
Secretariat memorandum

Author : John Cartledge

Agenda item 7

LTW321

Drafted 16.9.09

Government consultation on extending the remit of Passenger Focus

1 Purpose of report

- 1.1. To summarise the questions raised in the government's current consultation exercise on the extension of Passenger Focus's modal remit and to highlight some issues affecting the proposed interface with London TravelWatch on which a response to the document is recommended.

2 Recommendations

- 2.1. It is recommended, in the light of the matters discussed in this report, that the government is advised that
- (a) London TravelWatch endorses and adopts the views of Passenger Focus on the questions raised in its "Consultation on extending Passenger Focus' remit to bus and coach issues and the requirement to display information", except in relation to question 4.
 - (b) In relation to question 4, London TravelWatch believes that a clear distinction should be drawn between the respective remits of Passenger Focus and itself in respect of road passenger services and facilities, and that this is not achieved by the Rail Passengers' Council (Non-Railway Functions) Order 2010 as currently drafted.
 - (c) London TravelWatch therefore recommends that in section 112D(3) of the Transport Act 1985, proposed in section 3 of the Rail Passengers' Council (Non-Railway Functions) Order 2010, for all after "it appears to the Council to relate to" there should be substituted "any matter which the London Transport Users' Committee has a duty to consider under section 248 of the Greater London Authority Act 1999."
 - (d) London TravelWatch further recommends that the proposed section 112D(3) should be redrafted in such a way that it applies to any matter and, specifically, that it is not restricted to the those mentioned in section 112D(1) (i.e. matters which have been the subject of a representation made to the Passengers' Council under section 112C(1)(a) or (b)).
 - (e) If the proposed section 112D(3) is redrafted as suggested in the preceding recommendations (c) and (d), London TravelWatch believes that no further amendment would be required to refer to commuter coaches in London or more

generally to services authorised by Transport for London by means of London service permits granted under the provisions of section 185 of the Greater London Authority Act 1985.

3 Information

- 3.1. Following a public consultation exercise - in which London TravelWatch took part - the government announced in April last year that it proposed to extend the remit of Passenger Focus to enable it to act additionally as a “champion” for bus, coach and (possibly) tram users. Permissive powers to give effect to this decision were included in the Local Transport Act 2008, and Passenger Focus has since been performing this role on a “shadow” non-statutory basis. Although Passenger Focus’s rail remit also covers Wales and Scotland, this proposal relates solely to England because local transport arrangements elsewhere in Britain are a devolved matter.
- 3.2. On 16.7.09 the Department for Transport launched a further consultation exercise about the draft of the statutory instrument (the “Rail Passengers’ Council (Non-Railway Functions) Order 2010”) needed to give formal legal effect to this decision. The exercise also covers a further Order (the “Public Passenger Transport (Display of Information) (England) Regulations 2010”) designed to honour an undertaking given to Parliament during the passage of the Act that operators of bus and coach services and infrastructure would be required to publicise certain information, particularly about how users can register complaints.
- 3.3. Full details of the consultation exercise can be found at <http://www.dft.gov.uk/consultations/open/passenger-focus-remit/consultationdoc.pdf>. The closing date for responses is 8.10.09.
- 3.4. The government has also recently conducted a consultation on a proposal to extend the role of Passenger Focus to encompass the interests of air travellers. But that is outside the scope of the present exercise.
- 3.5. The consultation document lists 19 questions on which the views of organizations and members of the public are invited. These are :
 - “Q1 Should Passenger Focus (also) be the statutory representative for tram passengers?
 - “Q2 Do you agree that Passenger Focus' remit should include community transport services operated under “section 22” permits?
 - “Q3 Do you agree with the exclusions from the definition of 'road passenger transport services and facilities' (essentially charters, excursions and tours)? Are any other exclusions needed?
 - “Q4 Do you agree with the proposed arrangements for bus and coach matters partly or wholly operating in London?

- “Q5 Do you agree that Passenger Focus should be able to request any information from a relevant party?
- “Q6 Should there be an independent arbiter for disputed information requests and if so, who should it be?
- “Q7 Should Passenger Focus be required to conduct a 'value for money' test before making a representation? If so, what form should it take?
- “Q8 How should operators and local authorities be expected to respond to representations made by Passenger Focus?
- “Q9 Do you think it would be appropriate for Passenger Focus to refer a matter to Traffic Commissioners or the Secretary of State for them to exercise appropriate powers when it does not receive an adequate response?
- “Q10 Who should act as the enforcer for tram services where Passenger Focus has not been able to achieve a satisfactory response?
- “Q11 Do you agree with the proposals in the document about representations made by Passenger Focus to traffic commissioners?
- “Q12 Do you agree that Passenger Focus' role in handling complaints should be determined after it has completed a review of the complaints system?
- “Q13 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?
- “Q14 Are any other changes (additional to those proposed in the document) required to the constitution of the (Rail) Passengers' Council?
- “Q15 Do you agree with the information that operators would be required to display on their bus?
- “Q16 Do you think that the providers of bus stops and bus stations should also be required to display such information?
- “Q17 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?
- “Q18 Do you think that the providers of tram services should also be subject to the information requirements? If yes, who should enforce this?
- “Q19 Should the location and design of information be prescribed in the regulations?
- “Q20 Do you agree with the information that operators would be required to display other than on the vehicle?”

- 3.6. In preparing advice for their Board on these questions, officers of Passenger Focus have sought guidance from their counterparts at London TravelWatch, arising from its long experience as a representative body for bus and tram users in London. The conclusions emerging from these discussions are reflected in the draft response presented for consideration by the Board of Passenger Focus on 16.9.09, which can be found at http://www.passengerfocus.org.uk/Board_papers/0909/Item%2013.2.pdf
- 3.7. Except for question 4, none of the proposals to which these questions relate would impact directly on services in London. For this reason, although it is open to London TravelWatch to reply to any or all of them, it appears that no such intervention is necessary, and that a simple statement to the effect that London TravelWatch has seen and does not dissent from Passenger Focus's position will suffice (see recommendation at 2.2(a) above).
- 3.8. The position in relation to question 4 is, however, more complex. The consultation document states :

“Whilst Passenger Focus' new functions extend to England, there is already a statutory body, London TravelWatch (officially known as the London Transport Users' Committee) which deals with services operated, procured or licensed by Transport for London (TfL). This includes London Underground, London Buses, Docklands Light Railway, Croydon Tramlink, and Dial-a-Ride services.

“Where any matter relating to local bus services, tramway services or road passenger transport facilities refers partly or wholly to aspects within Greater London, new section 112D(3) of the Transport Act 1985 would require Passenger Focus to refer the relevant part to London TravelWatch. However, we intend that Passenger Focus would deal with those aspects of any matter which relate to England outside London. Section 137(1) of the Transport Act 1985 defines London for the purposes of that act as "the administrative area of Greater London as for the time being constituted".

“In addition, London TravelWatch does not cover coach services so we propose that Passenger Focus should represent users of domestic coach services operating in Greater London. These services predominantly move passengers over long distances to and from London, making it more appropriate for Passenger Focus to cover them. London TravelWatch will continue to have responsibility, as now, for facilities at Victoria Coach Station.”

Three issues arise from this.

- 3.9. First, it is clear that it is the government's intention that London TravelWatch's existing role should not be affected by these proposals. The paper correctly identifies the limits of London TravelWatch's remit as being defined institutionally (“services operated, procured or licensed by TfL”) and not by reference to any geographical limit. TfL has – and exercises – power to provide or procure services running to and from as well as within London, and all of these therefore fall within London TravelWatch's scope. But the paper goes on to propose that the limit of Passenger Focus's jurisdiction should be the administrative boundary of Greater London. The consequence of this would be that TfL services extending into neighbouring areas would fall simultaneously within the ambit of

both organizations.

If it is agreed that overlapping remits of this kind are best avoided, so that there is no duplication of effort or inappropriate competition between sister organizations, it would appear more appropriate for the proposed remit of Passenger Focus to be redefined to exclude any services operated, procured or licensed by TfL. This would eliminate any ambiguity regarding the respective constituencies of the two bodies vis-à-vis these cross-boundary routes. This would be achieved by the amendment recommended in paragraph 2.2(c) above.

- 3.10. Second, the draft Order accompanying the consultation paper would insert a new section 112C in the Transport Act 1985 setting out the new duties of Passenger Focus (“the Council”) vis-à-vis buses and coaches in the following terms :

“112C Duty to investigate road passenger transport services and facilities

- “(1) Subject as follows, the Passengers’ Council must investigate any matter relating to the provision of road passenger transport services or facilities if —
- (a) the matter is the subject of a representation made to the Council by a user or potential user of road passenger transport services or facilities,
 - (b) the matter is the subject of a representation made to the Council by an organisation representative of users or potential users of road passenger transport services or facilities,
 - (c) the matter is referred to the Council by the Secretary of State for investigation, or
 - (d) it appears to the Council that the matter is one which the Council ought to investigate.”

This wording is derived directly from the existing terms of reference under which both Passenger Focus and London TravelWatch operate. The following section then addresses the exclusion of services in London thus :

“112D Power to refer matters elsewhere instead of investigating

- (1) This section applies in relation to a matter which is the subject of a representation made to the Passengers’ Council under section 112C(1)(a) or (b).”
- and

- “(3) The Council must refer the matter to the London Transport Users’ Committee if, or in so far as, it appears to the Council to relate to—
- (a) the provision of local services in London,
 - (b) the provision of tramway services in London, or
 - (c) the provision of road passenger transport facilities in London.”

As it is currently drafted, Passenger Focus would be required automatically to refer matters to London TravelWatch if they relate to “local services” (i.e. buses), trams or

“road passenger transport facilities” (i.e. bus stops and stations, information services, etc) in London. But this duty would only apply in the case of matters about which it has received representations (i.e. complaints and appeals). No such duty would exist in the case of matters referred to it by the Secretary of State, or which it chose to investigate at its own discretion. The effect would be to duplicate in relation to buses the existing situation which applies to mainline rail services, where London TravelWatch alone handles representations from users but there are overlapping responsibilities as far as research and policy development generally are concerned.

Such an overlap of roles and responsibilities is neither necessary nor desirable. It is therefore recommended at paragraph 2.2(d) above that the proposed section 112D(3) should become free-standing, and not be conditional upon the requirements in 112D(1) being met.

3.11. Third, the government states that

“London TravelWatch does not cover coach services so we propose that Passenger Focus should represent users of domestic coach services operating in Greater London. These services predominantly move passengers over long distances to and from London, making it more appropriate for Passenger Focus to cover them. London TravelWatch will continue to have responsibility, as now, for facilities at Victoria Coach Station.”

Although a handful of long distance services pick up and set down elsewhere in London (e.g. Heathrow and Golders Green) and fall within the margins of London TravelWatch’s remit because they operate under TfL-issued licences (“London service permits”) within London, the government’s statement is correct in its essentials and as it stands this proposal should not cause any difficulty.

However, Passenger Focus’s draft response reads :

“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 London TravelWatch 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.”

The current legal position is that any “local services” (i.e. those which carry passengers for journeys of less than 15 miles) which operate in London require a London service

permit (LSP) from TfL. Because London TravelWatch's remit extends to any services "licensed" by TfL, these fall within it and London TravelWatch is automatically consulted on those matters which the licensing regime covers, e.g. stopping arrangements, route numbering and information, as well as on the roadside infrastructure which TfL provides for them and on the Mayor's general policy towards such services. A full list of them can be found at http://www.tfl.gov.uk/assets/downloads/businessandpartners/LSP_Bulletin.pdf.

Excluding those run on behalf of schools and colleges, there are currently 53 routes authorised by LSPs operating between Greater London and points beyond. Most are purely local links, and only 16 which run to and from central London fall into the category of commuter services of the kind for which Passenger Focus's draft response could be construed (from the statement "it makes sense for Passenger Focus to handle all domestic coach services, including commuter services such as Green Line and North Kent services") as proposing that it should have some formal responsibility. It should be noted that all such services are also registered by the Traffic Commissioners in respect of their non-London sections (because LSPs only extend to the London boundary), and these sections will therefore be covered by Passenger Focus in any event.

The "dual jurisdiction" within London which may be being canvassed here by Passenger Focus is not necessary and could result in avoidable confusion. The sections of these routes within London are already brought into London TravelWatch's remit by virtue of TfL's licensing role, and there are no proposals that this should be changed. There is no compelling reason to alter this arrangement. As long as it is not changed, sections within London will continue to be in London TravelWatch's scope, and users of sections outside will have a newly acquired champion in the guise of Passenger Focus. But when and if issues arise which transcend the boundary, there should be no difficulty in handling these by means of the "common sense arrangements" to which Passenger Focus refers, building on those which already exist in the case of rail services operating across the limits of London TravelWatch's jurisdiction.

Long-distance coach services which do not carry passengers locally are not required to be licensed or registered, and fall outside TfL's scope (except in its guise as operator of Victoria Coach Station, at which most of them terminate). They will therefore be purely Passenger Focus's concern, and there need be no difficulty for London TravelWatch in taking account of Passenger Focus's views on any facilities which the coach station provides for their users.

It is therefore recommended at paragraph 2(e) above that provided the alterations proposed in the preceding paragraphs are accepted, no particular provision is required in the Order to delineate the two organisations' respective jurisdictions in respect of coaches.

4 Equalities and inclusion implications

4.1. None

5 Financial implications

5.1. None

6 Legal powers

6.1. Section 248 of the Greater London Authority Act 1999 places upon London TravelWatch (as the London Transport Users Committee) a duty to consider – and where it appears to the Committee to be desirable, to make recommendations with respect to - any matter affecting the functions of the Greater London Authority or Transport for London which relate to transport (other than of freight).