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**Secretariat memorandum**

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Agenda item 13

LTW 348

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**Extending the role of Passenger Focus : the Government's response to consultation**

**1 Purpose of report**

- 1.1 To record the successful outcome of representations made to the Government on its consultation on the draft Order for extending the modal remit of Passenger Focus, in so far as it relates to the interface with London TravelWatch.

**2 Recommendation**

- 2.1 That the report be received for information.

**3 Information**

- 3.1 At its meeting on 29.9.09, the Board considered a paper (LTW 321) summarising the issues raised in a consultation paper by the Department for Transport (DfT) on the terms of a draft legislative Order giving effect to its previously-announced decision to extend the remit of Passenger Focus to embrace the users of bus, coach and (possibly) tram services in England, outside London.
- 3.2 The Board endorsed the broad objectives and terms of the Order, including the extension of Passenger Focus's remit to include tramways. It noted, however, that as drafted the Order would have created an overlap between Passenger Focus and London TravelWatch in respect of their general duties vis-à-vis bus and (prospectively) tram services in London. In addition, it noted that although handling of passenger appeals in London would be reserved to London TravelWatch, duplication could arise in the responsibilities of the two bodies with respect to this specific function in the case of Transport for London (TfL)-sponsored bus services outside Greater London.
- 3.3 The Board agreed that to create such a duplication of functions between the two consumer bodies was undesirable, and could result in some confusion regarding their respective roles. It therefore resolved that representations should be made, drawing DfT's attention to these (apparently unintended) effects of the Order as drafted, and seeking suitable amendments to its wording before it was tabled for Parliamentary approval.
- 3.4 A number of memoranda were prepared by officers of London TravelWatch, setting out the extent of the potential duplication and drawing DfT's attention to the organisation's existing legal remit in relation to bus, coach and tram services and facilities. This is coterminous organisationally with TfL's operations and duties (other than in respect of freight), rather than geographically with Greater London (as the authors of the draft Order had erroneously assumed), and is not limited functionally only to the handling of

representations received from or on behalf of their users. Following the submission of these memoranda, meetings were held (at their invitation) with officers of both DfT and Passenger Focus to amplify the potential problems which could be created if the draft Order was enacted in its existing form, and to suggest amendments which would remove them. In addition, guidance was provided to TfL (at its request) on the same issues, to assist it in formulating its own response to the same consultation.

- 3.5 On 19.1.10 the DfT published a summary of the responses it had received to its consultation paper on the draft Order, and setting out the Government's conclusions in the light of these. The summary can be found at <http://www.dft.gov.uk/consultations/closed/passenger-focus-remit/>. It confirms the intention to extend Passenger Focus's remit to include road passenger transport services generally (i.e. buses, coaches and trams) in England, outside London, and deals with a number of technical issues arising from this, such as the size of Passenger Focus's Board and its relationship with the Traffic Commissioners, the regulatory body for the bus and coach industry.

- 3.6 In relation to the specific issues raised by London TravelWatch it states

*There was broad agreement to the principle that London bus and tram services should be excluded from Passenger Focus (PF)'s remit. However, London TravelWatch (LTW) expressed concern, echoed by ten other consultees, that the draft Order did not accurately capture their existing remit dealing with services operated, procured or licensed by Transport for London (TfL). It was felt that this could lead to some duplication of responsibility and confusion for passengers and operators. Two operators suggested that it might be appropriate to merge PF and LTW as this would be less confusing to the public and help PF have a full knowledge of all areas.*

*We agree that it would not be appropriate for PF to investigate matters specific to London which already fall within LTW's remit. We propose to amend the Order to take account of these concerns and clarify that PF will only be able to investigate bus and tram services operated, licensed or procured by TfL where this forms part of its consideration of a matter which relates wholly or mainly to an issue outside London.*

*PF and LTW have co-operated successfully on handling railway matters for some time and have confirmed that they will extend these arrangements to cover coaches and cross-boundary bus services. It is not our intention to change LTW's remit.*

- 3.7 The revised Order has been laid before Parliament for approval. It was approved nem con by the House of Commons Delegated Legislation Committee on 1.2.10 after a short debate, the transcript of which is at <http://www.publications.parliament.uk/pa/cm200910/cmgeneral/deleg2/100201/100201s01.htm#end>. In response to the following question from an opposition spokesperson (Stephen Hammond)

*I am also slightly troubled by the Minister's comments about the roles of London TravelWatch and the new body. If I heard him correctly, he said that the new body can look at services that come into London, but that London TravelWatch would not be able to look at services that might start in London and go outwards. Is that what he said and what he intends? If so, is that not applicable only to coach and tram services, and should not the matter be more carefully defined?*

the Minister of State at the DfT (Sadiq Khan) replied

*London TravelWatch represents users of services that are operated, procured or licensed by TfL, including London buses, London Underground, Docklands Light Railway, Croydon Tramlink and dial-a-ride. Passenger Focus may consider such matters as part of a wide investigation into services elsewhere in England, such as those in Dartford. London TravelWatch will continue to represent passengers making local journeys by coach within Greater London—from Victoria to Heathrow, for example—and people using Victoria coach station. Passenger Focus will represent passengers making longer-distance coach journeys inwards and outwards; my tongue may have slipped when I addressed that point during my opening remarks. The draft order makes no changes to the existing responsibilities of London TravelWatch.*

- 3.8 The Order was also approved nem con by the House of Lords Grand Committee on 1.2.10. In his summing up on behalf of the Government, Lord Faulkner of Worcester referred to the role of London TravelWatch and to its constructive working relationship with Passenger Focus, but no question about this was raised in the debate.
- 3.9 The Order was signed and came into force on 25 2.10. The full text can be found at [http://www.opsi.gov.uk/si/si2010/draft/ukdsi\\_9780111490334\\_en\\_1](http://www.opsi.gov.uk/si/si2010/draft/ukdsi_9780111490334_en_1). The sections relating specifically to the interface between Passenger Focus and London TravelWatch are set out in the appendix to this memorandum. In essence, their effect is :
- (a) to exclude bus, tram and local coach services/facilities provided or authorised by or on behalf of TfL from Passenger Focus's remit, but
  - (b) to waive this exclusion where a matter relating to such services/facilities in London arises only as part of an investigation which relates primarily to services/facilities not provided or authorised by or on behalf of TfL, or to services/facilities in England generally; and
  - (c) to require Passenger Focus to refer to London TravelWatch any representations it receives which relate wholly or mainly to services/facilities in London, but
  - (d) to disapply this duty in respect of representations regarding long distance coach services, unless they have been made by or on behalf of a passenger travelling locally on such services within London, or it otherwise chooses to refer them.
- 3.10 This amended wording fully satisfies the concerns raised by London TravelWatch. The action taken in pursuance of the decision of the Board on 29.9.09 was successful in averting what might otherwise have given rise (unintentionally) to a situation in which there could be scope for further misunderstandings about the remit of London TravelWatch's activities or questioning of the effectiveness of its working relationship with Passenger Focus. It is encouraging that the Government has given public confirmation that it has no intention of restricting London TravelWatch's current remit.

#### **4 Equalities and inclusion implications**

- 4.1 No specific equalities implications for London TravelWatch arising from this report.

#### **5 Legal powers**

- 5.1 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). Section 252A of the same Act (as amended by Schedule 6 of the Railways Act 2005) places a similar duty upon the Committee to keep under review matters affecting the interests of the public in relation to railway passenger and station services provided wholly or partly within the London railway area, and to make representations about them to such persons as it thinks appropriate.

## **6 Financial implications**

- 6.1 No specific financial implications for London TravelWatch arise from this report.

## Appendix

Extracts from The Passengers' Council (Non-Railway Functions) Order 2010

### Conferral of non-railway functions on the Passengers' Council

- 3 (1) After section 112 of the Transport Act 1985 insert—  
“PART 5A PASSENGERS' COUNCIL: ROAD PASSENGER  
TRANSPORT FUNCTIONS IN ENGLAND”

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

- (1) 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.
- (4) The Council must not investigate by virtue of subsection (1)(d) any matter which relates solely to the provision of London road passenger transport services or facilities.
- (5) Subsection (4) does not prevent the Council from so investigating any such matter as part of an investigation of a matter which relates wholly or mainly to—
- (a) the provision of road passenger transport services or facilities other than London road passenger services or facilities; or
  - (b) the provision of road passenger transport services or facilities in any part of England outside London.

#### 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).
- (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 the provision of London road passenger transport services or facilities.
- (4) Subsection (3) does not require the Council to refer a matter to the Committee if, or in so far as, it appears to the Council to relate to the provision of a long distance coach service.
- (5) Subsection (4) does not apply in the case of a matter if, or in so far as, it appears to the Council to relate to a London local passenger.
- (6) Subsection (4) does not prevent the Council referring a matter under subsection (3) if, or in so far as, it considers it appropriate to do so.
- (7) In this section—

“London local passenger” means a passenger making a journey which begins and ends at stopping places in London;

“long distance coach service” means a bus service—

- (a) which has one or more stopping places outside London; and
- (b) which would be a domestic coach service, if no account were taken of any London local passengers.

## 112L Interpretation of Part 5A

(1) In this Part—

“domestic coach service” means a bus service which—

- (a) carries passengers at separate fares; and
- (b) is not a local service;

“London road passenger transport services or facilities” means road passenger transport services or facilities—

- (a) provided by Transport for London or any of its subsidiaries;
- (b) provided in pursuance of an agreement entered into by Transport for London or in pursuance of a transport subsidiary’s agreement; or
- (c) otherwise authorised by Transport for London to be provided.

The term “local service” is defined in section 2 of the Transport Act 1985, viz :

- (1) In this Act “local service” means a service, using one or more public service vehicles, for the carriage of passengers by road at separate fares other than one—
  - (a) which is excluded by subsection (4) below; or
  - (b) in relation to which (except in an emergency) one or both of the conditions mentioned in subsection (2) below are met with respect to every passenger using the service.
- (2) The conditions are that—
  - (a) the place where he is set down is fifteen miles or more, measured in a straight line, from the place where he was taken up;
  - (b) some point on the route between those places is fifteen miles or more, measured in a straight line, from either of those places.
- (3) Where a service consists of one or more parts with respect to which one or both of the conditions are met, and one or more parts with respect to which neither of them is met, each of those parts shall be treated as a separate service for the purposes of subsection (1) above.
- (4) A service shall not be regarded for the purposes of this Act as a local service if—
  - (a) the conditions set out in Part III of Schedule 1 to the 1981 Act [*i.e. the Public Passenger Vehicles Act 1981*] (trips organised privately by persons acting independently of vehicle operators, etc.) are met in respect of each journey made by the vehicles used in providing the service; or
  - (b) every vehicle used in providing the service is so used under a permit granted under section 19 of this Act