vehicles?

3.6.10 Does the Examiner and/or Senior recommend a PI?

3.6.11 Are there any other known concerns (i.e. any financial issues highlighted in reports or from licensing, possible change in entity or ownership noted on reports or from information raised by licensing.

3.5 When considering whether a warning letter should be issued for parking at sites other than the authorised **operating centre** the following offer pointers as to how staff acting under delegations should reach a qualitative assessment:

3.5.1 On receipt of any complaint regarding parking, all operators must be sent a letter requesting an explanation to the allegation. The request for an explanation is usually made by VOSA and submitted to the Office of the Traffic Commissioner once a reply is received or the deadline has passed. In the absence of a response the case must be submitted to the traffic commissioner.

- 3.5.2 Where the explanation states that the parking took place on a one off occasion or was similarly irregular formal action under section 26(1)(a) of the 1995 Act would not be appropriate, it is important that operators respect the terms of their licence and understand the concerns of residents.
 - 3.5.3 Where it is a first offence and only if a full explanation has been given with assurances that the vehicles will be parked at the operating centre in the future or that the vehicle was not parked at the place when not in use a team leader will be authorised to send a formal reminder to the operator of their obligations to park the vehicle(s) in their authorised operating centre when not in use.
 - 3.5.4 The team leader considering the case must always consider whether the definition of operating centre as stated in both the 1981 Act and 1995 Act applies to the place referred to in the complaint. Any subsequent reports of failure to use the authorised operating centre must, after investigation, be placed before the traffic commissioner.
 - 3.5.6 If there is evidence or an accusation of persistent and continuous parking of vehicles at an unauthorised operating centre a submission is required to be put to the traffic commissioner and there is no delegation sought.
- 3.6 There is no delegation to issue a warning letter in the following cases and must therefore be referred to a traffic commissioner:
- 3.6.1 immediate prohibitions which represent defects of a road safety critical nature;
 - 3.6.2 multiple historic prohibitions (including delayed) if the defect is reoccurring;
 - 3.6.3 success/fail rate at spot checks and annual test is significantly below the national average;
 - 3.6.4 'S' endorsed PG9s;
 - 3.6.5 unsatisfactory MIGs indicating major systems failure;
 - 3.6.6 examiner and/or senior recommend a public inquiry;
 - 3.6.7 operator response to VOSA disputes their findings;
 - 3.6.8 VOSA reports transport manager is no longer employed;
 - 3.6.9 No records produced and/or no systems in place.
- 3.7 The starting point for any item of non compliance must be the same as for a decision on No Further Action. If there is any question as to the involvement of the transport manager with a standard licence or Directors with a

Restricted licence as to how they allowed any shortcomings to exist then a warning letter on its own may not be appropriate.

- 3.8 For bus complaints the STL/TL must refer to the internal OTC Procedure Manual. The operator must have provided a full response to the complaint which addresses all the points raised and further non compliance is considered unlikely because action has been taken to rectify the problem by the operator or that the matter was exceptional and therefore outside of the operator's control. Matters must be minor in nature, i.e. not road safety related which would require consideration using the process outlined in 1. above. Issues where finance, transport manager control, good repute, vehicle condition, overcrowding are evidenced are not included in this. Anything that requires further investigation by VOSA will not be dealt with until the full facts are known.

4. Proposal of Undertakings

- 4.1 In those cases where a warning letter may be considered under delegation the TL / STL may, as part of the decision making process, also consider whether it is appropriate to request an undertaking from the operator prior to the issue of any warning letter (see Annex 3). Standard undertakings are currently considered by traffic commissioner(s) but these would be limited to the following when considered under delegation:
- 4.1.1 There will be a nil defect daily driver reporting system. Defect reports will show rectification and all reports will be retained for at least two years.
 - 4.1.2 A random audit of safety inspections will be conducted not less than _____ monthly when _____ vehicle/trailer will be checked by _____. The findings will be recorded and made available to staff from VOSA or the Office of the Traffic Commissioner on request.
 - 4.1.3 will attend a new operator seminar on.....
 - 4.1.4 Roller brake testing / headlamp aim to be carried out at 'X' interval
- 4.2 The proposal to issue undertakings must not be forced upon an operator and must be accepted, in writing, before being attached to a licence. Any refusal to accept will result in a submission being put to the traffic commissioner for all matters under consideration. For the sake of clarity, if an operator refuses to accept an undertaking no warning or NFA letter can be issued under delegation. It will not be appropriate in all cases for undertakings to be sought but if they are it must take place before any decision on whether to send a warning letter.

5. No Further Action

- 5.1 The decision as to whether to take NFA for non compliance is as important as a decision to issue a warning letter. NFA must only be taken in those circumstances where the level of non compliance is regarded as so minor that there has been no risk to road safety and no tangible commercial

advantage gained from the actions. Staff members should ask themselves the question: 'could I justify taking no action if something goes wrong in the future?'

- 5.2 The starting point for any item of non compliance must be the same as for the issue of a warning letter detailed above. The case must fall outside of the guidance in which a PI or warning letter should be considered and full consideration of the regulatory starting points detailed in Annex 3 of STC Statutory Document 10 or for drivers, Statutory Document 6. STL/TL must consider the principles of decision making, as detailed in Annex 3 of STC statutory document No.10. This includes the requirement to consider whether the non compliant activities of the operator were an attempt to gain a commercial advantage over a compliant competitor. NFA cannot be considered in the following circumstances:
 - 5.2.1 Where the items of non compliance suggest a level of regulatory action higher than 'LOW' in Annex 3.
 - 5.2.2 Even if the non compliance is listed as 'LOW' in Annex 3 it is unlikely that NFA would be appropriate and any decision to do so must be fully justified against this criteria.
 - 5.2.3 The operator / transport manager has been subject to a previous public inquiry and/or previous warning letter in the last five years.
 - 5.2.4 The incident presented a risk to road safety.
 - 5.2.5 The operator has failed to provide a full explanation for the incident
- 5.3 Whilst not in any way binding, a NFA recommendation must have been made by the SVE/STE. It goes without saying that where any other doubt exists NFA will not be the appropriate course of action.
- 5.4 To consider NFA the shortcomings must relate to minor paper/administrative failings and repetition is considered unlikely, due to the mitigation given and the steps taken by the operator. Prior to deciding upon NFA the STL/TL would also be expected to give careful consideration to proposing an undertaking as per the guidance above in order that the operator can be held fully to account should further issues be made known to the traffic commissioner.
- 5.5 If there is any question as to the involvement of the transport manager with a standard licence or Directors with a Restricted licence as to how they allowed any shortcomings to exist then NFA will not be appropriate.

6. Removal of an undertaking

- 6.1 Delegation to remove an undertaking attached to a licence may only be exercised in respect of a factual 'one time' undertaking such as the operator is required to have an audit undertaken, to build a hedge, etc.
- 6.2 The evidence supplied must show full compliance with the undertaking, confirmed, if appropriate, by a third party, e.g. RHA audit. Anything short of

full compliance or undertakings that are on-going or repeated (e.g. operator must have six weekly maintenance inspections) must be referred to a TC.

- 6.3 The STL must record any undertakings that he/she removes under delegation and this is subject to regular QA checks by a third party as part of the QA process within the OTC.

7. Minor Clarification of legal provisions to be considered at Public Inquiry

- 7.1 Staff members at the appropriate level are permitted to make minor amendments to the proposed legislation under which an operator or other is to be called to a hearing but only by way of clarification. There can be no circumvention of a TC's decision but there may be instances where a submission did not refer to or place sufficient weight on a piece of information as sufficient grounds to include additional legislation or where evidence is received subsequently that warrants inclusion of an additional ground. It is recognised that this delegation allows for the efficient use of tribunal time and resources by avoiding unnecessary adjournments. However staff members are not permitted to make changes to grounds involving establishment, good repute, financial standing or professional competence.

- 7.2 Grounds can only be added not removed. Grounds can only be added if they were evident in the evidence provided to the TC (i.e. submission was deficient) or if they concern a matter of fact (i.e. a subsequent conviction).

- 7.3 Examples of where an authorised TL/STL might exercise the delegation:

Where it is alleged that an operator has breached section 26(1)(a) of the Goods act is contained in the MIG but is not highlighted in the submission but the PI is signed off on grounds which do not include section 26(1)(a); however it is apparent that sufficient evidence is contained in the MIG and it is appropriate for the presiding TC to consider taking action in regard to that specific ground.

Where a maintenance report is received from VOSA detailing a number of issues including a breach of an undertaking, breach of a statement of expectation, a breach of condition and the issue of prohibitions; the submission to the traffic commissioner covers all points except for, say, the section 26(1)(e) - statement of fact/expectation that has not been fulfilled by six weekly maintenance inspections. The report from the VE clearly states that the inspections had been extended beyond the six week period. Rather than the need to resubmit to the traffic commissioner the authorised STL/TL could authorise the use of section 26(1)(e) in the call up letter ensuring that it is clearly identified to the operator which statement of expectation has not been fulfilled.

8. Impounding

- 8.1 Authorised staff members are permitted to send a formal letter on behalf of the traffic commissioner advising VOSA that no application for return has been received by the traffic commissioner. That delegation is subject to checks being made with the licensing team, impounding area office and

other relevant intelligence sources to ensure that no correspondence has been received prior to the letter being despatched.

- 8.2 The decision on whether to call a hearing and/or return the vehicle is not delegated under any circumstances.

9. Section 9/section 43 statements

- 9.1 This delegation relates to requests normally received from VOSA enforcement staff but also occasionally from the police or other enforcement agencies. The statements are usually required to confirm whether or not a named individual/company is/are the holder of a Goods or for PSV operators licence (section 9 statement) or whether a vehicle is specified on a particular licence. A case worker may sign the document as an officer of the traffic area on behalf of the traffic commissioner. Any request that is considered particularly complex or sensitive should be referred to the STL and, if appropriate, onto the traffic commissioner. It is incumbent upon the member of staff to ensure that all legal requirements on data handling are complied with and to consider any relevant exemptions in line with operating instructions.

ANNEX 6 – AUDIT PROCESS FOR STAFF WORKING UNDER DELEGATED AUTHORITY FROM TRAFFIC COMMISSIONERS

Background

1. The legal background to delegations is explained in the Statutory Guidance above. The delegation of functions requires proper oversight and there is therefore a clear need for a record to be kept of the process of auditing the way in which Office of the Traffic Commissioner staff exercise delegated functions, so that all who deal with the traffic commissioners and their staff can have confidence in the licensing system. These processes will also ensure that traffic commissioners have confidence in any staff member who carries out work on their behalf under delegated authority. Members of staff of the Office of the Traffic Commissioner are specifically referred to the Statutory Guidance, which explains the basis of those delegations.
2. The process defined below will provide evidence of a transparent audit system and will include audits of all staff working at all levels within the Office of the Traffic Commissioner so as to provide the relevant traffic commissioner with assurance that the delegation system is working properly.
3. Those carrying out the audits are reminded that the process set out below defines the minimum requirements and that, where there are concerns about a particular member of staff that result in further training, the audit frequency and type should be increased accordingly.
4. A distinction can also be drawn between those members of staff (at all levels) who have a number of years experience in the Office of the Traffic Commissioner and a consequent breadth of expertise (referred to as established staff) and those members of staff who are either newly recruited or who have relatively little experience in their new post (referred to as new staff). It will therefore be for those carrying out the audits to ensure that proper training and auditing takes place with particular regard to new staff.
5. Similarly where a traffic commissioner has legitimate concerns about an individual member of staff they must raise it with the Head or Deputy Head of the Office of the Traffic Commissioner at the earliest opportunity so that steps can be taken to address those concerns. All staff members are reminded that the final decision on whether to remove any delegation granted to a member of staff lies with the traffic commissioner alone and that any proposals by the Office of the Traffic Commissioner to remove any delegations must be fully discussed with the traffic commissioner who will make the final decision.

Process

6. Team leaders will conduct audit checks at least every calendar month of no less than 10% of all decisions made by established caseworkers (AO level) under delegated authority. A written record of those audit checks will be kept and will be provided to the traffic commissioner upon request and in any event every six months.
7. Senior team leaders will conduct audit checks at least every two calendar months of no less than 5% of all decisions made by established team leaders

(EO level) under delegated authority. A written record of those audit checks will be kept and will be provided to the traffic commissioner upon request and in any event every six months.

8. In the Central Licensing Office senior executive officers will conduct audit checks at least every three calendar months of no less than 5% of all decisions made by established senior team leaders (HEO level) under delegated authority. In the individual Traffic Area Offices the responsibility for completing and recording audit checks lies with the relevant senior team leader. The Deputy Head of the Office of the Traffic Commissioner will be responsible for recording audit checks across all the Traffic Area Offices. A written record of those audit checks will be kept and will be provided to the traffic commissioner upon request and in any event every six months.
9. The starting point for the audit of “new caseworkers” (AO level) will be for the team leaders to conduct audit checks on a reducing scale in respect of conducting an audit of 100% of their work for the first month after grant of delegation, 75% of their work for the second month after grant, 50% of their work for the third month after grant, 25% of their work for the fourth month after grant and 10% of the work thereafter. A written record of those audit checks will be kept and will be provided to the traffic commissioner upon request and in any event every six months. If the team leader determines that the caseworker (AO level) is progressing quickly enough to depart from this starting point they are required to record that decision with reasons.
10. Senior team leaders will conduct audit checks on a reducing scale in respect of “new team leaders” (EO level) conducting an audit of 100% of their work for the first month after grant of delegation, 75% of their work for the second month after grant, 50% of their work for the third month after grant, 25% of their work for the fourth month after grant and 10% of the work thereafter. As the team leader (EO level) post is key to the audit of other members of staff there will not be the scope for reducing the timescale for these audit checks. A written record of those audit checks will be kept and will be provided to the traffic commissioner upon request and in any event every six months.
11. Senior executive officers will conduct audit checks in respect of “new senior team leaders” (HEO level) at least every three calendar months of decisions made under delegated authority. They will also conduct audit checks regarding any decision made at any level and not previously audited and a cross-check of decisions that have been audited. A written record of those audit checks will be kept and will be provided to the traffic commissioner upon request and in any event every six months. To ensure a consistent approach the audit record will include comments as against the relevant headings below.
12. Where minor errors are found during the audit it will be sufficient for the relevant line manager to deal with that matter informally with the member of staff by whatever means they consider appropriate e.g. further training or mentoring or auditing.
13. Where major errors are found with a member of staff’s work as a result of the audit the relevant line manager will bring the matter to the attention of the

relevant traffic commissioner(s) as soon as possible and will discuss with them what steps are in place to deal with the matter appropriately. It will be for the line manager to deal with any HR matters arising as a result but it will be a matter solely for the traffic commissioner as to whether to retain or remove the delegation.

14. The Head of the Office of the Traffic Commissioner and Licensing will keep a register of those instances where members of staff are found to have acted either outside of their delegation or “ultra vires” and will provide a copy of that register to the Senior Traffic Commissioner on a quarterly basis.

Matters to be included in the audit template – licensing staff

- 1) Caseworker/team leader/senior team leader
- 2) Date of check
- 3) Licence Number
- 4) Operator Name – of the entity and of any trading name
- 5) Data input accuracy
- 6) Searches
- 7) Advert
- 8) Maintenance arrangements
- 9) Correspondence
- 10) Transport manager qualifications
- 11) Transport manager declaration
- 12) Convictions
- 13) Finances
- 14) Conditions/undertakings
- 15) Submission
- 16) Intelligence check
- 17) Publication
- 18) Delegation
- 19) Any additional comments

Matters to be included in the audit template – compliance staff

- 1) Caseworker/team leader/senior team leader
- 2) Date of check
- 3) Licence Number
- 4) Operator Name – of the entity and of any trading name
- 5) Data input accuracy
- 6) Searches
- 7) Maintenance arrangements
- 8) Correspondence
- 9) Transport manager declaration
- 10) Convictions
- 11) Finances
- 12) Conditions/undertakings
- 13) Submission – to include cross check that the call up letter (where applicable) refers to the correct legislation
- 14) Intelligence check
- 15) Call up letter – where appropriate
- 16) Warning letter – where appropriate
- 17) Publication
- 18) Delegation
- 19) Any additional comments

STANDARD TEMPLATE TO CONFIRM COMPETENCY TO EXERCISE DELEGATED FUNCTIONS

From: NAME OF

To: Traffic Commissioner for TRAFFIC AREA

Date:

I am writing to recommend that you award xxxx caseworker/team leader/senior team leader delegated authority to cover xxxx (2a etc) for xxxx Traffic Area.

xxxx has been working as a xxxx since xxxx and they undertook the mandatory operator licensing training on xxxx.

Xxxx has processed approximately xxxx applications for the xxxx traffic area. Within the xxxx period checks showed xxxx (e.g. very minor errors in relation to xxxx).

I am now satisfied that they have the necessary experience and expertise to enable grant of delegated authority at the level of caseworker/team leader/senior team leader.

They have also observed xxxx public inquiries.

The quality of their work is xxxx and their application processing accurate and I would recommend that xxxxx is awarded delegated granting rights with a reducing audit. If you content to award delegated grant I recommend you do so with effect from xxxx.