

Cynulliad Cenedlaethol Cymru	National Assembly for Wales
Y Pwyllgor Menter a Busnes	Enterprise and Business Committee
Gwasanaethau Bysiau a Thrafnidiaeth Gymunedol yng Nghymru	Bus and Community Transport Services in Wales
BCT 48	BCT 48
Comisiynydd Traffig dros Ardal Drafndiaeth Cymru	Traffic Commissioner for the Welsh Traffic Area

## **Consultation questions**

### **Question 1 –How would you describe the current condition of the bus and community transport sectors in Wales?**

There are over 800 bus and coach operators registered in Wales with a combined authority to operate over 6000 vehicles. Wales accounts for 9% of PSV operators in Great Britain, a similar number to the West Midlands Traffic Area. The average number of PSV discs issued per operator is 7.7, this compares to 8.7 in the West Midlands and a GB average of 10.5.

The composition of the PSV industry in Wales features a significant portion of small family run businesses. These businesses are often the first to suffer in times of falling patronage or when exposed to an unlevel 'playing field' as a result of a lack of enforcement. My annual report of 2014-15 highlights some of my concerns in this regard.

<https://www.gov.uk/government/publications/traffic-commissioners-annual-report-2014-to-2015>

In 2014-15 I held 29 public inquiries into existing PSV licence holders. My findings in 13 of these cases were that the level of non compliance was so severe that it was appropriate to revoke the holder's operator's licence. These cases have been identified with the relatively low level of enforcement. It is likely that increases in the resources available to the enforcement agencies would lead to more licences being revoked and prevent the holders transporting members of the public in unsafe vehicles.

With regard to local bus services, only 23% of these licence holders run services which is a comparable figure to the rest of Great Britain. In 2015 there were 1483 live bus registrations in Wales. Many of these services will cover the major urban areas and the majority will be operated by major bus operator groups such as Stagecoach and Arriva or smaller independent operators such as Cardiff City Transport. It should be noted that the so called 'big five' bus operators, Stagecoach, Arriva, First, Go Ahead and National Express have a much smaller presence in Wales compared to England and Scotland.

Since 2010 there has been a small reduction in the number of operators and vehicles authorised. Of bigger concern is the reduction of local bus services from 1866 in 2010 to the 1483 registered today. More detailed analysis of the type of services affected is not possible but the loss of services will mean that communities are no longer served by good public transport. It should be remembered that this reduction is of entire services rather than just individual journeys.

Again there is a general lack of enforcement of bus services across Great Britain. As a result of an initiative to improve the enforcement of bus services the Driver and Vehicle Standards Agency replaced the network of c17 Bus Compliance Officers responsible for on-street monitoring of services in 2011 and replaced them with a wider network of Bus Operator Account Managers who are also dedicated vehicle or traffic examiners. There was no increase in man hours spent on bus compliance. Rather than on-street monitoring of services the emphasis changed to meeting operators and assessing their systems. The effectiveness of this approach is debatable and DVSA are currently piloting a new approach using the operator's own monitoring evidence.

To the credit of the Welsh Government a decision was taken to retain the three former DVSA Bus Compliance Officers in a part time capacity within Bus Users Cymru. This approach does allow for on-street monitoring to continue but obviously with only three people covering the entirety of Wales it only allows for reactive monitoring of services when complaints are received. This level of monitoring did not create a single public inquiry case in 2014-15 down from five the previous year. The positive to take from this is that none of the reports I received from either the DVSA or Bus Users Cymru were severe enough to take action against the operator under the Transport Act 1985 and the guidance issued by the Senior Traffic Commissioner.

A further positive feature of the Bus Users Cymru activities is that the experienced specialist bus monitors are well respected by industry and in the event of a serious complaint can intervene promptly to address problems. The quality of services in Wales is better as a result of the specialists funded by the Welsh Government.

The use of the term community transport sector can be ambiguous. Permits are issued to 'not for profit' groups to enable them to provide transport services for 'hire or reward'. There are two types of permits issued under the Transport Act 1985; Section 19 Permits and Section 22 Community Bus Permits.

The legislation governing these permits is vague and there are several hundred bodies who are permitted to issue Section 19 permits in Great Britain. These range from local authorities to organisations, such as, the British Olympic Wrestling Association. This diversity of issuing bodies makes it more difficult to achieve consistency and increase competence in the sector, although the Community Transport Association does provide very good advice for its members.

Section 19 permit holders cannot carry members of the general public. The groups holding permits include educational bodies, voluntary groups or dedicated Community Transport Groups supporting defined sections of society or geographical areas. Although many of these groups carry out good work on behalf of the community, competition issues can arise as they do bid against licensed PSV operators for contracts and are usually more competitive as a result of lower costs. This is a source of concern to PSV operators who see permit operators as less regulated and stretching beyond the remit that they were initially created to fulfil.

This opposition has resulted in a challenge from PSV operators to the European Union and the issuing of an Infraction Notice to the UK Government as a result of UK legislation not being aligned to EC Regulations. DfT officials are currently working with stakeholders on what revisions should be made to UK legislation

regarding permits and it is essential that the Welsh Government is represented in these discussions.

The vagueness and lack of effective enforcement provisions in the law relating to permits has meant that there is very little enforcement, it is ineffective and this has led to abuses.

In England there are several Section 19 permit holders that operate a large number of vehicles and are being awarded a number of Local Authority contracts. Wales does not have any community transport groups of a similar size and I have had no specific complaints regarding those Bodies operating under the permit system, contrary to the West Midlands where I have received complaints. This may suggest that the balance is in greater harmony in Wales.

The law relating to the issue and grant of permits is in urgent need of a thorough overhaul as it is not fit for purpose. The paucity of regulatory action does not reflect a good compliant sector, instead it is a result of considerable difficulties in effective enforcement within the existing legal framework. In fairness to the Community Transport Association, of the various entities that have power to issue licences, it is the most effective, I confirm that I consider that it has better oversight than the existing traffic commissioner arrangements. Ineffective enforcement has been a contributory factor in the financial disadvantages suffered by good, compliant PSV operators. I suggest that this contributes to the rationale for the legal challenge by the PSV industry.

It is not yet clear whether the UK Government will seek to legislate as a result of the EU Infraction Notice. For this reason the Welsh Government might seek to have this power devolved so it can ensure that the community transport sector is run in an effective manner that suits the needs of the people of Wales.

The number of Section 22 community bus operators remains small in comparison to PSV local bus service providers.

## **Question 2 – why do you think the number of bus services and the number of bus passengers is declining in Wales?**

Undoubtedly one major cause of this is the reduction of the public subsidy for operators to run loss making local services. The level of public subsidy available for public transport is a matter for the Welsh Government and local authorities but it is often smaller, more remote communities that are worse affected.

Poor reliability of services, increasing fares and increasing car ownership will all have an impact on passenger patronage.

Other respondents may be able to give a more detailed insight into the level of the

average fare rise and how that may have affected patronage and whether car ownership has increased in recent years. It should be remembered that buses often compete against all other forms of transport. This can include the obvious contenders of car, taxis and trains but also the bicycle where local authorities have installed cycle friendly road systems.

The absence of cross ticketing schemes can also dissuade patronage if it means passengers having to buy two tickets for a single journey at increased cost. This may make the car a more cost and time efficient form of transport for any given journey.

It should also be mentioned that in times of economic hardship bus patronage falls either as a result of people not requiring to travel to the workplace or reducing the leisure journeys that they make.

The reliability of services is an important motivator for using local bus services. Where services do not run to time passengers are more likely to switch modes so that their journeys to work or appointments are more reliable. In order to maintain public confidence in bus services there needs to be effective enforcement. When enforcement is minimal some operators will lower their standards to increase profits. Effective and visible enforcement helps to prevent this lowering of standards. It is essential that the appropriate level of resource is invested in the enforcement of this important industry. I remarked in my 2014-15 annual report that I was encouraged that the DVSA is to recruit in an attempt to address some of the historic staffing shortfalls in the South Wales area. It will be interesting to see what happens with the work that is likely to be referred to a traffic commissioner as a result. I look forward to being in a position to better regulate on behalf of stakeholders. Currently I have concerns that the many fine hard working family businesses and bus passengers in Wales suffer as a result of the lack of a level playing field,

**Question 3** – what do you think is the social, economic and environmental impact of recent changes in bus and community transport service levels?

This is a question that is more appropriate for the political leaders or the local authorities to respond to.

**Question 4 –what do you think the Welsh Government should do to support bus and community transport in Wales?**

The existing PSV legislation is often confusing and contradictory in its objectives. The devolution of operator licensing and bus registration matters would allow the Welsh Government to reshape the legislation to resolve these issues and ensure that it can respond to local transport issues.

The Welsh Government already provides additional assistance for the monitoring of services and the devolution of BSOG allows for the Welsh Government to create legislation or guidance that more effectively targets the public funds available to provide bus services.

As outlined in my answer to question 1 above, there is a strong case to review and reform the law relating to community transport. If this were undertaken on an England & Wales basis, that should address the needs of Wales. However, reform of community transport in Wales might be easier if the function were devolved.

**Question 5 –what do you think Welsh local authorities should do to support bus and community transport services?**

In these times of increasing restrictions on the financial resources available to local authorities it is understandable that the subsidy for bus operators is reduced. Local authorities should consider whether they are currently working with operators in an effective manner and consider whether the existing provisions for partnership schemes (both voluntary and statutory) are being used to maximum effect. A properly constructed Quality Partnership Scheme would allow greater local authority participation over the routes and services without necessarily increasing the subsidy in support. It could also enable better use of cross ticketing schemes and other ‘soft measures’ that enhance passenger experience.

Legislation also allows for the regulation of bus services through the implementation of a Quality Contracts Scheme. A QCS scheme could enable the local authority to decide what services are provided in an area, paying a subsidy to the successful bidder for loss making services or receiving a premium for profitable routes. Or, alternatively, the local authority can take the increased risk of receiving the revenue from the services.

Despite being available to local authorities since the Transport Act 2000 and made easier in the Local Transport Act 2008 only Nexus (on behalf of the North East Combined Authority) has made an official request for a scheme to be considered. The report of the QCS Board was released on 3 November 2015 and highlighted a number of areas where the re-regulation of the bus market under current legislation would prove difficult. For your benefit I have attached the summary of the report and the Appendix 3 that sets out some of the issues in greater detail. A copy of the full report can be accessed at –

[www.gov.uk/government/news/qcs-board-publishes-report-on-tyne-and-](http://www.gov.uk/government/news/qcs-board-publishes-report-on-tyne-and-)

wear-scheme

Any move for Local Transport Authorities in Wales to implement a QCS will result in an increased challenge from operators and there are a number of implications, not least on legal challenges. In the case of Wales it should be recognised that a distinctive characteristic of the industry is the preponderance of family businesses, rendering any implementation of a QCS more problematic logistically, that is aside from the cost/subsidy implications.

Targeted Quality Partnerships Schemes can produce good results and I recommend politicians who are reflecting on QCSs to study the extent of and success of the partnership approach in the West Midlands controlled by Centro. Centro introduced a Statutory Quality Partnership Scheme in 2012 following extensive work with the local operators and this has brought benefits to all parties involved in public transport in the centre of Birmingham. It is also open to Local Transport Authorities to enter into voluntary partnership arrangements with operators and this has proved to be successful in a number of areas.

Consideration may also be given on whether Wales would benefit from the creation of an Integrated Transport Authority (ITA) in urban areas currently under the control of several individual authorities. ITAs could deliver a more coordinated approach in the provision of transport in an area across all modes and would give authorities a stronger negotiating hand with the operators of services.

**Question 6 - what do you think about proposals to devolve bus registration powers to Wales? How should these be used?**

The move to devolve bus registration powers in Wales has my full support. Bus services are local issues and need to be resolved locally. The staff supporting my role in Leeds have little practical knowledge of the networks and infrastructure of Wales. The lack of adherence to the requirements of the Welsh language legislation is a feature that I have raised consistently and the devolution of bus registration in Wales is the most effective means of addressing this.

Devolution of bus registration powers would enable the Welsh Government to consider whether services should continue to be registered with the traffic commissioner or whether another body would allow greater benefits or 'added value'. PTI Cymru currently provide information that is of a greater detail than that required by legislation to be supplied to me. It should be considered what the benefits that may be realised by placing the requirement on bus operators to provide the registrations to PTI Cymru, whilst retaining the role of the traffic commissioner to regulate the compliance of the services. Consideration is being given to moving bus registrations from traffic commissioners in England, I support this approach as others are better equipped to undertake the task.

The Electronic Bus Service Registration system (EBSR) has been in operation for eight years but take up by operators is stubbornly low. Stagecoach and Arriva services are registered using EBSR but few other Welsh operators use the system. The benefit of the system includes the more efficient transfer of bus registration information between operators, local authorities, PTI Cymru and the traffic commissioner. The provision of better information benefits the passengers and could help to increase patronage. Although DfT is keen to encourage the wider use of EBSR the devolution of powers enables the Welsh Government to consider its own strategy that could include making financial incentives available to the operators who use EBSR encouraging increased take up, e.g. a reduction in the registration fee. An obvious option would be to set a relatively high standard fee of £x with a heavy discount to £y for a registration that was: (a) undertaken promptly and in good time; and (b) met service standards to be set by the Welsh Government. Service standards could include effective communication with the relevant local authority – and - use of electronic communication clearly showing all requirements.

**Question 7 – please tell us whether you think further powers to regulate the bus industry in Wales are required and why?**

The extent of further regulation is a political decision that I should not comment on.

**Question 8 – what other action can be taken to ensure that bus and community transport services meet the needs of people in Wales?**

Please tell us anything else you would like to mention this topic, thank you for contributing to our inquiry.

The role of the traffic commissioner in Wales is different to the other areas in Great Britain as it is the only traffic area that does not have its own dedicated traffic commissioner. I refer to successive annual reports with consistent references to the outcome being in Wales being lower safety standards.

I am seeking a meeting involving interested parties as the existing triennial review of traffic commissioners for Great Britain provides an opportunity to address longstanding issues.



## **Summary of the QCS Board's Opinion**

10.1. This is the first time that the 15-year-old legislation supporting Quality Contract Schemes has been put to the test. It seems to us, that the legislators probably had in mind that it would be tested in a rather smaller scale first. The scale of the Tyne & Wear proposal is large. The proposal is enormously ambitious and could, if delivered successfully and the risks don't materialise, provide Tyne & Wear with a transport system unrivalled in Great Britain outside London.

10.2. By its very nature, virtually everything that Nexus was trying to assess was a novel intervention. There was little, if any, truly relevant research for them to draw upon. It is the Board's view that they have done exceptionally well to get where they have got to today. It is always far easier to criticise, than to create. Appendix 3 deals with some of the learning points we have found in our consideration of the proposal.

10.3. In the VPA, Nexus can be proud that it has led three bus companies to put forward a proposal that is in itself novel and groundbreaking, with the makings of potentially effective governance allowing local citizens real influence over their bus services. From our understanding, it is likely that there will be clauses in the forthcoming Buses Bill that could allow, should they wish to, Nexus to establish greater certainty through a new version of a statutory quality partnership. It is against that very difficult background, and recognising the immense progress made by Nexus, that we set out here a summary of our findings.

## **Consultation**

10.4. It is our opinion that Nexus fails to comply with the statutory requirements on consultation set out in Section 125 of TA2000. This is primarily because the representation of the difference in scale of benefits between the QCS, and the VPA in the formal consultation document was such as potentially to mislead respondents and we saw evidence respondents had been so misled<sup>1</sup>.

## **The public interest test criterion**

10.5. Nexus did not apply an optimism bias on top of its modelling of the four specific risks chosen. We saw that the risk contingency was likely to be spent on 31% of possible outcomes. An optimum bias should have been applied on top of this risk contingency. There is therefore a likelihood that the scheme will run out of money. There is a further cash flow issue in the early years. For those reasons, the Board is not convinced that the scheme is affordable and, on that basis, we cannot conclude that it will lead to an increase in the use of bus services and it is our opinion that the requirements of Section 124(1)(a) TA2000 are not demonstrated.

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<sup>1</sup> For example, see paragraph 4.19 above

10.6. We are satisfied that service quality would improve compared to the *do minimum*. In our opinion, section 124(1)(b) TA2000 is satisfied.

10.7. We saw how the QCS would contribute to local policies and strategies. In our opinion, section 124(1)(c) TA2000 is satisfied.

10.8. The effectiveness of the QCS has been significantly overstated due to errors within the modelling. In particular, Nexus attributed benefits associated with simplified ticketing to passengers who did not buy a ticket. We reject, as reverse engineering, the latest version of events that simplified ticketing and customer charter were simply a proxy for a wider package of benefits. That assertion is not supported by any of the core documentation of the scheme. It is our opinion that Section 124(1)(d) TA2000 is not met.

10.9. The proposals generate negative cash impacts on the three existing operators in the range of at least £85 million to £226 million. The mean of those figures is significantly in excess of the net present value of benefits likely to be delivered by the QCS. The sheer scale of those figures is such that they will do real harm to the existing operators. The Board is firmly of the view that Parliament never had in mind that the introduction of a quality contract scheme would lead to cash impact on businesses of the order of hundreds of millions of pounds. In addition, the benefits that could be delivered by the VPA are of similar orders of magnitude to those delivered by the QCS. In fact, in cash terms as modelled, they are greater but we accept that the governance arrangements for the QCS are superior, at least as the VPA is currently defined. We have no hesitation in concluding the negative impacts on the operators are wholly disproportionate to the benefits accruing both to the travelling public in Tyne & Wear and the well-being of the wider citizens. It is our opinion that Section 124(1)(e) TA2000 is not met.

### Lessons learned relevant to wider franchising proposals

**Note – this Appendix is not part of the Board’s formal opinion**

#### Introduction

1. This is the first time that any local authority has taken advantage of the legislation to seek to introduce a Quality Contracts Scheme. Since the start of the proposal, and particularly very recently, there has been much discussion, and in some areas progress in agreements to devolve powers, funding and responsibilities to authorities (as in the case of Cornwall) and to combined local authorities usually based on recognised economic areas or city regions (as in the case of Manchester Combined Authority, North East Combined Authority and Tees Valley). Some of the devolution deals include powers to franchise bus services in the area within a broader package to tackle the barriers to economic growth in those regions. It is possible then that this could be the only example of testing Quality Contract proposals against the criteria and that future proposals will take some form of franchising in a variety of situations.

2. Whatever approach is pursued to seek changes in the operation of bus services in the future, this Board considers that there are valuable lessons to be learnt from this QCS process which has now taken three years and involved a great deal of public and private investment in time and money. The following thoughts and suggestions are not seen as an exhaustive list of lessons to be learnt but merely some helpful ideas to help others involved in discussions or proposals to change the way bus services are provided in their area. They are grouped into a number of themes but there are strong links between the themes and the suggestions that follow and the reader is recommended to consider the appendix in the round.

#### Initiation, funding and subsidy

3. In a Foreword to a recent book on London’s Buses, then Commissioner of Transport for London, Sir Peter Hendy commented “*Public transport in a major city properly designed to cope with the peak flows of people to jobs creating wealth, education, healthcare and leisure, consumes public subsidy..*” (emphasis added). The QCS in Tyne and Wear was driven by the need to protect services in the light of reducing public sector funds. Whilst a laudable aim, any such approach has inherent conflicts. A more positive approach would be to identify where enhancements to bus services would eliminate constraints to enhanced economic growth and well-being, develop an enhancement plan to the point where incremental costs began to outstrip incremental benefits, and thus identify a subsidy requirement for a new network. An appropriate procurement structure might then be more readily apparent.

## Process of development and assessment

4. There were many things which contributed to the lengthy timescale for this QCS proposal and which, in the Board's view, could have been reduced. All the way through the process, the Board has had to consider differing views on the information, assumptions and guidance and as the report shows in some areas we can see a range of outcomes that seem equally to be right. One of the key problems was that, even with the offer of confidentiality agreements, important base information was not made available to Nexus at the start of the process.

5. The economic advisors sought to achieve common ground as far as possible over a considerable period of time. In fact, a further error was conceded (in relation to risk modelling) only a few days before the oral evidence sessions began. It's notable that the statement of common ground was dated 10 July – the Friday before the hearings began on Monday 13 July. In addition it was well into the process before there was an opportunity to openly debate and constructively challenge the views of all parties. As a result it is suggested that the following is considered

- There should be a staged, independently scrutinised, approach to the process of development and assessment of any proposal. This staged process would require agreement at each stage before progression to the next stage.
- The first stage may agree the scope of the initiative and the area to be covered. This would, for example, examine the relevance to the proposal of LA boundaries, the recognised economic area, and travel to work areas. Approval at this stage may place an obligation on parties to make relevant data available to the local authority on a confidential basis. We recommend that obligation is statutorily defined and includes information on patronage, ticket sales and fare box revenue at an individual route and time basis). A further stage would involve agreement to the intelligence from the data and parameters/forecasts to be used.
- The independent scrutiny should be supported by independent expert capability and the costs borne by the sponsor of the proposal.
- In addition to economic experts, experts in accountancy, procurement contracting, commercial bus operation, and public sector bus network planning should be called upon
- The independent scrutiny process could continue following the introduction of a scheme with annual scrutiny review of progress in delivering outcomes/ adequacy of governance arrangements etc. This could usefully include a SWOT analysis.
- It is recommended that advice be developed on an appropriate staged process for future proposals.
- There should be an agreed process for changes to the existing bus services once the project development/scrutiny process has started.

## Scope

6. The remit and functions of the Quality Contracts Scheme Board are governed by the statutory provisions contained in the Transport Act 2000 and the associated Quality Contracts Schemes Regulations. Further insight is provided by the Statutory Guidance. In short the issues for the Board were twofold:

- i. To form an opinion whether the proposal meets the conditions of the public interest test, and
- ii. To form an opinion on whether the consultation complied with the requirements.

7. It is the Board's view that scrutiny of any future proposals should enable a wider view than the QCS Board remit allows. Any assessment must be more about how the proposal will contribute to tackling the key issues of the area e.g. local economy, accessibility to employment etc on a more subjective basis, supported by, rather than potentially constrained by monetary benefits. Whilst it may appear that Criterion B, contribution to local policies, addresses this, its scope is strictly limited to simply whether or not the proposal does more than the *do minimum*.

8. The Board encouraged an inquisitorial approach to the process but it was inevitable with the scale of financial implications possible for all parties that a more adversarial approach to the process emerged. However it is acknowledged that many of the errors identified may not have been uncovered without an opportunity to independently challenge. We recommend:

- The adoption of an independently scrutinised, staged approach to the process as outlined above could encourage a more inquisitorial and less adversarial and less academic approach.

## Guidance

9. The statutory guidance for quality contract schemes suggests that LTAs may wish to refer to the Department for Transport's extensive guidance on transport scheme appraisal found in the WebTAG documents. The QCS guidance also states that compliance with this guidance is not a legal requirement, but it may assist LTAs in preparing a high-quality and persuasive assessment of different impacts that might arise from their proposed scheme. All parties agreed that use of the guidance in WebTag (and documents that had informed WebTAG such as the Aecom report - The Role of Soft Measures in Influencing Patronage Growth and Modal Split in the Bus Market in England) was appropriate and helpful.

10. WebTAG has been shaped over many years essentially for the development and evaluation of capital transport schemes, both highway and public transport. The Quality Contract proposal is different. There is not a large up front capital cost. There is an ongoing stream of contract costs to be judged against potential fare box revenues for the scheme proposer and real financial implications for operators to be

assessed. The Board found that, because it was not developed for this kind of project, the guidance was in some cases not helpful and encouraged different views to be taken on key issues. As a result the Board recommends:

- The appraisal process must be more about sensible judgement and less about the minutiae of economic/statistical factors.

## **Flexibility**

11. The July 2013 consultation document explains in section 2.10 the development of the QCS proposal. During 2011/12 Nexus developed an initial QCS proposal based on a theoretical bus route network which it considered might, if implemented, deliver enhanced social and economic benefits across the region as well as delivering enhanced patronage levels. Nexus recognised however that this proposed route network did not reflect the current network in actual operation across the region. Following informal dialogue with Operators and other stakeholders on the untested route structure, Nexus decided to abandon the first proposal and develop a QCS based on the current route structure in day to day operation.

12. The proposed QCS therefore assumes the bus network as it exists and contracts for bus services across that network for a minimum of 7 years with the potential to extend to 10 years (the life of the QCS). Within the QCS, there is scope to vary the contracts but this does not give the opportunity for reducing services or for radical change. The collection of new data from day one of the QCS or for any other proposal would enable planning for network changes to follow a settling-in period. This suggests that any rationalisation proposals could be contemplated much sooner than 7 years. We therefore recommend that:

- Consideration should be given to a mixed approach with 3,5,7 year contracts (with the option to extend a further 2 years). The shorter contracts could be those where it appears there is scope and need for early change e.g. for rationalising main corridors, optimising the network to reduce costs, stimulating demand by increasing frequencies and/or widening the service day, developing routes which are not constrained by historic operating areas, or improving accessibility to employment, education, retail and leisure.
- Mix contract lengths and starting dates would smooth out the demands for contract renewal.

## **Risk**

13. It is well understood that the drivers of risks can be financial, operational and strategic, influenced both internally and externally. The identification, quantification and management of risk in the development, assessment, introduction and monitoring of the QCS proposal is a subject that has engaged the Board throughout this process. There are some obvious key risks such as the way in which the Tyne & Wear QCS proposes the shift of an enormous financial risk from the private sector to

the public sector but there are many other key risks that impact both positively and negatively on the potential success or otherwise of the proposal.

14. The QCS as proposed essentially moves the majority of the financial risk for operating services from the private sector to the public sector. Under the proposed QCS Nexus will put the main group of services out to tender in 11 lots. Operators will consider the lots and submit bids to operate the services in each of the 11 lots for contracts of 7 years duration and the possibility of extension to ten years. Operators would bid on the basis that Nexus would retain all revenue from fares collected.

15. The financial risk of meeting the contract cost during the lifetime of the contracts would be with Nexus. Alternative forms of a QCS could be considered that retained the key features considered vital to securing the benefits and which would leave the majority of the financial risk with, or shared with, the operators. Contracts could be let on a subsidy /premium basis or a mix with Nexus taking a proportion of the risk.

16. The capacity and capability of an organisation to develop and take forward a project that is possibly larger and different to its core functions may require additional and new skill sets. These additional and new skill sets may be within the organisation itself or provided by experts contracted to support it. The Board has suggested in this Appendix that the scope of assessment of such proposals should also look at the broader economic issues of the area and the big picture and the skills need to be available to do this. This would also reinforce the value of an intelligent client function.

17. In addition the persistent risk management problem, that of over-optimism and unrealistic expectations, referred to as optimism bias has also exercised the board in this process. It is recognised that the risks associated with optimism bias and therefore the allowance can be reduced as more is known and agreed in the development of a project. The process adopted for this project, which meant that independent challenge or scrutiny took place sometime after the publication of the proposals, meant that it was difficult to readily identify the level of optimism bias that should be allowed in the risk contingency. The Board considers that the staged scrutinised approach to such a project would allow an appropriate and proportionate approach to optimism bias to be adopted.

- Adopt an appropriate and proportionate application of optimism bias within the proposed staged scrutinised approach to project development, assessment and approval.
- Carefully consider the capacity and capability and skill sets needed to develop and deliver such projects.

## **Proportionality**

18. Proportionality in the context of a QCS or franchising is a subject that the Board consider could benefit from clarification in law, in particular, in considering the adverse effects on operators against the relevant benefits. The QCS is novel and is

unlike a conventional transport project. It is the Board's understanding that in a conventional transport project the possible adverse effects on individuals, communities and businesses are identified and where possible quantified. This QCS involves a significantly different set of effects.

19. The statutory QCS guidance recognises that it is inevitable that there will be a degree of subjectivity associated with this where the adverse effects on one group need to be weighed against benefits that accrue to another. The guidance also suggests that it would be appropriate to attach different weight to different benefits and adverse impacts. The difficulty in the context of this proposal is weighing up whether the notional benefits gained are proportionate to the real financial adverse effects to be experienced by the operators, not least where pension schemes are affected. In view of this, the Board recommends:

- Legislation enabling franchising should specifically address the issue of proportionality of financial loss of bus operators. It may be that some form of compensation is considered appropriate.