



Bar Council response to the Law Commission consultation paper on Automated Vehicles

1. This is the response of the General Council of the Bar of England and Wales (the Bar Council) to the Law Commission and Scottish Law Commission consultation paper on Automated Vehicles: Consultation Paper 2 on Passenger Services and Public Transport.¹ The Bar Council responded to the Law Commission and Scottish Law Commission joint consultation paper on Automated Vehicles on 8 February 2019.²

2. This paper discusses the regulation of Highly Automated Road Passenger Services (HARPS). The Law Commissions have coined the term HARPS to encapsulate the idea of a new service. It refers to a service which uses self-driving vehicles to provide journeys to passengers without a human driver or user-in-charge. The vehicle would be able to travel empty or with only passengers on board. In other words, there is no person in the vehicle with legal responsibility for its safety.

3. In this paper, the Law Commissions consider a national licensing scheme for HARPS. They also discuss private ownership of passenger-only vehicles. The Law Commissions cover accessibility for older people and people with disabilities, how to control congestion on public roads and how regulation can help self-driving vehicles integrate with public transport.

4. The Bar Council represents approximately 17,000 barristers in England and Wales. It promotes the Bar's high-quality specialist advocacy and advisory services; fair access to justice for all; the highest standards of ethics, equality and diversity

¹ [Paper 2 on Automated Vehicles](#)

² [Paper 1 on Automated Vehicles](#) and [Bar Council Response to Paper 1 on Automated Vehicles](#)

across the profession; and the development of business opportunities for barristers at home and abroad.

5. A strong and independent Bar exists to serve the public and is crucial to the administration of justice. As specialist, independent advocates, barristers enable people to uphold their legal rights and duties, often acting on behalf of the most vulnerable members of society. The Bar makes a vital contribution to the efficient operation of criminal and civil courts. It provides a pool of talented men and women from increasingly diverse backgrounds from which a significant proportion of the judiciary is drawn, on whose independence the Rule of Law and our democratic way of life depend. The Bar Council is the Approved Regulator for the Bar of England and Wales. It discharges its regulatory functions through the independent Bar Standards Board (BSB.)

Chapter 3

Chapter 3 considers the current, highly fragmented, regulatory system applying to taxis; private hire; public service vehicles (PSV); and car hire. At one time, the distinctions reflected genuine market differences. However, these divisions are blurring and may disappear altogether in an automated environment. We do not think that it will be possible to shoehorn HARPS into the current regulatory structure. Instead we provisionally propose a single licensing system for all HARPS operators.

Consultation Question 1 (3.82):

Do you agree that Highly Automated Road Passenger Services (HARPS) should be subject to a single national system of operator licensing?

6. We agree, for the reasons given by the Law Commissions, that HARPS should be subject to a single national system of operator licensing.

7. For example, the existing system of localised private hire vehicle (PHV) licensing for driver, vehicles and operators has been the subject of significant controversy in the last few years. The main problem is “cross border hiring” by which a driver licensed in one area has a statutory “right to roam” into areas where he is not licensed. While the “right to roam” is not enjoyed by operators it is

perfectly possible that an operator, particularly one using modern methods of communication such as apps or social media, could structure its business in a manner whereby it only had one premises and one operator's licence (in whichever controlled district had the most lenient requirements) and then send its fleet out across the country, possibly into areas where the operator had been refused a licence on safety grounds.

8. The plethora of case law includes:

9. *R (Delta Merseyside Ltd) v Knowsley MBC* [2018] EWHC 757 (Admin); *Reading BC v Ali* [2019] EWHC 200 (Admin); *Milton Keynes Council v Skyline Taxis and Private Hire Ltd* [2017] EWHC 2794 (Admin); *Dittah v Birmingham City Council* [1993] RTR 356; *Shanks v North Tyneside Borough Council* [2001] EWHC Admin; *Windsor and Maidenhead Royal Borough Council v Khan* [1994] RTR 87; *Murtagh (t/a Ruberry Rednal Cars) v Bromsgrove District Council* [2001] L.L.R. 514

10. While HARPS legislation could be structured to avoid this unsatisfactory position, it is clearly far preferable that a national regulator be responsible for the authorisation of vehicles and operators.

Consultation Question 2 (3.86):

Do you agree that there should be a national scheme of basic safety standards for operating a HARPS?

11. We agree that there should be a national scheme of basic safety standards for operating a HARPS. This will ensure, as will having a single national system of licensing, a harmonised and consistent approach across the country.

Chapter 4

Chapter 4 discusses the scope and content of a new scheme of HARPS operator licensing. It looks in detail at how PSV operator licensing currently works and asks how far these principles are relevant to HARPS.

Consultation Question 3 (4.33)

Do you agree that a HARPS operator licence should be required by any business which:

(1) carries passengers for hire or reward;

- (2) using highly automated vehicles;
 - (3) on a road;
 - (4) without a human driver or user-in-charge in the vehicle (or in line of sight of the vehicle)?
12. of the vehicle)?

13. We agree, for the reasons given by the Law Commission. Please also see answer to question 2.

Consultation Question 4 (4.34):

Is the concept of “carrying passengers for hire or reward” sufficiently clear?

14. We think that the concept of “carrying passengers for hire or reward” is sufficiently clear. The “business test” and the refined question “*does the service for which payment is made go beyond the bounds of mere social kindness*” set out in *Albert v Motor Insurers’ Bureau* [1972] AC 301 provides sufficient basis to determine the vast majority of situations. It seems to us that the odd difficult case will be few and far between and will be capable of relatively easy determination by courts using the existing test and bearing in mind that the rationale for the licence requirement is safety. It seems to us that any systematic carrying of passengers with sharing of expenses is likely to require a PSV whereas the occasional lift being given to a number of people would not.

15. We note that the scope of the new scheme is concerned with the licensing and regulation of business. We wonder whether this misses an opportunity to broaden the licensing regime so that it extends beyond business and covers transport schemes that may not be caught under the business test. For example, some voluntary/charitable schemes that transport a wide variety of individuals. The primary aim must be to ensure public safety. It may be that broadening the scope of the regime is impracticable, but perhaps efforts should be made to do so.

Consultation Question 5 (4.46):

We seek views on whether there should be exemptions for community or other services which would otherwise be within the scope of HARPS operator licensing.

16. Our tentative view accords with the Law Commission. The paramount concern is safety and it is our view that an operator running this type of services should be licensed. Unlike the current situation where community groups can satisfy themselves that there is a responsible driver in control of the vehicle a HARPS

without a user in charge will provide no such assurance. It follows that the responsibility must fall to the Operator and that appropriate licensing is in place. These operators are likely to be providing services to vulnerable people such as children, the old and disabled. In our view, there would need to be verifiable guarantees concerning safety to justify any exemption.

Consultation Question 6 (4.54):

We seek views on whether there should be statutory provisions to enable the Secretary of State to exempt specified trials from the need for a HARPS operator licence (or to modify licence provisions for such trials).

17. It is our view that such trials should be permitted without the necessity for a HARPS operator licence so long as they are conducted in controlled and limited circumstances. In reality, this means in circumstances where the safety of other road users is not affected. Our tentative view is that statutory provision should be made for the Secretary of State to empower the regulator to grant such an exemption or to modify licence provisions with necessary conditions.

Consultation Question 7 (4.72):

Do you agree that applicants for a HARPS operator licence should show that they:

- (1) are of good repute;**
- (2) have appropriate financial standing;**
- (3) have suitable premises, including a stable establishment in Great Britain;**
and
- (4) have a suitable transport manager to oversee operations?**

18. We agree, for the reason given by the Law Commission. This mirrors the Traffic Commissioners regime which in our experience has proved to be robust and effective. We see the benefits in there being a stable presence in Great Britain and records being easily accessible to the authorities. Guidance should be provided on what premises are considered suitable if HARPS and technical operating equipment are being garaged at those premises.

Consultation Question 8 (4.73):

How should a transport manager demonstrate professional competence in running an automated service?

19. We concur with the Law Commission's observations at para 4.70 that the role of Transport Manager will require different skills. However, it may be the case that the skills required will be additional to skills already needed under the current certification system. At present the obtaining of a Certificate of Professional Competence requires a Transport Manager to pass exams prescribed by the Department of Transport. We think that consideration should be given to extending the examination requirements to include a technical understanding of automated driving systems. This will necessarily require learning in the role, but it is also necessary for the regulator or assessing body to have some criteria by which to judge competence. This will require some expertise itself, whether in providing tests or examinations or assessing whether a detailed safety case demonstrates competence.

20. We appreciate that the acquiring of expertise by the regulator or assessment body will also pose difficulties in the early days of HARPS. There will inevitably be learning by experience and evolving knowledge of what will be involved in the running of an automated service. Examples from the gambling regime might assist, in that suitability is not assessed by reference to an independent Certificate of Professional Competence (see para 4.70 of the consultation document), but by the Gambling Commission itself taking a view based on a variety of factors. It is difficult to avoid a 'chicken and egg' situation.

Consultation Question 9 (4.89):

Do you agree that HARPS operators should:

- (1) be under a legal obligation to ensure roadworthiness; and**
- (2) demonstrate "adequate facilities or arrangements" for maintaining vehicles and operating systems "in a fit and serviceable condition"?**

21. We agree, for the reasons given by the Law Commissions in the paper.

Consultation Question 10:

Do you agree that legislation should be amended to clarify that HARPS operators are "users" for the purposes of insurance and roadworthiness offences?

22. Yes.

23. We consider it to very important to clarify that HARPS operators are users for the purposes of insurance and roadworthiness offences, particularly as there will not be a human driver to notice problems.

Consultation Question 11:

Do you agree that HARPS operators should have a legal duty to:

(1) insure vehicles;

24. Yes.

25. Such insurance must be compulsory.

26. It is also important that insurers monitor risks, particularly in the early stages of this new transportation. HARPS operators need to be conscious of the fact that poor standards will be reflected in higher premiums.

(2) supervise vehicles;

27. Yes.

28. This also fits with a legal duty to insure.

(3) report accidents; and

29. Yes.

30. This also fits with a legal duty to report accidents to insurers.

(4) take reasonable steps to safeguard passengers from assault, abuse or harassment?

31. Yes. We note that guidance will be required as to what constitutes "*reasonable steps*".

32. This also fits with a legal duty to insure.

Consultation Question 12 (4.125)

Do you agree that HARPS operators should be subject to additional duties to report: untoward events, together with background information about miles travelled (to put these events in context)?

33. Yes, HARPS are an entirely new system and there is a benefit, particularly in the early years of implementation, that lessons are learned from how HARPS operate in practice. We assume that information as to miles travelled, absent untoward events, will assist the interpretation of data.

Consultation Question 13 (4.128):

Do you agree that the legislation should set out broad duties, with a power to issue statutory guidance to supplement these obligations?

34. Yes. We agree if the body administering the operation of licensing is responsible nationally. Our tentative view is that this body should have similar powers to issue statutory guidance as currently given to the Senior Traffic Commissioner under s.4C (1) Public Passenger Vehicles Act 1981. Such guidance provides practical information to potential operators as well as guidance to which regard must be given and will provide a useful supplement to the broad duties set out in the legislation.

Consultation Question 14 (4.133):

We invite views on whether the HARPS operator licensing agency should have powers to ensure that operators provide price information about their services.

In particular, should the agency have powers to:

- (1) issue guidance about how to provide clear and comparable price information, and/or**
- (2) withdraw the licence of an operator who failed to give price information?**

35. The current law provides that traders are obliged to provide clear and timely pricing information about their products and services. Failure to do so will breach Regulation 6 Consumer Protection from Unfair Trading Regulations 2008. We take the view that the current law provides enough protection to the consumer. It is also the case that an existing body, the Chartered Institute of Trading Standards has provided guidance in relation to pricing practices. In December 2008 it issued Guidance for Traders on Pricing Practices. Our view is that the agency should not have the powers suggested. Failures to provide adequate pricing information can be amply enforced by Trading Standards and the Competition and Markets Authority ("CMA"). The CMA investigated and obtained statutory undertakings from traders on price transparency in the car hire industry (2017) alluded to in the Law Commission's consultation (para 3.69) and hotel booking websites (February 6th, 2019). Trading Standards are well versed in investigating and enforcing pricing complaints. If a HARPS licensee breaches pricing laws then the licensing agency will

be able to take appropriate action because such activity is likely to impact on the licensee's reputation.

Consultation Question 15 (4.138):

Who should administer the system of HARPS operator licensing?

36. Our tentative view is that the system of HARPS operator licensing should be administered by the Traffic Commissioners. They have a great deal of experience in the area of Goods Vehicle Operator's Licences and Public Service Vehicle licences. The licensing scheme for HARPS will involve similar principles and it makes sense for the same body to be applying those in respect of Automated Vehicles. Particular expertise will be required and as such we would tentatively suggest that specially trained Traffic Commissioners be responsible for administering HARPS operator licensing. We would encourage joint working with the agency responsible for authorising Automated Driving System Entities (ADSE). Whichever body is given this administration role it will require substantial change.

Consultation Question 16 (4.410)

We welcome observations on how far our provisional proposals may be relevant to transport of freight.

37. In our view, the proposals will be relevant to freight. In a similar way that the Traffic Commissioners regulate the licensing of both passenger and freight transport using similar principles the same could be applied to automated vehicles in both types of transport.

Chapter 5

Chapter 5 considers privately-owned vehicles authorised for use without a user-in-charge. It asks who should be responsible for insuring, maintaining and supervising such vehicles.

Consultation Question 17 (5.12)

Do you agree that those making "passenger-only" vehicles available to the public should be licensed as HARPS operators unless the arrangement provides a vehicle for exclusive use for an initial period of at least six months?

38. We agree, for the reasons provided by the Law Commission. In particular we concur with its provisional conclusion that a stricter regulatory regime is necessary where there is no responsible user having the obligation to ensure safe and legal road use. Again, safety being paramount. In relation to the six-month period, we note that the Consumer Credit Act 1974 (“the CCA”), which regulates consumer hire, applies only to agreements which are capable of subsisting for more than three months (section 15(1)(b)). The CCA does, of course, apply to hiring across many industry sectors so may not provide a direct comparator, but it would tend to support the argument that the relevant period should certainly not be more than six months.

Consultation Question 18: Do you agree that where a vehicle which is not operated by a HARPS licence-holder is authorised for use without a user-in-charge, the registered keeper should be responsible for:

(1) insuring the vehicle; Yes

39. Such insurance should be compulsory.

40. The Motor Insurers’ Bureau or a similar body should be required to respond in situations where for some reason the vehicle is uninsured.

41. Any drafting of new legislation should consider the implications of the EU Motor Insurance Directive, as presently drafted.

(2) keeping the vehicle roadworthy; Yes

(3) installing safety-critical updates; Yes

(4) reporting accidents; Yes and

(5) removing the vehicle if it causes an obstruction or is left in a prohibited place?
Yes

Consultation Question 19: Do you agree that there should be a statutory presumption that the registered keeper is the person who keeps the vehicle?

42. Yes

Consultation Question 20 (Paragraph 5.42):

We seek views on whether:

(1) a lessor should be responsible for the obligations listed in Question 18 unless they inform the lessee that the duties have been transferred.

43. We agree that there is a sound basis for placing most of the obligations listed in question 18 on the lessor in these circumstances – for example we strongly agree that lessees should not bear any responsibility for installation of safety-critical updates. However, it seems to us that if obligations to report accidents and remove stranded vehicles remain with the lessor this is likely to require some form of continuous remote monitoring of the vehicle by the lessor, which might be an unattractive feature for those who want the autonomy of their own vehicle. This would tend to support the view that lessors should be able to transfer at least some of their obligations to the lessee.

(2) a lessor who is registered as the keeper of a passenger-only vehicle should only be able to transfer the obligations to a lessee who is not a HARPS operator if the duties are clearly explained to the lessee and the lessee signs a statement accepting responsibility?

44. We agree that, if there is to be the option of transferring obligations to the lessee, then it will be necessary to ensure that lessees are made aware of those obligations and are required formally to accept that responsibility. It seems to us that there may need to be consideration as to whether all the obligations set out in question 18 should be capable of transfer – it might be thought to be risky to leave an obligation to install a safety critical update in the hands of individual lessees, although we note that the regulation suggested in question 21 may resolve this concern.

Consultation Question 21 (Paragraph 5.47):

Do you agree that for passenger-only vehicles which are not operated as HARPS, the legislation should include a regulation-making power to require registered keepers to have in place a contract for supervision and maintenance services with a licensed provider?

45. Yes. This suggestion chimes with our concern that certain safety-critical aspects of the operation of an automated passenger-only vehicle may be too significant to leave to individual users. A regulation requiring a contract with a regulated provider of such services is in our view likely to be desirable.

Consultation Question 22 (Paragraph 5.53):

We welcome views on whether peer-to-peer lending and group arrangements relating to passenger-only vehicles might create any loopholes in our proposed system of regulation.

46. Peer-to-peer lending is a relatively novel concept in itself, as the consultation paper recognises, and as such it is difficult to predict the manner in which it might develop in this context. For example, in the regulated lending sector it is the P2P lending platform which is subject to Financial Conduct Authority regulation, but the actual lending takes place between individuals who are (provided they are not acting by way of business) not themselves subject to regulation. That model does not fit entirely comfortably with the existing legislation (the CCA), which places certain obligations on the creditor.

47. In this case, the intention is that the P2P platform would be required to obtain a HARPS licence and would assume the obligations accordingly. That would not seem to us to be likely to cause any real issues. However, we are not entirely comfortable with the proposition that the relevant definition (“carriage of passengers for hire or reward”) would be met in these circumstances. If the regulated lending example is applied by analogy, it would be the users of the platform who would be offering vehicles for hire or reward, not the platform itself. It may therefore be necessary to provide specifically for the regulation of such platforms as HARPS.

Consultation Question 23 (Paragraph 5.60):

We seek views on whether the safety assurance agency proposed in Consultation Paper 1 should be under a duty to ensure that consumers are given the information they need to take informed decisions about the ongoing costs of owning automated vehicles.

48. In our response on the scope of the duties of the safety assurance agency in Consultation Paper 1, we said the following:

49. *The existing agencies namely Trading Standards and the Advertising Standards Agency are used to dealing with consumer and marketing materials in relation to a wide variety of goods and services. There is no reason why they should not be able to deal with them in this situation. However, acknowledging the specialist knowledge of the new agency, some formal liaison between it and the existing agencies seems a sensible step.*

50. We remain of that view, although we note the concerns expressed as to the financial constraints placed on Trading Standards services at the current time. Plainly if they are to have responsibility for policing this area those funding issues would need to be addressed, but it seems to us to be logical to leave the responsibility for regulating matters of consumer protection to those with direct experience of it, augmented where necessary by the ability to call on the expertise provided by the safety assurance agency.

Chapter 6

Chapter 6 discusses how to regulate HARPS to ensure that they provide an accessible service to older and disabled people.

Background and introduction

51. The LRC welcomes the focus of the Consultation's Chapter 6 on Accessibility of HARPS. As the Law Commission are doubtless aware, transport is key to the independence of people with disabilities and underpins many of the rights set out in the Equality Act 2010 ("EqA").

52. As stated by Lady Hale in *Paulley v First Group Plc* [2017] UKSC 4 "*The ability to travel and to get about is important to all of us. Without it we cannot get to work, do the shopping, visit family and friends or places of entertainment, in short be part of the community.... Difficulties with transport are one of the two most common barriers to work for people with impairments ... It scarcely needs stating that they face particular difficulties in getting about and thus playing as full a part as they can in the life of the community. Without the ability to travel they risk becoming socially isolated and losing confidence in themselves. But their journeys need even greater planning than do those of people who are not wheelchair users: will I be able to get to the bus stop, will I be able to get on the bus, when will the bus go, will I be able to get from the bus to the train station, will I be able to get on the train, when will the train go, will I be able to get to my destination at the other end?"*

53. HARPS have the potential to bring significant liberation for disabled and older people but equally could contribute to further isolation and exclusion if they are not, as indicated in Chapter 6, designed and operated with inclusivity at their core.

54. In addition to the EqA, it is also important to consider that the UK Government has ratified the UN Convention on the Rights of Persons with Disabilities. This provides overarching obligations upon the state including non-discrimination, obligations in respect of transport, information gathering and the inclusion of people with disabilities.

Consultation Question 24:

We seek views on how regulation can best promote the accessibility of Highly Automated Road Passenger Services (HARPS)? In particular, we seek views on the key benefits and concerns that regulation should address.

55. We agree that it is critical that as HARPS are developed, designed and introduced, the interests of disabled and older people are taken into account from the start and that the whole journey, from point of departure to destination, is considered. We also consider it important that the needs of those transporting infants and children (in addition to the older and disabled passengers mentioned) are taken into account. We consider that regulations like those provided for in respect of public service vehicles would be the most appropriate means of promoting the accessibility of HARPS. These should address access to the transport (booking travel, as well as access to the vehicles), the vehicles' design, contact in the event of difficulties and enforcement. Co-design is welcome and because the technology is at an early stage and the impact of its use largely untested, consideration could be given to periodic reviews of the regulatory framework to ensure that it remains fit for purpose both for HARPS operators and users. It is notable, for example, that the PSVAR regulations have not been updated to deal with a larger reference wheelchair (though wheelchairs have grown large since the regulations were first developed) nor to address mobility scooters which are far more common.

Consultation Question 25:

We provisionally propose that the protections against discrimination and the duties to make reasonable adjustments that apply to land transport service providers under section 29 of the Equality Act 2010 should be extended to operators of HARPS. Do you agree?

56. We agree that the protection against discrimination, including the duty to make reasonable adjustments that apply to land transport service providers under section 29 and Schedule 2/3 to the EqA should be extended to operators of HARPS. There is no reason for such operators, who will be providing a service to the public or a section of the public, to be excluded from these obligations.

57. Many of the non-employment claims taken against service providers tend to be for breach of the duty to make reasonable adjustments. Consideration may need to be given to amending the list of factors to be taken into account in determining what is a reasonable step for a service provider to have to take, those factors are set out in the statutory Code of Practice on Services, Public functions and Associations (at para 7.29-7.30):

58. *The duty to make reasonable adjustments places service providers under a responsibility to take such steps as it is reasonable, in all the circumstances of the case, to have to take in order to make adjustments. The Act does not specify that any particular factors should be taken into account. What is a reasonable step for a particular service provider to have to take depends on all the circumstances of the case. It will vary according to:*

59. the type of service being provided;

60. the nature of the service provider and its size and resources; and

61. the effect of the disability on the individual disabled person.

62. *However, without intending to be exhaustive, the following are some of the factors which might be taken into account when considering what is reasonable:*

63. *whether taking any particular steps would be effective in overcoming the substantial disadvantage that disabled people face in accessing the services in question;*

64. *the extent to which it is practicable for the service provider to take the steps;*
65. *the financial and other costs of making the adjustment;*
66. *the extent of any disruption which taking the steps would cause;*
67. *the extent of the service provider's financial and other resources;*
68. *the amount of any resources already spent on making adjustments; and*
69. *the availability of financial or other assistance.*

70. In addition, consideration could be given to the use of regulations to specify which adjustments it might always be reasonable for a HARPS to have to provide (by means of EqA s.22) – to address, for example, those who do not have access to technological booking facilities. On the one hand, specific regulations would provide certainty, however prescribing reasonable adjustments which always have to be made runs the risk of creating a set of minimum standards which may stifle further steps to improve accessibility. It is hoped that co-design will mitigate the risk that provision of a HARPS for those with any disability could be considered a fundamental alteration but a clear policy steer that HARPS be designed and developed with disabled users in mind should reduce this risk and mitigate the need for adjustments to be made. Consideration could also be given to reinforcing any policy with regulations to mitigate against price discrimination. This is specifically addressed in respect of taxis and wheelchair users under Part 12 EqA. However, this does not prohibit a disabled person from having to pay more for an accessible vehicle than a non-disabled person has to pay for a non-accessible vehicle or than the latter may have to pay if a non-accessible vehicle is not available and so an accessible one is sent instead. Whilst engineering and design is outwith the expertise of the Bar Council; the consultation documents suggest that there could be flexibility in configuration of HARPS and their usage. Full consideration of the rights and needs of those with disabilities at the design stage will make it less likely that HARPS operating for hire and reward will have to alter their service to make it accessible to those with disabilities in the future. This should reduce the risk that any additional costs of adjustment are levied on the disabled user. Whilst we would not want to stifle the business case for the expansion of HARPS by imposing onerous legal requirements, consideration could be given to ways of mitigating the risk of potential price discrimination against those with disabilities. One option could be to

consider prohibiting the price differentials described above by regulating that such treatment is a breach of the duty to make adjustments.

Consultation Question 26:

We seek views on how regulation could address the challenges posed by the absence of a driver, and the crucial role drivers play in order to deliver safe and accessible journeys. For example, should provision be made for: (1) Ensuring passengers can board and alight vehicles? (2) Requiring accessible information and reassurance when there is disruption? (3) Expansion of support at designated points of departure and arrival?

71. Anxiety related to the use of new technology and the absence of a human in the vehicle will need to be addressed for many users. We agree with the Consultation suggestions as to regulation addressing the challenges posed by the absence of a driver, and, provision being made for ensuring that passengers can board and alight vehicles; require accessible information and reassurance when there is disruption; and explanation of support at designated points of departure and arrival. We further support the 12 “accessibility outcomes” set out at pages 113 to 125. Regulations provide certainty both for those with obligations and those with rights under them.

72. We have a number of particular points to make in respect of these:

73. As to information about services being accessible: the consultation makes reference to the public-sector equality duty and the responsibility of regulators for ensuring that transport providers prevent digital exclusion as part of their public sector equality duty. It is important to remember, however, that compliance with the Public Sector Equality Duty (PSED) is only one aspect of a regulator’s obligations and consideration should be given to specific provision in a regulator’s statutory obligations to duties relating to transport provision for disabled and older people

74. In respect of wheelchair access to vehicles: as both Law Commissions will be aware, anxiety amongst people with disabilities in respect of travelling is extremely high (see for example, this report of Scope - <https://www.independent.co.uk/travel/news-and-advice/disabled-passengers->

[public-transport-study-scope-a9088821.html](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/408882/public-transport-study-scope-a9088821.html) - where 4 in 5 disabled people faced anxiety using public transport). This is based on experience of things going wrong. As well as the training in transport use, and involvement in its design in the first place, it is critical that there is a means of obtaining assistance if something does not work. This reassurance is vital – and that assistance, until any system has bedded in – would, we think, be most likely to be effective in reducing anxiety if provided by a human.

75. Assistance from a human is even more important when one considers that there will be people with disabilities with different communication needs – for example, someone whose speech is impaired – and who will need someone to take time to understand those needs to assist them

76. Training is key – and any training provided should involve people with disabilities. There is some accreditation by way of the Centre for Accessible Environments and it is important that those involved in training transport providers are appropriate

Consultation Question 27:

We seek views on whether national minimum standards of accessibility for HARPS should be developed and what such standards should cover

77. On balance, we agree that national minimum accessibility standards should be developed for HARPS. We consider that a sensible approach may be to develop guidance which is subsequently embedded into regulation. As we expressed in our answer to Q25 there is some concern that setting minimum standards imposes a ceiling as opposed to laying a foundation upon which higher standards are built. However, it is important that minimal permissible standards are clearly set out and capable of being enforced. The concern as to stifling innovation should not be at the expense of accessibility.

Consultation Question 28:

We seek views on whether operators of HARPS should have data reporting requirements regarding usage by older and disabled people, and what type of data may be required.

78. We agree that rights under the EqA can be difficult to enforce, though there is a challenge pending in respect of Qualified One-Way Costs Shifting (QOCS) which, if successful, may change the landscape; providing QOCS to discrimination cases will remove the barrier of costs from people with disabilities who wish to pursue their claims in the county court and was a recommendation of the House of Lords Committee referred to in the consultation.

79. Nevertheless, it is important that people with disabilities retain the right, as in respect of the other rights under the EqA, to present a claim of discrimination to the County Court should there be a breach of the EqA in respect of HARPS.

80. We consider however that there should be in addition – as there is with taxis, for example, - another enforcement mechanism such as oversight by an ombudsman. The difficulty with criminal sanction can be the burden of proof required. However, for the sake of consistency, this may be more appropriate.

81. As to data collection: this is critical for the purposes of the PSED but in any event, to ensure that disabled and older people are not being excluded it is vital that HARPS operators gather such data. It will need to include broadly the same data required previously under the specific duties i.e. whether a user is disabled, their age, and the nature of the journey. Again, research will need to be conducted with people with disabilities to ensure that relevant information is gathered; and consideration given to how to capture information on those who are not travelling as well as those who are.

Chapter 7

Chapter 7 addresses the potential problem that large numbers of new vehicles may be placed on urban roads before private car use has reduced, adding to congestion and pollution. The problem would be compounded if HARPS “cruise empty” - that is, circle around for no purpose. We therefore look at the tools for controlling this, including traffic regulation orders; parking charges; road pricing and phased deployment.

Consultation Question 29 (7.23):

We seek views on whether the law on traffic regulation orders needs specific changes to respond to the challenges of HARPS.

82. We do not foresee that the law on Traffic Regulation Orders (TROs) need specific changes to respond to the challenges of HARPs. The on-going review “TRO Alpha” of Traffic Regulation Orders (“TROs”) ought to cover any emerging issues, if it is done with some consideration of how legislative changes may impact upon the regulation of HARPS. What is required (for any TRO) is an efficient, standardised system which provides sufficient notice to the affected public. As proposed by the Discovery Project, a standardised TRO in a digital format would assist. In view of the current 12-18 month time frame for a TRO, a further possibility is a streamlined TRO approach for HARPS with shorter statutory deadlines for consultation and implementation. Although not a legal matter, it would be unfortunate if their uptake was delayed because there were no parking places or ranks. On-street parking for car club users and charging points for electric vehicles will have encouraged their use (albeit the system in London is more cumbersome than Berlin).

Consultation Question 30 (7.59)

We welcome views on possible barriers to adapting existing parking provisions and charges to deal with the introduction of HARPS.

83. We do not intend to comment upon public policy regarding charges for parking. It appears that the current legislation is sufficiently broad to allow for existing parking provisions to be adapted to deal with the introduction of HARPS. It is not clear what further considerations would need to be added to section 122 of the Road Traffic Regulation Act 1984 to allow for appropriate adaptation, as presumably the goal of such adaptation would be to manage the “expeditious, convenient and safe” movement of traffic and pedestrians.

Consultation Question 31 (7.86):

We seek views on the appropriate balance between road pricing and parking charges to ensure the successful deployment of HARPS

84. We note the observations made in the consultation paper and have nothing to add. The topic related to transport strategy and traffic management is best answered by those with specific expertise in this area.

Consultation Question 32 (7.87):

Should transport authorities have new statutory powers to establish road pricing schemes specifically for HARPS?

If so, we welcome views on:

- (1) the procedure for establishing such schemes;**
- (2) the permitted purposes of such schemes; and**
- (3) what limits should be placed on how the funds are used.**

85. For the reasons set out in the consultation paper, a new statutory scheme would be beneficial. Although implemented locally, it would be sensible to develop a national framework to reduce administrative costs and create a simpler, uniform approach. The purpose of the schemes could include reducing congestion caused by empty or underused HARPS and improving air quality, and any limits on the funds could allow for expenditure towards achieving that aim.

Consultation Question 33 (7.97):

Do you agree that the agency that licenses HARPS operators should have flexible powers to limit the number of vehicles any given operator can use within a given operational design domain for an initial period? If so, how long should the period be?

86. Yes, there should be such powers for an initial period. It should be possible to extend it given that it is not known how long it will be before full deployment would be appropriate.

Consultation Question 34 (7.120):

Do you agree that there should be no powers to impose quantity restrictions on the total number of HARPS operating in a given area?

87. The reasons given for opposing quantity restrictions are compelling. For the time being it may not be advisable to create such powers, but this might be kept in

review in case the number of HARPS operating in certain areas becomes unmanageable.

Chapter 8

Chapter 8 looks at how to integrate HARPS with mass transit. It considers how far HARPS should fall within existing bus regulation. It then asks how individual HARPS can be encouraged to feed into mass transit systems including through developments in MaaS. It suggests possible partnership arrangements in which local authorities provide facilities for HARPS (such as priority lanes and parking near railway stations) in return for integrated information and ticketing systems.

Consultation Question 35 (8.92):

Do you agree that a HARPS vehicle should only be subject to bus regulation:

- (1) if it can transport more than eight passengers at a time and charges separate fares; and**
- (2) does not fall within an exemption applying to group arrangements, school buses, rail replacement bus services, excursions or community groups?**

88. Yes, this is a logical approach.

Consultation Question 36 (8.94):

We welcome views on whether any particular issues would arise from applying bus regulation to any HARPS which transports more than eight passengers, charges separate fares and does not fall within a specific exemption.

89. No particular issues are immediately apparent.

Consultation Question 37 (8.95):

We welcome views on whether a HARPS should only be treated as a local bus service if it:

- (1) runs a route with at least two fixed points; and/or**
- (2) runs with some degree of regularity?**

90. That may be appropriate, given that it would only be in such circumstances that any HARPS satisfying the definition of a bus would be effectively acting as a bus and should therefore be subject to, for example, the punctuality provisions.

Consultation Question 38 (8.109):

We seek views on a new statutory scheme by which a transport authority that provides facilities for HARPS could place requirements on operators to participate in joint marketing, ticketing and information platforms.

91. Such a statutory scheme would be welcome. In light of the clear benefits to consumers and the public, willingness to be part of a MaaS scheme would be a reasonable condition for using some or all the facilities provided by a transport authority. To encourage competition, it may be left to operators to demonstrate that they are taking part in an effective MaaS scheme, rather than requiring them to join up to a particular one. Operators could also be strongly encouraged to join a MaaS scheme as a means of accessing a wider customer pool, so that it is not considered a burden.

Bar Council³

03 February 2020

*For further information please contact
Sarah Richardson, Head of Policy, Regulatory Issues, Law Reform & Ethics
The General Council of the Bar of England and Wales
289-293 High Holborn, London WC1V 7HZ
Email: [REDACTED]*

³ Prepared for the Bar Council by the Law Reform Committee