

BUS STRATEGY DELIVERY PROJECT

CONSULTATION REPORT

TYNE AND WEAR PASSENGER TRANSPORT EXECUTIVE (NEXUS)

OCTOBER 2014

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GLOSSARY OF TERMS

Accessibility	The ability to access points via the public transport network, taking into account walk access time and service availability;
Allocation Arrangements	Allocation arrangements prepared to determine which employees will transfer to which Quality Contracts as set out section 8 of the Quality Contracts Schemes (Application of TUPE) Regulations 2009;
Annual Development Cycle	A formalised process utilised to provide a consistent, open and transparent approach and to ensure that only necessary changes are made to the QCS Network which support the objectives of the QCS as set out in Part 3 of Annex 7 of the Scheme;
BSOG	Bus Service Operators Grant, formerly the Fuel Duty Rebate means the grant paid to Operators of eligible Local Services and community transport organisations to help them recover some of their fuel costs;
Bus Strategy	The bus strategy developed by the former ITA pursuant to section 108 of the Transport Act 2000, as adopted by the Combined Authority that can be found at www.nexus.org.uk/busstrategy ;

- Bus Strategy Deliverables or Deliverables** The deliverables of the Bus Strategy, being:
- fully integrated, multi-modal public transport network;
 - unified and consistent customer offer and guaranteed standards of service;
 - enhanced consultation on network changes;
 - all infrastructure is accessible and of a high standard;
 - adopt Accessibility standards and targets;
 - common brand and accessible, high quality buses;
 - integrated network;
 - affordability for the customer and the taxpayer;
 - simplified fares and ticketing offer; and
 - improved environmental standards;

- Bus Strategy Objectives or Objectives** The objectives of the Bus Strategy, which are to:
- arrest the decline in bus patronage;
 - maintain (and preferably grow) Accessibility; and
 - deliver better value for public money;

Combined Authority or NECA The Durham, Gateshead, Newcastle Upon Tyne, North Tyneside, Northumberland, South Tyneside and Sunderland Combined Authority;

Commercial Bus or Commercial Service	A bus service provided without any subsidy and with no restrictions on fares (excluding Concessionary Travel Scheme fares and the BSOG);
Concessionary Travel Scheme	A travel scheme provided by the Combined Authority or Nexus which sets fares and uses public money to subsidise Concessionary Travel;
Concessionary Travel	The carriage of passengers eligible for concessions (as defined in the Transport Acts of 1985 and 2000);
Concessionary Travel Reimbursement or Statutory Reimbursement	The reimbursement of Operators for transporting passengers eligible for concessions within a defined principal area at a cost below the notified fare (as defined in the Transport Acts of 1985 and 2000), in a given year, with the objective of leaving such Operators no better and no worse as a result of the existence of a Concessionary Travel Scheme;
Consultation	The period during which Nexus consulted with local people, including customers and key stakeholders and which included Informal Stakeholder Engagement, Public Engagement Exercise, Statutory Consultation and Supplemental Consultation;
Cross Boundary Bus Collaboration Protocol	NECA Cross Boundary Bus Collaboration Protocol to mitigate adverse impacts that the QCS may raise in County Durham and Northumberland;
Customer Charter	Sets out the service commitments and performance standards that customers can expect from QCS Services;

Deregulation	The transfer of operation of bus services from public bodies to private companies pursuant to the provisions of the Transport Act 1985, fully effective from October 1986;
Dft	Department for Transport;
Do Minimum Scenario	The business case modelled in which an assessment is made by Nexus regarding the local bus market if no intervention takes place and therefore current trends continue, based on its current knowledge; the course of events that it is considered will transpire if no changes are made to the current way of delivering bus services in Tyne and Wear
Draft VPA	The draft voluntary multi-lateral partnership proposal provided to Nexus by NEBOA on 13 December 2013;
EBIT	Earnings before interest and tax;
ENCTS	The English National Concessionary Travel Scheme introduced in 2001 and extended in April 2008, which obliges LTAs to offer free off-peak travel on eligible local buses for eligible older and disabled people within England;
ETM	Electronic Ticket Machine;
Fare Elasticity	The relationship between the level of demand for bus services and the cost;

Guidance	Statutory guidance issued by the Department for Transport regarding the Local Transport Act 2008 and Quality Contracts Schemes, published December 2009;
Informal Stakeholder Engagement	Process of entering into informal discussions with stakeholders in respect of options for the future delivery of the bus network in Tyne and Wear, undertaken by Nexus between December 2011 and February 2012;
ITA or TWITA	Tyne and Wear Integrated Transport Authority which oversaw the transport system across Tyne and Wear on behalf of the public, and comprised of elected Councillors and expert staff to promote and develop the transport network, which was abolished pursuant to Article 6 of the Order;
ITSO	ITSO Ltd a company limited by guarantee (CRN 04115311) whose registered office is Luminar House, Deltic Avenue, Rooksley, Milton Keynes, MK13 8RW. The specification created by ITSO provides inter-operability for smart ticketing schemes;

Local Bus Boards	Advisory working groups established by the Combined Authority in respect of each of the Tyne and Wear Councils, who are accountable to the Combined Authority and responsible for the network of services operating wholly within each district of Tyne and Wear, whose purpose is to monitor and review the performance of the bus network at a local level, advise the Combined Authority as regards local matters, and develop local approaches to improving bus service delivery including punctuality and reliability in accordance with Part 2 of Annex 7 of the Scheme;
Local Service	Has the same meaning as in Section 2 of the Transport Act 1985;
Local Transport Authority (LTA)	Has the meaning given to it in the Transport Act 2000;
Lot	Each of the 11 Quality Contracts to be procured in Round 1 based around groups of Commercial Services from existing depots in the North East area, and such lots will be determined at the point of QCS adoption;

Low Carbon Emission Buses	Defined by the Government as those buses which produce at least 30% fewer greenhouse gas emissions than the average Euro III equivalent diesel bus of the same total passenger capacity, and the greenhouse gas emissions will be expressed in grams of carbon dioxide equivalent measured over a standard test, and will cover 'well-to-wheel' performance, thereby taking into account both the production of fuel and its consumption on board;
Metro	A light rail rapid transit system operating in Tyne and Wear;
Metro Gold Card	Provides unlimited travel on the Metro, the Shields Ferry and Northern Rail services between Newcastle and Sunderland from 9.30am Monday - Friday and all day at weekends, on public holidays and throughout July and August at a concession for older and disabled people who hold a Concessionary Travel pass;
NEBOA	North East Bus Operators' Association;
NECA or Combined Authority	The Durham, Gateshead, Newcastle Upon Tyne, North Tyneside, Northumberland, South Tyneside and Sunderland Combined Authority;
Nexus	An executive body of the Combined Authority, whose office is at Nexus House, St James' Boulevard, Newcastle upon Tyne, NE1 4AX;

Nexus Affordability Model	An excel based financial model which includes a bus patronage forecasting tool whose structure and relationships are based upon the National Bus Model;
Non-Statutory Consultee	A consultee with whom there is no statutory requirement for Nexus to consult under section 125(3) of the Transport Act 2000;
Operator	An operator of buses licensed by the Traffic Commissioner;
Order	The Durham, Gateshead, Newcastle Upon Tyne, North Tyneside, Northumberland, South Tyneside and Sunderland Combined Authority Order 2014;
Original QCS Proposal	The QCS proposal which was the subject of informal dialogue in July 2012;
Peak Vehicle Requirement (PVR)	The total number of buses which is required to operate a full service;
PTE	Passenger Transport Executive;
Public Engagement Exercise	A parallel process to the Statutory Consultation process implemented to raise awareness of the QCS Proposal to the general public;
Public Interest Test	The test (including the five criteria) contained within section 124 of the Transport Act 2000, and as explained in the Guidance for the development of Quality Contracts Schemes;
QCS or Scheme	The Tyne and Wear Quality Contracts Scheme for buses;

QCS Adoption	The decision point at which the Combined Authority formally makes the QCS;
QCS Area	The area of Tyne and Wear that will be covered by the QCS;
QCS Board	Has the meaning given to it in section 126A(1) of the Transport Act 2000;
QCS Commencement	The date from which services operating under and in accordance with Quality Contracts will commence;
QCS Network	The base network to be provided and developed by the Combined Authority under the QCS;
QCS Proposal	The quality contracts scheme proposal in respect of which Statutory Consultation was undertaken;
QCS Services	Local Services provided pursuant to a Quality Contract;
QCS TUPE Regulations	Quality Contracts Schemes (Application of TUPE) Regulations 2009;
Quality Contract	An agreement entered into between Nexus and an Operator pursuant to Article 7 of the Scheme;
Quality Contracts Scheme	A scheme under which a Local Transport Authority, or two or more Local Transport Authorities acting jointly, determine what local bus services should be provided in the QCS Area to which the scheme relates and any additional facilities or services which should be provided in the QCS Area;

Round 1	Quality Contracts for the provision of Local Services with an assumed PVR of between 39 and 128 vehicles each, or such other number of vehicles as Nexus determines;
Round 2	Quality Contracts for the provision of Local Services with an assumed PVR of between 1 and 20 vehicles each, or such other number of vehicles as Nexus determines`;
RPI	Retail Prices Index being the retail prices index for the whole economy of the United Kingdom and for all items as published from time to time by the Office for National Statistics, or if such index shall cease to be published or there is, in the reasonable opinion of the Combined Authority, a material change in the basis of the index or if, at any relevant time, there is a delay in the publication of the index, such other retail prices index as the Combined Authority may determine to be appropriate in the circumstances;
Scheme or QCS	The Tyne and Wear Quality Contracts Scheme for Buses for Tyne and Wear;
Scholars Services	A Local Service providing transport for pupils to and/or from schools within the QCS Area, provided that a Scholars Service may also provide transport to the general public;
Secured Bus Services or Secured Services or Secured Buses	Services partly or fully secured under Transport Act 1968 powers, subject to compliance with the requirements of the Transport Act 1985;

Shields Ferry	Commuter ferry operating a daily passenger service across the River Tyne between North Shields and South Shields, operated by Nexus;
Smartcard	A plastic card, that may or may not contain a photo, which has an embedded microchip to store product and customer information;
Smart Ticketing	The use of a Smartcard or other device that can be read, written to or edited by an ETM, as defined by the ITSO Standard, whereby an entitlement to travel (or ticket) is stored electronically;
Soft Measures	Variables in bus travel that affect the awareness, Accessibility and acceptability of bus services amongst individuals and societal sectors in terms of, for example, passenger information, driver quality and safety;
Statutory Consultation	The period of formal consultation undertaken by Nexus, as directed by the ITA and on the ITA's behalf, between 30 July 2013 and 22 November 2013 and the period of Supplemental Consultation, pursuant to section 125 of the Transport Act 2000;
Statutory Consultee	The persons mentioned in section 125(3) of the Transport Act 2000;
Statutory Notice	The notice to be given pursuant to section 125 of the Transport Act 2000;

Supplemental Consultation	The period of supplemental consultation, which was part of Statutory Consultation, undertaken by Nexus between 9 April 2014 and 4 June 2014, in respect of the quality contracts scheme proposal;
SYSTRA	External consultant, formerly known as MVA Consultancy, engaged by Nexus to provide quality assurance;
TNEC	Transport North East Committee, a joint committee of the constituent councils and the Combined Authority;
Traffic Commissioner	A person appointed by the Secretary of State for Transport pursuant to Section 4 of the Public Passenger Vehicles Act 1981 as traffic commissioner, who is responsible for the licensing and regulation of those who operate heavy goods vehicles, buses and coaches, and the registration of local bus services;
Transport Act 2000	The Transport Act 2000 (as amended by the Local Transport Act 2008)
TUPE	Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended by the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014);

TWITA or ITA	The Tyne and Wear Integrated Transport Authority which oversaw the transport system across Tyne and Wear on behalf of the public, and comprised of elected Councillors and expert staff to promote and develop the transport network, which was abolished pursuant to Article 6 of the Order;
Tyne and Wear	Area comprising of Gateshead, Newcastle Upon Tyne, North Tyneside, South Tyneside and Sunderland;
Tyne and Wear Council	Each of the councils for the metropolitan district areas of Gateshead, Newcastle Upon Tyne, North Tyneside, South Tyneside and Sunderland;
Voluntary Partnership Agreement or VPA	An agreement between Operators and local authorities relating to the provision of bus services by those Operators to a specified standard, where the local authorities provide facilities or do other things for the benefit of persons using those services;
VPA Proposal	The draft voluntary multi-lateral partnership proposal received from NEBOA on 28 May 2014;
WebTAG	Web-based Transport Analysis Guidance, the DfT's transport appraisal guidance and toolkit, which consists of software tools and guidance on transport modelling and appraisal methods that are applicable for highways and public transport interventions;
Workforce Information	Employee information obtained from Operators following a request under Regulation 5 of the QCS TUPE Regulations;

3Es

Economy, efficiency and effectiveness, pursuant to section 124(1)(d) of the Transport Act 2000 .

1. EXECUTIVE SUMMARY

1.1 Introduction

- 1.1.1 On 24th November 2011, the predecessor body of the NECA for transport matters relating to Tyne and Wear – the TWITA – resolved to consider alternative approaches to the delivery of bus services within Tyne and Wear as a means to deliver the Bus Strategy for Tyne and Wear.
- 1.1.2 The Bus Strategy: Charter for Growth, adopted in March 2009 by the ITA and subject to consultation and refresh in July 2012 sets out the aspiration for bus services in Tyne and Wear. At this meeting, TWITA resolved that Nexus should be directed to investigate the possibility of developing a Quality Contracts Scheme across the region as a possible mechanism for achieving TWITA’s strategic objectives and in parallel engage with Operators to see whether a Voluntary Partnership Agreement could be developed through dialogue that would provide an effective alternative mechanism to a QCS. These two parallel workstreams were taken forward by Nexus through the Bus Strategy Delivery Project. Nexus was directed to report as appropriate to TWITA on the two proposals once developed.
- 1.1.3 In the course of developing a QCS, Nexus sought feedback from Operators and interested parties on a regular basis. Initially, Nexus conducted an Informal Stakeholder Engagement exercise which included a series of meetings with Operators and other interested groups. Based on the results of this process, Nexus completed the development of its Original QCS Proposal in July 2012. In line with Guidance, Nexus determined again to engage in informal dialogue with Operators and other stakeholders to obtain their feedback and this led Nexus to develop the QCS Proposal, dated July 2013.
- 1.1.4 At its meeting on 26th July 2013, TWITA resolved to proceed to Statutory Consultation in relation to the proposed Tyne and Wear Quality Contracts Scheme. This document outlines the Consultation process, the feedback received

from Statutory and Non-Statutory Consultees and others, and what Nexus has done as a result of that feedback.

1.2 The Consultation Process

- 1.2.1 Two parallel processes were undertaken: the Statutory Consultation and a Public Engagement Exercise. Both are explained in detail in Sections 1 to 5 of this report.
- 1.2.2 The Statutory Consultation process, designed to comply with section 125 of the Transport Act 2000, provided Consultees (the Statutory Consultees provided for by the Transport Act 2000 plus additional Non-Statutory Consultees directed by TWITA) with a suite of Consultation materials in written form. These materials, along with additional background and supporting information, were also made available to download on a dedicated section of the Nexus website, known as the 'Nexus Consultation website' – see www.nexus.org.uk/busstrategy.
- 1.2.3 The Public Engagement Exercise was intended to raise awareness of the QCS Proposal more generally. Using printed and electronic literature, stakeholder and local meetings, social media and media coverage, Nexus sought to engage with stakeholders and the general public to inform them about the broad characteristics of the QCS Proposal, the reasons why it was being proposed and how people could obtain more information and elect to participate in the Consultation process.
- 1.2.4 Nexus established procedures to address requests for clarification, further information and the management of confidentiality. In addition, both prior to and during the Consultation process, Nexus has from time to time considered it appropriate to appraise other bodies, including the QCS Board and the Department for Transport, of relevant matters concerning the development of the QCS.
- 1.2.5 The initial Statutory Consultation period opened on 30th July 2013 and, after an extension, was closed on 22nd November 2013. Following detailed analysis of the Consultation responses, Nexus considered that a limited number of potential

changes to the QCS should be the subject of a period of Supplemental Consultation. This opened on 9th April and closed on 4th June 2014.

1.3 Consultation Feedback

- 1.3.1 In the first phase of Consultation, substantial responses were received from 16 Statutory Consultees, including the large bus Operators, the seven districts of the Combined Authority, passenger groups and trade unions. In addition, comments were received from 69 organisations and individuals who were Non-Statutory Consultees.
- 1.3.2 During the Supplemental Consultation a further 13 responses were received from Statutory Consultees and 3 from organisations who were Non-Statutory Consultees.
- 1.3.3 Despite conducting specific briefing sessions with the Small Operators (those bus companies currently operating bus services in Tyne and Wear, with the exception of Stagecoach, Go North East and Arriva) to explain the implications of the Proposal, Nexus did not receive any responses from these Consultees neither the Statutory or Supplemental Consultation. Also only one non-incumbent Operator provided a response in the Public Engagement Exercise. As explained below in Section 8, Nexus is satisfied that the lack of responses from these groups is not a matter of concern.
- 1.3.4 Additionally, during the Consultation process a number of petitions in support and opposition to the QCS Proposal were presented to TWITA. Further information is contained in section 8.7 of this report.

1.4 Consultation Analysis

- 1.4.1 Nexus has completed a full and detailed analysis of all of the responses received, both from Statutory Consultees and Non-Statutory Consultees in the formal Consultation processes and via public engagement. The detailed analysis of responses has identified eleven themes which Nexus believes reflect the key overarching concerns of the Consultation feedback. It has also informed revisions

to the QCS that Nexus are now recommending to the NECA, and the drafting of the Public Interest Test Report being delivered to the NECA by Nexus.

1.4.2 Those eleven themes identified are as follows:

- Theme 1: Concerns that the legislation has not been complied with
- Theme 2: Concerns that QCS is an inappropriate remedy
- Theme 3: Concerns about the Do Minimum Scenario
- Theme 4: Concerns that benefits of the proposed QCS have been overstated or are uncertain
- Theme 5: Concerns that costs of the proposed QCS have been underestimated
- Theme 6: Cross boundary concerns
- Theme 7: Concerns over employee impacts
- Theme 8: Concerns over adverse effects on Operators
- Theme 9: Concerns over the modelling approach
- Theme 10: The impact on well-being
- Theme 11: Suggested features and inclusions in the QCS

1.4.3 Each theme has a number of more detailed issues which outline in greater detail the matters raised by Consultees. Section 9 of this report provides a review of the issues raised in each theme, along with Nexus's response to those issues and their impact on the QCS.

1.4.4 It should be noted that this report is a summary of the responses to Consultation received by Nexus. Readers are advised that all responses from Statutory and Non-Statutory Consultees can be found on the Nexus Consultation website

(www.nexus.org.uk/busstrategy) under the Consultation responses menu for both the Statutory and Supplemental Consultations.

- 1.4.5 As part of the process of preparing this report Counsel has been asked to review the process undertaken by Nexus and to confirm that it has complied with all relevant legal requirements. A copy of Counsel's opinion will be provided to the NECA.

1.5 Voluntary Partnership

- 1.5.1 As detailed above, in November 2011 the TWITA instructed Nexus to prepare a draft QCS and to explore the scope for a VPA. In response to this resolution, local Operators came together to form the NEBOA, which was founded in 2012. NEBOA's objectives include the development of one or more VPAs to cover Tyne and Wear, Northumberland and Durham.
- 1.5.2 Nexus, the NECA and TWITA have worked with NEBOA since its inception to develop a VPA that can help achieve the Objectives set out in the Bus Strategy for Tyne and Wear.
- 1.5.3 The VPA has evolved over the last 18 months: a first proposal was put forward by NEBOA in October 2012, revised versions were prepared in May 2013 and December 2013, and the latest VPA Proposal was provided in May 2014. Further information regarding the engagement with Operators relating to the development of the VPA Proposal is contained in the VPA Assessment at Section 10 of this report.
- 1.5.4 Numerous meetings have been held between officers of TWITA, the NECA and NEBOA to jointly develop and clarify the VPA Proposal.

1.6 Conclusion

- 1.6.1 Nexus is satisfied that all stages of the Consultation process have complied with the requirements of Section 125 of the Transport Act 2000 and all other legal

requirements necessary for the conduct of a lawful consultation. Further information is contained in Section 11 of this report.

1.6.2 Nexus considers that:

- (a) The Consultation process has been sufficiently robust to engage all the necessary parties;
- (b) Sufficient and suitable information has been provided to allow the parties to interpret and respond to the Consultation; and
- (c) Nexus has appropriately considered and responded to all relevant points made by respondents to the Consultation.

1.6.3 As requested in the Directions and Guidance, this report will be provided to the NECA when it is deciding whether to progress a QCS or VPA.

2. **PURPOSE OF THIS DOCUMENT**

2.1 **Introduction**

2.1.1 At its meeting on 26th July 2013 the Tyne and Wear Integrated Transport Authority (TWITA) resolved to proceed to Statutory Consultation in relation to the QCS Proposal. This document will:

- (a) describe the stages of the Statutory Consultation and Supplemental Consultation, who was involved, the timescales and the materials and methods used to communicate;
- (b) consider whether the Statutory Consultation and Supplemental Consultation processes satisfy the requirements specified in Section 125 of the Transport Act 2000;
- (c) consider whether the Statutory and Supplemental Consultation processes comply with the 'Direction and Guidance to Nexus on Consultation' issued by the TWITA on 26th July 2013;
- (d) summarise the feedback received from Statutory Consultees and others; and
- (e) summarise Nexus' response to that feedback.

2.2 **Document Structure**

Chapter	Title and Content description
3	Background to the QCS Proposal Outlines the process to date
4	Statutory Consultation Outlines the approach to the Statutory Consultation in line with Section 125 of the Transport Act 2000
5	Public Engagement Exercise Outlines the approach to the Public Engagement Exercise, as requested in

Chapter	Title and Content description
	the Direction and Guidance from the TWITA
6	Updates to other organisations and groups Summarises contact with other relevant organisations or groups who were not Statutory Consultees prior to and during the Consultation process.
7	Treatment of information Explains the treatment of confidential information
8	Consultation Feedback Outlines the sources and volume of feedback received during the Consultation period
9	Consultation Analysis Outlines the feedback received during the Consultation period, Nexus' analysis of the feedback received and actions taken as a result of that analysis.
10	Voluntary Partnership Agreement (VPA) Outlines the approach to the development of the VPA Proposal, including the communications and Consultation with Operators and other relevant parties which has underpinned that process.
11	Conclusion Considers whether the process employed by Nexus has complied with Section 125 of the Transport Act 2000 and the TWITA's Direction and Guidance to Nexus on Consultation such that parties have been engaged and feedback has been analysed and actioned appropriately.

2.3 A series of appendices is attached :

- Appendix A : Background to the QCS Proposal
- Appendix B: Direction and Guidance to Nexus on Consultation
- Appendix C : A list of Statutory Consultees
- Appendix D : Letter from QCS Board (25TH September 2013)

3. **BACKGROUND TO THE PROPOSAL**

- 3.1 On 24th November 2011, the predecessor body of the NECA for transport matters relating to Tyne and Wear, the TWITA, resolved to consider alternative structures for the delivery of bus services within Tyne and Wear as a means to deliver the Bus Strategy for Tyne and Wear. At this meeting, TWITA resolved that Nexus should be directed to investigate the possibility of developing a QCS across the region as a possible mechanism for achieving TWITA's objectives and in parallel engage with the Operators to see whether a VPA could be developed through dialogue that would provide an effective alternative mechanism to a QCS. Nexus was directed to report as appropriate to TWITA on the two proposals once developed.
- 3.2 In developing a QCS, Nexus sought feedback from Operators and other interested parties on a regular basis. Initially, Nexus conducted an Informal Stakeholder Engagement exercise which included a series of meetings with Operators and other interested groups. Based on the results of this process Nexus went on to complete the development of its Original QCS Proposal in July 2012. In line with the Guidance, Nexus determined again to engage in informal dialogue with Operators and other stakeholders to obtain their feedback on the Original QCS Proposal. This feedback persuaded Nexus to develop a revised Scheme which became the QCS Proposal, dated July 2013. Further detail regarding each of these stages is contained in Appendix A (Background to the QCS Proposal).
- 3.3 On 26th July 2013, the QCS Proposal was presented to the TWITA for consideration. At this meeting, TWITA resolved to proceed to formal Statutory Consultation in relation to this QCS Proposal. Nexus was directed by TWITA to undertake the Consultation on its behalf subject to directions from TWITA as to how the Consultation should be conducted. These Directions are appended in Appendix B (Direction and Guidance to Nexus on Consultation).

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4. **STATUTORY CONSULTATION**

4.1 Introduction

4.1.1 Section 125 of the Transport Act 2000 sets out the notice and consultation processes that must be undertaken prior to the QCS Proposal being submitted to a QCS Board for review.

4.1.2 This section outlines the approach to Statutory Consultation taken by Nexus in line with Section 125 of the Transport Act 2000 and the Direction and Guidance to Nexus on Consultation from the TWITA (Appendix B - Direction and Guidance to Nexus on Consultation).

4.2 Timescales

4.2.1 The initial Statutory Consultation period opened on Tuesday 30th July 2013 and was scheduled to close on Tuesday 5th November 2013. As the process overlapped with the main annual holiday period the Consultation period was set at 14 weeks to comply with Cabinet Office guidance on consultation principles¹ and so ensure adequate time for all Consultees to respond.

4.2.2 During this Statutory Consultation period, Nexus received a number of requests from Operators to extend the Consultation beyond 5th November 2013. After careful consideration of these requests, and in light of the Operators' commitment to provide an enhanced VPA by 22nd November 2013, Nexus agreed to allow an extension until that date. This resulted in a total Consultation period of 17 weeks and 3 days. That extension allowed the Operators' responses to the Consultation to take into account the VPA and compare the perceived benefits (and disbenefits)

¹ Consultation Principles, Cabinet Office, 17 July 2012

of the QCS Proposal against the perceived benefits (and disbenefits) of the Draft VPA.

4.3 Supplemental Consultation Timescales

4.3.1 Following detailed analysis of the Statutory Consultation responses, in line with the Guidance and with the specific TWITA Direction (at paragraph 1.11.4 in the Direction), Nexus was of the view that a limited number of potential changes that it was minded to make to the QCS Proposal should be subject to a period of Supplemental Consultation before any recommendations were made to the NECA regarding modifications to the QCS Proposal.

4.3.2 Nexus considered that those potential changes were largely self-contained (in that they might potentially help address certain of the concerns raised by some of the Consultees, whilst not materially impacting the benefits to be derived from the QCS Proposal) and Nexus therefore considered that it could properly consult on them whilst completing its overall review of the Consultation feedback on the QCS Proposal.

4.3.3 Nexus therefore determined that it wished to invite the views of Statutory Consultees on those potential changes to the QCS Proposal. A period of Supplemental Consultation therefore opened on 9th April and closed on 4th June 2014. Nexus received no requests for extensions to these timescales. Details were placed on the Nexus Consultation website (www.nexus.org.uk/busstrategy) so that interested members of the public were made aware of the potential changes and could participate in the Supplemental Consultation if they wished.

4.4 Literature and Distribution

4.4.1 Section 125(1)(C) of the Transport Act 2000 requires a notice to be displayed in at least one newspaper circulating in the area to which the Scheme relates to advertise the Consultation and raise public awareness.

The Statutory Notice was published in four local newspapers (the Sunderland Echo, Journal, Northern Echo and the Shields Gazette) on 30th July 2013 and a copy of the Statutory Notice was sent to all Statutory Consultees. The Notice described the Proposed Scheme, stated where a copy of the Scheme could be inspected and outlined the reasons the Scheme was being proposed.

4.4.2 For the first phase of Statutory Consultation, in addition to the Notice, Statutory Consultees received a suite of consultation materials to ensure compliance with Section 125 (1) of the Act.

4.4.3 The 'Consultation Document' was the primary source of information. It comprised of six sections:

- (a) **An introductory letter** outlining the requirements of Section 125 of the Transport Act 2000 and explaining how these requirements had been addressed. The letter detailed the timing of the Consultation, how to respond to the process and provided contact details should clarification or further information be required by a Consultee.
- (b) **The QCS Proposal**, which provided a detailed description of the proposed Scheme, including an outline of the bus services included and excluded from it, and the reasons as to why it was believed the five public interest criteria (outlined in section 124(1) of the Act) were met.
- (c) **The appendices to the QCS Proposal.**
- (d) **The Affordability Declaration**, completed by the Treasurer to the TWITA. This declaration confirmed that the funding required to implement the Scheme could be provided by resources available to the Authority.

- (e) **The Consultation Direction and Guidance**, the document detailing the TWITA's instruction to Nexus regarding the approach to be taken to the Consultation process and the date (subject to any extension) by which responses were to be received.
- (f) **The TWITA Resolution**, passed by the TWITA to proceed to Statutory Consultation on the QCS Proposal.

4.4.4 The Consultation Document was available for download in full on the Nexus Consultation website.

4.4.5 Additional information was also made available for download on the Nexus website to support the Consultation Document. This included:

- (a) The Statutory Notice (as described earlier in this document).
- (b) Supporting or source documents referenced in the QCS Proposal which were not available from external sources.
- (c) The models referenced in the QCS Proposal. Three models were provided – Affordability which informs the financial case, Value for Money which informs criterion (d) of the Public Interest Test and Fares and Ticketing which informs the fares and ticketing proposal. Each was accompanied by a simplified modelling guide. The models were provided in PDF format for download, although a number of Statutory Consultees subsequently requested and were provided with them in Excel format to allow further interrogation and analysis.
- (d) The Draft Scheme. This was a draft of the formal legal document that would be approved by the TWITA to make a QCS for Tyne and Wear. The document would be required should the TWITA progress to the 'making' of the QCS, the point at which the TWITA formally determines the proposed QCS is to go ahead.

- (e) Legal advice and instructions. Nexus, on behalf of the TWITA, sought a legal opinion from Counsel, James Pereira of Francis Taylor Buildings, confirming that the QCS Proposal contained those matters required for Consultation in accordance with the Transport Act 2000 and to ensure the QCS Proposal contained a lawful analysis of the Public Interest Test criteria and a lawful assessment of proportionality.
- (f) A suite of QCS brochures. Four brochures were prepared outlining the general principles and some specific aspects of the Scheme. Please refer to sections 5.2.2 to 5.2.4 for further details.
- (g) TWITA reports. A link to the reports and appendices presented to the TWITA on 26th July 2013 was provided.

4.4.6 Nexus considers that the QCS Proposal document, appendices and the associated documentation considered by the TWITA met the requirements of the Consultation Document as defined by section 125(1)(a) of the Transport Act 2000.

4.4.7 In the Supplemental Consultation process, Statutory Consultees were invited to consider certain potential changes to the QCS Proposal arising out of the Statutory Consultation process. The areas to be considered for potential change were:

- (a) Fares and ticketing;
- (b) Contract Standards;
- (c) Procurement;
- (d) Bus Company Employees; and
- (e) Governance.

- 4.4.8 All Statutory Consultees were sent a letter and a copy of the document entitled “Supplemental Consultation (April 2014) with respect to the Proposal for a Quality Contracts Scheme in Tyne and Wear”, which dealt with the areas for consideration set out above, together with its appendices.
- 4.4.9 At the start of both the Statutory and Supplemental Consultation processes, Nexus sent the Consultation materials in written form, delivered by courier, to the following persons and organisations who come within the scope of Sections 125(3)(c) or (g) of the Transport Act 2000, who were formally invited to participate in the Consultation:
- (a) Operators of Local Services;
 - (b) Bus user representatives;
 - (c) Relevant Local Authorities including the five Councils of Tyne and Wear, Durham, Northumberland and Hartlepool;
 - (d) The Chiefs of Police for Northumbria Police and Durham Constabulary;
 - (e) Trade Unions; and
 - (f) Network Ticketing Limited (nominated by TWITA as a Statutory Consultee pursuant to section 125(3)(g)).
- 4.4.10 A full list of Statutory Consultees can be found in Appendix C (list of Statutory Consultees).
- 4.4.11 26,631 visits were made to the Nexus Consultation website by the close of Statutory Consultation on 22nd November 2013 and a further 4220 during the Supplemental Consultation. This includes the visits of both Statutory and non-Statutory Consultees.

4.5 Meetings

4.5.1 In addition to correspondence, a number of formal and informal meetings and discussions were held with stakeholders throughout the Consultation period so as to clarify feedback received to the Consultation. A schedule of such activities was placed on the website insofar as the material did not prejudice the commercial confidentiality of those providing the information – this schedule can be accessed by clicking [this link](#).

4.5.2 Briefing sessions were also arranged to provide small independent bus Operators with an overview of the Bus Strategy Delivery Project and the potential implications for them of the impact of the options available.

4.6 Requests for Clarification and Further Information

4.6.1 In the Introductory letter of the Consultation Document, postal and e-mail contact details were provided for any requests for information or clarification.

4.6.2 An internal log was established to monitor the receipt of such requests and ensure responses were provided in a timely manner. Some 69 requests for information or clarification were received during the first phase of Consultation, with a further 9 during the Supplemental Consultation phase.

4.6.3 To ensure that all Consultees and interested parties had access to all further information released in respect of the QCS Proposal, a section was established on the Nexus Consultation website to display requests for additional information, and the responses and any additional information were provided as a result. The requests and responses were categorised first by the requesting organisation, and then by date.

4.6.4 It was necessary for Nexus to rectify four inaccuracies in the suite of documents released in the first phase of Consultation and a section was

established to flag such changes to Consultees entitled 'Consultation Document Alerts'. A further two inaccuracies were flagged during Supplemental Consultation. These were identified at an early stage and rectified. Nexus therefore considers that there was no impediment to the ability of Consultees to respond in a properly informed and complete manner to the Consultation.

5. **PUBLIC ENGAGEMENT EXERCISE**

5.1 **Introduction**

5.1.1 The Direction and Guidance was clear that Nexus must engage both with Statutory Consultees and with the general public, therefore in addition to the Statutory Consultation process a parallel Public Engagement Exercise was implemented.

5.1.2 Nexus considered that the Public Engagement Exercise in parallel with formal Statutory Consultation was critically important in raising awareness of the Proposal, and complementing the Consultation process. The Public Engagement Exercise therefore considered:

- (a) The current perceived threats to the delivery of bus services in Tyne and Wear and the need for action to address those concerns;
- (b) The broad characteristics of the QCS Proposal and the reasons why it was being proposed; and
- (c) The process leading to the making of a QCS.

5.1.3 It also provided information as to how interested parties could obtain more information or participate in the Consultation process.

5.2 **Literature and Distribution**

5.2.1 The primary source of information was the Nexus Consultation website, with the majority of stakeholders receiving information electronically. Secondary sources of information included the production of specific printed documents, stakeholder mailings and briefings and the availability of hard copies of the QCS Proposal at key locations across Tyne and Wear. The campaign was promoted through media advertising and given priority space on the Nexus Consultation website. Stakeholders comprised of approximately 800 contacts, including large regional employers, business

parks, education and health providers, local community and interest groups, charities, Councillors and MPs.

- 5.2.2 A suite of documents was produced. The first was a brief, high-level, pamphlet intended to be accessible to the general public and to encourage them to take an interest in the Consultation process. The second was a longer summary document, largely based on the executive summary of the QCS Proposal.
- 5.2.3 The third document set out a more substantial explanation of the QCS Proposal for those members of the public who did not wish to study the full QCS Proposal in detail, but who wished to know more than the high-level explanation given in the pamphlet explained in section 5.2.2
- 5.2.4 Two further brochures were developed to inform passengers of the implications to cross boundary services and bus company employees about what the QCS Proposal could mean for them.
- 5.2.5 Reference copies of the QCS Proposal were placed in main public libraries, and Civic Centres (or equivalent main premises of each Tyne and Wear Council, Durham and Northumberland), at Nexus House in Newcastle and were also available at events.
- 5.2.6 Stakeholders were emailed or mailed a copy of the summary document and directed to the Nexus Consultation website for more information.
- 5.2.7 The summary document, high level pamphlet and cross boundary and employee brochures were available to take away from events and other locations, and were available to download from the Nexus Consultation website.
- 5.2.8 Copies of the high level pamphlet, summary document and brochures and leaflets were supplied to Northumberland County Council, Durham County Council and Unite the Union to distribute accordingly. The full QCS

Proposal and supporting documents were available to all to view and download on the Nexus website free of charge.

5.2.9 Additional hard copies and alternative formats of all literature were available on request.

5.3 Meetings

5.3.1 A stakeholder mailing, containing the summary brochure and details of 15 briefings that were held across Tyne and Wear (which stakeholders could attend for information and to discuss the proposals), was sent to identified stakeholders on 9th August 2013. A total of 61 people attended the stakeholder events.

5.3.2 Similar information, and proposed Councillor briefing dates, was also supplied in hard copy to Councillors in the Tyne and Wear districts.

5.3.3 Briefings were received by four of the five Tyne and Wear Councils plus Durham County Council and Hetton Town Council (which specifically requested a briefing). South Tyneside and Northumberland Councils declined the offer from Nexus. The matter was further discussed at other local meetings where Nexus was invited to give updates on the project. Those meetings were attended by over 1,000 people in total.

5.4 Social Media

5.4.1 A social media strategy, designed to ensure stakeholder involvement from those who favoured direct digital communications was implemented by Nexus in order to engage with this audience.

5.4.2 The key elements of the strategy included:

- (a) The provision of a clickable route to the Nexus Consultation website;
- and

(b) The monitoring of online debate regarding the Bus Strategy Delivery Project in order to address misconceptions and direct people to the Nexus Consultation website where further information was available.

5.4.3 Social media communication was introduced for those who favour direct digital communication or normally obtain information through Twitter, YouTube and online news sources. Social media communication was managed through a specialist agency which also sent invitations and reminders to community representatives. The agency engaged in a proactive social media campaign with an emphasis on digital channels (including direct email and community interest forums) that targeted key audiences. This included passenger groups, local politicians and trade and regional media commentators.

5.4.4 Facebook and Twitter accounts were set up under the '**Time For Change?**' brand applied to Consultation documents (see below) to allow intervention in debate and signposting to Consultation information.



5.4.5 Careful monitoring across all channels allowed Nexus to respond rapidly to claims and discussions, by directing respondents to relevant documents available online or highlighting factual statements derived from those documents.

5.4.6 Of the 26,631 visits made to the Nexus Consultation website, 1,206 were channelled via social media.

5.5 Media Coverage

5.5.1 Throughout the Consultation period there was local newspaper coverage, some national media coverage, and coverage, comment and analysis in transport trade magazines.

5.6 Public engagement during Supplemental Consultation

5.6.1 During the Supplemental Consultation most of the proposals for change that were being consulted upon related to matters of technical detail, were primarily of relevance to Operators and the Statutory Consultees and were considered to have little direct relevance to the public or other non-statutory stakeholders. Therefore a low-key Public Engagement Exercise was considered appropriate.

5.6.2 An initial press release was issued and the main issues were covered at regular meetings attended by Nexus Customer Relations Officers, such as Councils' local area meetings and meetings of voluntary and community groups, particularly those relating to older and disabled people. Details as to where to access further information or make comment were provided at such meetings.

5.6.3 The primary source of information was the Nexus Consultation website and to support this, hard copies of both the original and the Supplemental Consultation documents were made available for reference at the main Council office and library in each district. The information was emailed to transport departments in each Tyne and Wear Council, and Durham, Northumberland and Hartlepool Councils.

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6. UPDATES TO OTHER ORGANISATIONS OR GROUPS

6.1 Introduction

6.1.1 Both prior to and during the Consultation, Nexus considered it appropriate to appraise other organisations or groups of the status of the process.

6.2 QCS Board

6.2.1 As required by the Transport Act, Nexus provided a copy of the Statutory Notice plus other supporting information to the Senior Traffic Commissioner. In response, and as defined in section 126A (1), a QCS Board was constituted.

6.2.2 Nexus has ensured the QCS Board has been fully informed of progress, advising it directly of the approach to Consultation, any time extensions and providing links to the Consultation responses on the Nexus Consultation website. The QCS Board was also requested to give procedural advice as to whether Nexus' proposed consultation activities were sufficient to meet the statutory requirements as detailed in Section 125 of the Transport Act 2000. Having considered the Consultation proposals the Board advised Nexus that it was of the opinion that the minimum statutory requirements had been met. The QCS Board noted however that this advice was given without prejudice to any arguments or issues that might be raised during any formal review process that might follow as to the adequacy of the Consultation process. Please refer to Appendix D (Letter from QCS Board).

6.2.3 In addition, the QCS Board was copied into a Request for Information by a Statutory Consultee. Accordingly, Nexus copied the QCS Board into its response and both the request and the response were posted on-line for the benefit of other Consultees.

6.3 Department for Transport

6.3.1 In light of correspondence during, and responses to, Consultation on the QCS Proposal, Nexus also contacted the Department for Transport to seek clarification on the Secretary of State's intent regarding the application of the Guidance in relation to criterion (d) of the Public Interest Test. A response was received, which was published on the Nexus Consultation website and can be accessed by clicking [this link](#).

7. TREATMENT OF INFORMATION

7.1 Confidentiality

- 7.1.1 The Consultation Document clearly stated that all responses and correspondence relating to the Consultation would be treated by Nexus and the TWITA as being in the public domain. They would be published on the website and made available to any QCS Board constituted to consider the Scheme following Consultation.
- 7.1.2 The Consultation Document however recognised that some relevant information would be commercially sensitive or subject to data protection legislation and would need to be kept confidential. Nexus therefore advised those Consultees to whom this was applicable to contact it, in order to reach agreement as to the basis on which such data might be disclosed or the extent to which such data should be redacted.
- 7.1.3 In practice, a number of the responses were provided in both an unredacted and redacted format, with the redacted versions being published on the Nexus Consultation website. Appropriate measures were put in place for the handling of confidential documents including encryption and password protection where necessary.
- 7.1.4 Following the close of the Consultation process Nexus approached two bus Operators to request access to underlying data referred to in their Consultation responses, and supporting reports prepared by their economic advisors. Access to this information would to allow Nexus to both clarify and analyse their responses fully. These Operators were concerned that the data in question was of a particularly confidential nature. Confidentiality and Non-Disclosure Agreements were duly executed for relevant personnel at Nexus and its external economic advisors in order for them to be allowed access to the material. Items covered by these Agreements have been handled and stored by Nexus and its external consultants as directed by those Agreements.

7.2 Freedom of Information

- 7.2.1 Nexus received one Freedom of Information request during the Statutory Consultation and one also during the Supplemental Consultation period. Both of these requests were displayed on the Nexus Consultation website along with Nexus' responses to them.

8. **CONSULTATION FEEDBACK**

- 8.1 This section summarises the sources and volume of feedback received during the Consultation period.
- 8.2 As a result of the Statutory Consultation, responses were received from 16 Statutory Consultees. In addition, comments were received from 69 organisations and individuals who were not Statutory Consultees.
- 8.3 As a result of the Supplemental Consultation, a further 13 responses were received from Statutory Consultees and 3 from organisations who were not Statutory Consultees, one being a resubmission of their initial response.
- 8.4 All responses were logged with a unique reference number and posted on the Nexus website.
- 8.5 Despite conducting the meetings outlined in Section 4.5 so as to ensure direct engagement with a key group of stakeholders, Nexus did not receive any substantive responses from the small Operators currently represented in Tyne and Wear. Nexus is confident based on its past experience of dealing with the small Operators that if any of them had specific concerns they would have made these known to Nexus.
- 8.6 There was also only one response from a non-incumbent Operator in the Public Engagement Exercise. Whilst Nexus hoped to engage a wider range of views on the QCS Proposal from major Operators outside of Tyne and Wear, Nexus is satisfied that a lack of response from this group at this stage is not indicative of a lack of interest in tendering for QCS contracts when the time comes.
- 8.7 During the Consultation process a number of petitions regarding the QCS Proposal were presented. On 15th November 2013 Stagecoach presented to TWITA a 6,500 signature petition against the QCS Proposal. PTUG (the Tyne and Wear Public Transport Users' Group) organised an on-going petition in support of the QCS Proposal, which at its final count contained around 960 signatures.

8.8 GNE provided 424 forms, produced by GNE, that its staff had completed, and requested that they be treated as individual responses to the Consultation. The forms asked employees a series of questions regarding the QCS Proposal in the form of a survey, and provided an opportunity for a comment to be made. The questions were of GNE's own devising and did not reflect the Consultation materials provided by Nexus – indeed Nexus considers that the forms were not balanced and that several questions were intended to 'lead' respondents to a particular answer. Although Nexus has taken these forms into account (as requested by GNE), Nexus has attached limited weight to their contents because they represent responses to GNE from its own staff, rather than responses to the Consultation. Where individual comments were made they were considered in the Consultation process.

8.9 Analysis of the responses received is contained in Section 9 of this document.

9. **CONSULTATION ANALYSIS**

9.1 Introduction

9.1.1 Nexus has completed a full and detailed analysis of all of the Consultation responses received, both from Statutory and Non-Statutory Consultees. The detailed analysis of responses has resulted in the identification of eleven themes that Nexus believes fairly represent the areas of Consultation feedback.

9.1.2 The following sections of this report will provide, by individual theme:

- an introduction to each theme;
- a summary of the issues raised;
- Nexus's response to those issues; and
- the steps taken to address those issues in the QCS presented to the NECA for consideration.

9.1.3 The eleven Themes are:

- Theme 1: Concerns that the legislation has not been complied with
- Theme 2: Concerns that QCS is an inappropriate remedy
- Theme 3: Concerns about the Do Minimum Scenario
- Theme 4: Concerns that benefits of the proposed QCS have been overstated or are uncertain
- Theme 5: Concerns that costs of the proposed QCS have been underestimated
- Theme 6: Cross boundary concerns
- Theme 7: Concerns over employee impacts

- Theme 8: Concerns over adverse effects on Operators
- Theme 9: Concerns over modelling approach
- Theme 10: The impact on well being
- Theme 11: Suggested features and inclusions in the QCS

9.1.4 It should be noted that this report is a summary of the responses to Consultation received by Nexus, and Nexus' response to the issues raised. Readers are advised:

- (a) that all responses from Statutory and Non-Statutory Consultees can be found on the Nexus Consultation website (www.nexus.org.uk/busstrategy) under the Consultation responses menu for both the Statutory and Supplemental Consultations; and
- (b) further information and detail regarding Nexus' response to the issues raised can be found in the QCS Public Interest Test Report, the Quality Contracts Scheme and the Affordability Analysis.

9.1.5 As part of the process of preparing this report Counsel have been asked to review the process undertaken by Nexus and to confirm that it has complied with all relevant legal requirements. A copy of Counsel's opinion will be provided to the NECA.

9.2 Theme 1: Concerns that the legislation has not been complied with

9.2.1 Introduction

- (a) The principal legislation governing the introduction of the QCS is set out in the Transport Act 2000. Part of this Act allows local transport authorities to introduce Quality Contracts Schemes in order to meet their local transport policies and objectives, but requires that where they do so a series of statutory criteria – collectively known as the Public Interest Test criteria – are met.
- (b) Section 124 of the Transport Act 2000 requires that local transport authorities undertake an analysis of this “Public Interest Test”. Section 124(1) sets out five Public Interest Test criteria that must be satisfied before a QCS can be made. These criteria require that:
 - (i) the proposed scheme will result in an increase in the use of bus services in the area to which the proposed scheme relates (criterion (a));
 - (ii) the proposed scheme will bring benefits to persons using Local Services in the area to which the proposed scheme relates, by improving the quality of those services (criterion (b));
 - (iii) the proposed scheme will contribute to the implementation of the local transport policies of the LTA (criterion (c));
 - (iv) the proposed scheme will contribute to the implementation of those policies in a way that is economic, efficient and effective (criterion (d)); and
 - (v) any adverse effects of the proposed scheme on Operators will be proportionate to the improvement in the well-being of persons living or working in the area to which the proposed scheme relates (criterion (e)).

- (c) The proportionality test under criterion (e) is closely aligned with human rights considerations in relation to Article 1 of the First Protocol (A1P1) of the European Convention on Human Rights (ECHR). A1P1 protects the peaceful enjoyment of possessions, which can include matters such as the goodwill of a business. In simple terms, A1P1 would require the interference with the peaceful enjoyment by Operators of their possessions to be proportionate to the Objectives of the QCS.
- (d) The Transport Act 2000 also prescribes the notice and consultation processes that must be undertaken before the QCS is submitted to a QCS Board for review and comment.
- (e) During Consultation some stakeholders suggested that the QCS Proposal did not comply with either the Transport Act 2000 or A1P1.

9.2.2 The issues raised

- (a) The issues raised under this theme were:
 - (i) Compliance with the Transport Act 2000 (as amended), including concerns that the Public Interest Test was not satisfied;
 - (ii) Breach of the Human Rights Act 1998 and Article 1 of the First Protocol ("A1P1") of the European Convention on Human Rights ("ECHR");
 - (iii) It was unlawful for Nexus or the TWITA to make a scheme covering bus services that operate in Durham and Northumberland;
 - (iv) Issues with the introduction of the Combined Authority; and
 - (v) The consultation process was not legally compliant.

- (b) Concerns that the QCS Proposal did not comply with legislation were principally raised by the larger incumbent Operators: Arriva, Go North East and Stagecoach. Within their feedback, comments received included assertions that:
 - (i) Nexus had failed to consult on the revised draft of the QCS Proposal (as revised following initial informal consultation) before the TWITA determined that Consultation should be undertaken in respect of it;
 - (ii) The Consultation process did not comply with the requirements of procedural fairness governing lawful public consultation;
 - (iii) the Public Interest Test was not satisfied, alongside various concerns including inappropriate modelling assumptions, overestimation of the benefits and under estimation of costs; and
 - (iv) the TWITA did not have the power to make a QCS that includes cross boundary services which will operate outside the QCS Area.

9.2.3 Nexus response to the issues raised

- (a) Nexus has carefully considered the comments made during Consultation. Nexus understands the importance of complying in full with the statutory process for establishing a Quality Contracts Scheme, and has engaged legal advisors to guide this process.
- (b) The point at which the legality of a QCS can properly be judged is at the point when the NECA actually determines (if it decides to do so) to make it. A QCS can only be made following the conclusion of a statutory procedure that includes a review by the QCS Board. Nexus therefore considers that the assertion that the QCS Proposal as set

out in the Consultation Document was unlawful pre-judges the outcome of the development process and any final decisions made by the NECA.

- (c) Nexus acknowledges that if the NECA is not satisfied that the Public Interest Test is satisfied, then it may not lawfully make the QCS. Having carefully considered all responses, Nexus has accepted that a degree of change was required in the analysis of the Public Interest Test it set out in the Consultation Document, and indeed the purpose of consulting upon it in the first place was to understand where changes were needed. These changes are detailed in subsequent sections of this report.
- (d) Nexus considers that the formal Consultation it conducted was compliant with the provisions of the Transport Act 2000 and the associated Guidance in all material respects. Elsewhere in this report Nexus sets out the detailed and multiple steps Nexus took in consulting with key stakeholders, impacted parties, and the general public and how both formal and informal Consultation was carried out. Nexus consulted informally on a first draft proposal and took account of the responses it received, but there was neither a statutory requirement nor a practical need for it to engage in further informal consultation before proceeding to formal Consultation. Consultees were given full and detailed information to base their responses upon during Consultation, and had a fair opportunity to respond and therefore no procedural or substantive unfairness could have arisen from the decision not to undertake a further stage of informal consultation.
- (e) The Consultation process was comprehensive and all Statutory Consultees were provided with a further opportunity to make submissions on the issues which were the subject of Supplemental Consultation. In addition, Nexus notes that, should the NECA decide

to take the QCS forward, the QCS Board stage will involve a further detailed review of the Public Interest Test and of the Consultation process.

- (f) The QCS will only have legal effect in the area to which it relates, which is the QCS Area. Beyond the QCS Area, bus services will not be provided under the powers utilised through the introduction of the Quality Contracts Scheme, but by using existing powers of providing tendered bus services.
- (g) As a result of the introduction of the NECA on 15th April 2014, the TWITA and its area ceased to exist. Nexus was satisfied that the TWITA had the power to make a QCS including cross-boundary services, and it is clear that the NECA has the power to make a QCS covering the former TWITA area (which is now part of the NECA area) and to let contracts which include the operation of services within Durham and Northumberland. Nexus has recommended to the NECA that a Cross Boundary Bus Collaboration Protocol should be put in place to support the operation of the QCS where its introduction may impact on services in neighbouring areas. However the Cross Boundary Bus Collaboration Protocol does not form part of the QCS.

9.2.4 Steps taken to address the issues raised

- (a) In response to this Consultation feedback, Nexus made changes to its approach to assessing the Public Interest Test:
 - (i) Criterion (a): assumptions that influence bus demand forecasts have been amended;
 - (ii) Criterion (b): the structure of the assessment of this criterion was revised to highlight the service quality benefits of the QCS based on its main components, rather than the Bus Strategy

Objectives and Deliverables. In considering these service quality benefits, Nexus has included amendments made to the specifications of the Scheme;

- (iii) Criterion (c): amended to consider the transport policies of the whole NECA area;
 - (iv) Criterion (d): the approach taken by Nexus to undertaking an assessment of the 3Es and Value for Money has been amended to reflect the Guidance more accurately, to better reflect the effect of costs and revenues transferring between Operators and Nexus in the QCS scenario, and to incorporate Operators' views on the key risks that apply to the QCS and VPA outcomes; and
 - (v) Criterion (e): Nexus has now completed a full assessment of the proportionality of the QCS, which was not possible to do in the Consultation Document because the assessment relies in part on information about adverse effects received from incumbent Operators. The assessment has been completed by Nexus using Consultation feedback, its modelling of the QCS (the updated Nexus Affordability Model) and its assessment of the improvements in well-being arising to people living or working in the area.
- (b) In light of the changes made to the Public Interest Test, Nexus has carefully considered the points raised by Consultees regarding compliance with all relevant legislation. As set out in the Public Interest Test Report, Nexus is satisfied that the QCS as now proposed complies with this legislation. It has also sought external legal opinion regarding both the process it has undertaken to develop the QCS and the conclusions it has drawn regarding legal compliance, which is fully supportive of Nexus' conclusions.

- (c) This Consultation Report shows that Nexus has to date also been fully in compliance with the statutory procedure for the development of the QCS.

9.3 Theme 2: Concerns that the QCS is an inappropriate remedy

9.3.1 Introduction

- (a) The context for the consideration of the QCS is the Bus Strategy for Tyne and Wear, which was adopted by the TWITA in 2012 and subsequently became a matter for the NECA. The Bus Strategy considers the issues facing the local bus market within Tyne and Wear such as the long-term decline in numbers of fare-paying bus passengers, the importance of the local Accessibility provided by the bus network, and the need to ensure that public funding for the bus network is controlled and spent effectively. To address these issues, the Bus Strategy sets out three key policy Objectives designed to deliver improved bus services, namely to:
 - (i) Arrest the decline in bus patronage;
 - (ii) Maintain (and preferably grow) accessibility; and
 - (iii) Deliver Value for Money.

- (b) The QCS Proposal contained a Do Minimum Scenario in which Nexus set out a forecast of what is likely to happen if no intervention is made, which was used as a comparator against which to measure the benefits of the QCS and VPA. The Do Minimum Scenario projected a continuation of the long-term trend of declining bus patronage, and severe cuts to those bus services and non-statutory discounted fares that are publicly-funded. For details please see Section 1.4 of the Public Interest Test Report.

- (c) Appendix A (Delivery Options) of the Bus Strategy notes that legislative amendments made by the Local Transport Act 2008 provide local transport authorities with a range of delivery options to meet the challenges facing the industry whilst addressing local policy objectives. These can be summarised as:

- (i) Do Nothing, which for the purposes of this report is the Do Minimum Scenario;
 - (ii) Voluntary Partnership Agreement;
 - (iii) Quality Partnership Scheme;
 - (iv) Quality Contracts Scheme.
- (d) During the Consultation, some stakeholders suggested that a QCS in Tyne and Wear was not an appropriate remedy for the problems stated.

9.3.2 The issues raised

- (a) The issues raised under this theme were:
 - (i) Nexus should keep an open mind about alternative approaches that could meet the Objectives;
 - (ii) The Competition Commission indicated that alternative remedies to a QCS could address customer detriment;
 - (iii) Other areas with lower levels of customer satisfaction have chosen not to introduce a QCS;
 - (iv) A VPA would be a more appropriate remedy;
 - (v) Nexus has been motivated by improper purpose;
 - (vi) If the improvements that Nexus proposes genuinely drove demand, the commercial market would already be supplying them;
 - (vii) The Bus Strategy for Tyne and Wear is a circular document that has been deliberately written to 'set up' a QCS;

- (viii) A QCS will be slow and costly to implement, and may not be available for several years. Alternative delivery methods can be implemented faster;
 - (ix) The network would be less responsive to customer demands under a QCS;
 - (x) It is not within the remit of the bus Operators to ensure affordability for the tax payer;
 - (xi) The QCS places an unacceptable burden on the taxpayer and transfers risk to the public sector.
- (b) Concerns that a QCS would not be an appropriate remedy for the issues facing the local bus market were principally brought forward by the three large incumbent Operators. Within their feedback, the Operators set out the perceived benefits of the Draft VPA as an alternative to the QCS, including that it could be delivered much more quickly, would be more likely to address the challenges facing the industry, meet local policy Objectives, pass the Public Interest Test and offer less risk to public finances.
- (c) A small number of alternative remedies were also suggested, for example, allowing publicly funded bus services to be phased out – with some respondents questioning the actual scale of impact that would result.

9.3.3 Nexus response to the issues raised

- (a) Nexus has carefully considered the issues raised in respect of this theme. It has kept an open mind on the alternative methods of delivering the Bus Strategy throughout, including extensive dialogue with NEBOA regarding the development of the VPA offer.

- (b) Nexus rejects the suggestion that the Bus Strategy was deliberately written to 'set up' the QCS. The Bus Strategy was developed in order to assess whether the local bus market was achieving local policies, and what, if anything was needed to improve upon the current situation. It was itself the subject of a public consultation. It contains an appendix which considers potential delivery options, describing VPAs and Quality Partnership Schemes alongside Quality Contracts Schemes. The Bus Strategy Objectives and Deliverables are sufficiently broad that they can be delivered through a variety of means, including a VPA, and this has been demonstrated by the approach taken by NEBOA in developing the VPA Proposal, in which a 'VPA Bus Strategy' is included that draws heavily from the Bus Strategy Deliverables.
- (c) Several Operators commented on Nexus' and the ITA's motivation for considering a QCS. In addition to claims of political dogma (for the response to which see above), the issue was highlighted of Nexus seeking to use profits made from bus services to cover a perceived shortfall in Metro revenues. Nexus rejects this claim on the grounds that no funding from the Tyne and Wear levy is currently utilised to support the operation of the Metro (please see section 1.4.3 of the Public Interest Test Report). Nexus does however use funding from the Tyne and Wear levy (£4.7 million in 2014/15) to support the provision of the Metro Gold Card. Nexus considers that, without Metro Gold Card, those passengers that previously used it would simply switch to bus travel and thus increase the cost of Concessionary Travel Reimbursement to an equivalent sum (Please see 1.4.6 (v) of the Public Interest Test Report).
- (d) It was also claimed by some Consultees that Nexus is seeking to use profits made from bus services to cover a reduction in local authority funding. The Do Minimum Scenario takes account of the need to reduce expenditure on discretionary Secured Bus Services and

reduced fare schemes that results from reductions made to the Tyne and Wear levy. In developing both the QCS Proposal and the VPA Proposal, Nexus has been seeking to avoid this Do Minimum Scenario because it would fail to meet – and indeed would run counter to - all of the three main Objectives of the Bus Strategy for Tyne and Wear.

- (e) Regarding the points made about the Competition Commission (CC), Nexus had already considered this in the Consultation Document section 3.6.5 (pages 64-65). In summary, the QCS Proposal is designed so as to achieve the Objectives set out in the Bus Strategy, and not to remedy the 'Adverse Effect on Competition' that the CC had identified. The CC in reaching its conclusions, and in ruling out QCSs, was considering potential remedies to the 'Adverse Effect on Competition'. It did however acknowledge that LTAs may have legitimate reasons for introducing a QCS, and it did not wish to rule out the future application of a QCS into the local market.
- (f) In respect of the point made that if the drivers of demand identified in the QCS Proposal were real, that Operators would already be putting them into practice, Nexus makes the following comments: firstly, whilst some of the proposals in the QCS Proposal are intended to drive demand, they are not necessarily intended to increase or maintain profitability, which is likely to be an important consideration for Operators; secondly, Operators regularly amend and develop their strategies in order to respond to changing circumstances, which is in opposition to the assertion that everything that could be done to grow demand is already being done; and thirdly, the VPA Proposal contains a number of aspects that are intended to drive demand such as 'Bus2Bus' fares and 50 additional buses in the network, demonstrating that Operators accept that alternative strategies may grow demand.

- (g) Nexus accepts that the QCS may take more time to deliver than a VPA, whilst noting that in Nexus's view the VPA Proposal requires further development before it could be entered into as a legal document. The additional time requirement in the QCS arises from the legal process set down in the Transport Act 2000 (including consideration of the QCS by the QCS Board), and from the procurement process that would follow a decision by the NECA to make the Scheme. However Nexus considers that speed of delivery should be balanced against certainty of achieving Objectives and the scale of benefits offered, when making a decision on how best to achieve the Bus Strategy Objectives. This is discussed at length in Section 6 of the Public Interest Test Report.
- (h) Nexus has carefully considered the transfer of risk for revenues and costs from the private sector Operators to the public sector. This has been the subject of extensive analysis and modelling, as set out Sections 1.5.8, 1.6 and 5 of the Public Interest Test Report. As a result of this analysis Nexus has established that the QCS is affordable across a wide range of risk scenarios, and that the contingency that Nexus has set aside to cater for unexpected events will be sufficient for all but the most extreme circumstances. Nexus therefore considers that the transfer of risk associated with the QCS is a proportionate response in order to deliver the Bus Strategy Objectives and the service quality benefits that the QCS delivers.
- (i) Nexus acknowledges the existence of a number of potentially less intrusive alternative delivery options which would offer lower levels of risk but which would achieve significantly lower levels of beneficial impact, or which would require significant additional resource. Such options would be unlikely to meet the stated Objectives of the Bus Strategy and have therefore not been considered as viable alternatives or been subject to any detailed appraisal by Nexus.

- (j) Finally, Nexus does not accept that the network would be less responsive to customer demands under a QCS and notes that there is a difference between being responsive to customer needs, and being responsive to financial performance. The Annual Development Cycle has been designed to take account of trends in demand, costs and revenues, as well as a range of other factors including Accessibility and the views of customers and stakeholders. Proposals to change the network would be made in order to provide the best network and fares within the resources available, and they would then be subject to consultation. Nexus does not consider that the current system, where changes to services and fares are almost always made based on commercial criteria that are invisible to passengers and the wider public, can be said to be superior.

9.3.4 Steps taken to address the issues raised

- (a) In response to the Consultation feedback the following changes have been made or steps taken:
 - (i) Nexus has committed additional time and resource to work with NEBOA to develop a VPA, which was delivered in May 2014. In doing so, officers from Nexus have been able to obtain additional clarification and seek a greater understanding of the merits of the VPA Proposal. This process has enabled a full appraisal of the VPA Proposal, as an alternative delivery option, to be completed. A summary of this analysis has now been incorporated within the refreshed Public Interest Test.
 - (ii) Nexus has considered whether the VPA Proposal constitutes a less intrusive measure that could be adopted without unacceptably compromising the Objectives sought by the QCS for the purposes of the proportionality assessment required by

section 124(1)(e). Its assessment of criterion (e) of the Public Interest Test reflects this approach.

9.4 Theme 3: Concerns about the Do Minimum Scenario

9.4.1 Introduction

- (a) Buses are essential to the economic and social wellbeing of the NECA area. According to the DfT's National Travel Survey, the North East continues to have the lowest levels of car ownership of any English region (except London) and the highest number of bus trips per head of population (also except London). In 2012/13 there were 172.6 million recorded passenger trips taken by bus in the NECA area (Tyne and Wear: 139.6 million; Durham: 23.8 million; Northumberland: 9.2 million).
- (b) The North East's relatively high use of local buses masks a trend of people switching away from using the bus towards cars. Between 2001 and 2011, the number of people using the bus to travel to work in Tyne and Wear fell by 13% according to the 2011 Census, and over the same time period the number of adult fare-paying journeys on buses fell by 16%. Despite the relatively high utilisation of buses in the North East at 77 trips per head of population in 2011/12, this is down from 84 trips per head in 2004/5, while over the same period car utilisation grew from 371 to 381 trips per head.
- (c) Bus patronage in Tyne and Wear is in long term decline. After sustained growth during the 1970s and 80s, from the point of Deregulation in 1986 the trend became one of decline that lasted until the introduction of free local bus travel for older and disabled people in 2006, followed by free national bus travel under the English National Concessionary Travel Scheme (ENCTS) in 2008.
- (d) In recent years the government's policy to reduce the national deficit has led to severe financial pressures placed upon local councils in the UK, and in particular in the NECA area. This has inevitably led to reductions in the availability of local funding to support public

transport services. As a result, cuts to Secured Bus Services and discretionary concessions have been applied across the country, including in Durham and Northumberland.

- (e) In Tyne and Wear the strategy has been to maintain services over the medium term. In order to achieve this with reduced funding, Nexus has been expending its reserves since 2011/12, as well as carrying out additional efficiency measures to reduce general expenditure. However the reserves available to Nexus that can be expended on maintaining services are finite and will be fully exhausted by the end of the financial year 2016/17. From that point onwards the only alternatives are for income to grow, or for local public expenditure to be reduced by approximately £5 million (in the case of local support for bus services), to £51.2 million.
- (f) In the Do Minimum Scenario, Nexus sets out a forecast of what is likely to happen if no intervention is made, to be used as a comparator against which the benefits of the QCS Proposal can be measured. The Do Minimum Scenario projects a continuation of increases in fares above inflation leading to the long-term trend of declining bus patronage, and severe cuts to those bus services and non-statutory discounted fares that are publicly-funded.
- (g) During Consultation on the QCS Proposal, some stakeholders expressed concerns that the Do Minimum Scenario modelled by Nexus over-stated the current problems within the bus market in Tyne and Wear and was not a fair reflection of what is likely to happen in the event that there is no market intervention. However, the issues facing the local bus market within Tyne and Wear were set out within the Bus Strategy and the long-term decline in fare-paying passengers and increasing shortfall in public funding to meet rising costs were both described in detail and supported by analysis.

9.4.2 The issues raised

- (a) The issues raised under this theme were :
 - (i) The 'Do Minimum' case is overly pessimistic;
 - (ii) The Proposal does not provide evidence or explanation to link changes in passenger numbers to behaviours by bus Operators;
 - (iii) Bus customer satisfaction is already high in Tyne and Wear, according to Passenger Focus surveys;
 - (iv) Bus Operators have invested heavily in recent times and will continue to do so;
 - (v) Services under the control of Nexus have been subject to instability or decline;
 - (vi) Some of the long term decline in bus usage is put down to passengers transferring to the Metro since the early 1980s;
 - (vii) Recent bus patronage has been increasing for some bus companies;
 - (viii) Historic fare increases are justified by their strong relationship to increases in fuel and other costs;
 - (ix) The QCS Proposal does not appropriately reflect the many positive elements of service already delivered by Tyne and Wear Operators;
 - (x) Simplified, multi-modal ticketing is already provided through Network One; and
 - (xi) Nexus already obtains Value for Money from its payments to Operators.

- (b) Concerns about the Do Minimum Scenario were principally raised by the larger incumbent Operators.

9.4.3 Nexus response to the issues raised

- (a) Nexus has carefully considered all Consultation feedback regarding the Do Minimum Scenario. The analysis that informed the Do Minimum Scenario, contained within the QCS Proposal, was based upon the data then available to Nexus. Nexus has incorporated aspects of the Consultation feedback in its revised assessment and modelling of the Do Minimum Scenario.
- (b) However, Nexus considers that its analysis of past trends and influences on the bus market remain valid and are unchanged in light of Consultation feedback. Furthermore, Nexus considers it appropriate that these past influences are appropriate measures of how the future bus market will develop in future years without intervention.
- (c) Operator feedback referred to current levels of bus user satisfaction, increasing patronage in certain cases, recent levels of investment, the existence of a multi-operator ticketing scheme in Tyne and Wear and other features of the bus market, which they asserted were evidence of a well-functioning market. Nexus acknowledges these points but does not consider that they change the assumptions used in developing the forecast in the Do Minimum Scenario. This has been highlighted by the latest patronage figures for 2013/14 published by DfT, which demonstrate that in the context of the current investments being delivered by Operators and Nexus, Commercial Bus operations in Tyne and Wear have seen patronage has reduced by 5 million compared to the previous year across Tyne and Wear. Therefore the factors highlighted above do not appear to have arrested the decline in bus patronage.

9.4.4 Steps taken to address the issues raised

- (a) Nexus has revisited the underlying data and assumptions in the Nexus Affordability Model, upon which the Do Minimum Scenario is based:
 - (i) The assumption that Nexus had included within the Do Minimum Scenario was that in the absence of a QCS, fares would increase by RPI+3%. In light of Consultation feedback, Nexus has revised this assumption to Bus Industry Costs +2%. This addresses a range of concerns raised by Operators and their economic advisors. It also leads to a revised level of forecast patronage, and lower forecast profit margins for Operators than in the QCS Proposal.
 - (ii) In the QCS Proposal, Nexus assumed that the level of public support for bus services in the Do Minimum Scenario would be frozen in cash terms until such time as there was insufficient funding available to cover statutory Concessionary Travel Reimbursement for ENCTS, after which time it would rise accordingly. Consultation feedback confirmed this view.
- (b) In light of the revisions made to the Nexus Affordability Model, Nexus has updated its assessment of the appropriate criteria within the Public Interest Test.

9.5 Theme 4: Concerns that the benefits of the proposed QCS have been overstated or are uncertain

9.5.1 Introduction

- (a) Section 124(1) of the Transport Act 2000 sets out the five Public Interest Test criteria that must be satisfied before a Quality Contracts Scheme can be made. The second of these criteria, criterion (b), requires that:

“the proposed scheme will bring benefits to persons using local services in the area to which the proposed scheme relates, by improving the quality of those services”

- (b) The Guidance provides that the quality of services (and by extension, the benefits) includes the standard of vehicles used to provide services (considering Accessibility and emission levels), the frequencies or timing of services, punctuality, reliability, driver training, the introduction of Smart Ticketing and the arrangements for the integration of ticketing with other transport modes or services. A reduction in fares alone may not constitute an improvement in the quality of service.

- (c) Further, the fifth of the public interest criteria, criterion (e), references benefits as it requires that:

“any adverse effects of the proposed scheme on operators will be proportionate to the improvement in the well-being of persons living or working in the area to which the proposed scheme relates”

- (d) The Guidance advises that the scale and likelihood of benefits arising to people, businesses or organisations living or working within the area of the scheme should be identified to assist the evaluation of well-being. Relevant benefits could include benefits to existing bus

passengers, to those who switch from other modes as a result of improvements to bus services, to users of other modes who benefit (for example, motorists benefit from reduced congestion as a result of modal shift to buses) and to local residents and others who benefit from environmental improvements. It follows that benefits for the purpose of criterion (e) are broader than those considered under criterion (b), as under criterion (e) benefits experienced by the entire community of people who either live or work in the QCS Area are relevant.

- (e) A number of Consultees suggested that in identifying and quantifying the benefits (where it was possible to do so), Nexus had overstated their value or claimed their delivery to be more certain than is realistic.
- (f) These concerns were principally raised by the larger incumbent Operators, but were also expressed by some user groups, Councils and members of the public in relation to specific matters.

9.5.2 The issues raised

- (a) The issues raised under this theme were :
 - (i) Nexus has over-estimated the potential impact of 'Soft Measures' benefits of simplified ticketing;
 - (ii) Simplified ticketing is not a customer priority;
 - (iii) Many customers would face fare increases;
 - (iv) Simplified ticketing would remove locally-tailored fares and livery that are valued by customers;
 - (v) There is no basis for the claim that Nexus' Customer Charter proposals would grow patronage compared to today's situation, particularly because customer charters already exist;

- (vi) There is nothing in the Proposal which will necessarily guarantee reduced carbon emissions, and running additional bus services when there is insufficient demand will impact adversely on the environment;
- (vii) Nexus has failed to take account of relevant highway controls or how a QCS would fit in with them;
- (viii) No evidence that “democratic control” is desired by the public;
- (ix) Contractual incentives and processes will be weaker than existing market forces in providing strong performance;
- (x) Financial benefits of QCS have been overstated;
- (xi) Any money saved by the scheme could be used by the local authority or Nexus to fund other local services or modes;
- (xii) Delivery risks have not been properly considered when evaluating benefits;
- (xiii) Proposed fare levels may be inappropriate or unsustainable when compared to the current fare scales of operators;
- (xiv) Network stability must not be compromised by multiple change dates;
- (xv) It is not legitimate to consider retaining existing service provision and standards as a benefit;
- (xvi) Governance processes are unwieldy. A more locally focused structure may prove more effective;
- (xvii) Relaxing the maximum vehicle age and standards will reduce quality benefits as the bus fleet will be older and compare unfavourably against the VPA and Do Minimum; and

- (xviii) There is a concern that some bus companies may suspend or cancel services if the QCS progresses, causing significant inconvenience for passengers.
- (b) A substantial area of feedback from Operators claimed the benefits attributed to the QCS fares and ticketing offer were overstated due to several factors.
- (c) Firstly, it was asserted that simplified ticketing was not a customer priority as passengers valued the locally tailored fares which would no longer be available under a QCS.
- (d) Secondly, it was claimed that many customers would face fare increases. As an example, a number of respondents highlighted concerns regarding the percentage of adult passengers forecast to experience a significant increase in fares (over 20%) in Gateshead.
- (e) Finally, the Operators claimed that Nexus had over-estimated the potential impact of 'Soft Measures' benefits both for simplified ticketing and the Customer Charter. The resulting forecast increase in patronage was said to be based on inappropriate and statistically insignificant evidence, and in the case of fares, did not reflect the actual experience of Operators. Proposed fare levels were also said to be inappropriate or unsustainable when compared to the current fare scales of Operators.
- (f) All of the Operators suggested that any patronage uplift claimed as a result of the introduction of a QCS Customer Charter was inappropriate given they already offer individual customer charters to a similar standard.
- (g) There was a concern from Operators that, unlike the Do Minimum or VPA Scenarios, the introduction of a QCS would mean that passenger satisfaction would no longer be their priority. Further, the

specification of standards through a contractual mechanism would remove Operators' incentive to continually drive improvements in their fleet and service offerings.

- (h) There was a concern from a number of respondents that, as transport has borne a larger and disproportionate share of budget cuts at a national level in recent years, any money saved by the Scheme could be used to fund non-transport services. Additionally, assurances were sought that savings would not be diverted to transport modes other than bus.
- (i) In response to concerns regarding required vehicle standards outlined in the Statutory Consultation, the Supplemental Consultation proposed a relaxation of vehicle age and emission standards for the initial period of the QCS. It was argued by an Operator that whilst existing vehicles could be used to a greater extent, this relaxation would reduce benefits as the bus fleet would be older and compare unfavourably against the VPA scenario and Do Minimum Scenario.

9.5.3 Nexus response to the issues raised

- (a) Nexus has carefully considered the matters raised in Consultation feedback, in respect of the benefits that the QCS could deliver.
- (b) Nexus is satisfied that its assumption of increased demand as a result of simplified ticketing and an improved Customer Charter is robust and appropriate. As well as reviewing in detail the evidence relied upon previously, as set out in the AECOM report on Soft Measures that has now been included within WebTAG, Nexus has undertaken new and bespoke local passenger research on these matters, in order to confirm that these Soft Measures are indeed aspects of the provision of bus services that passengers place a value on – this additional research was drawn to the attention of Consultees during

the Supplemental Consultation. This research bears out Nexus' original assumption, based on the AECOM/DfT study, that simplified ticketing will grow adult patronage in Tyne and Wear; the concluding sentence of the Nexus simplified ticketing research says:

“Nexus’ quantitative and qualitative research, together with previous research and further Nexus analysis, indicates that introducing a simplified ticketing structure has the potential to increase bus patronage in the adult market”.

- (c) Nexus notes analysis of this research by Oxera in a Supplemental Consultation response which questions its robustness; however given that Nexus has now conducted extensive market research into this issue over several different surveys, and has considered in great detail the AECOM research, Nexus is confident in its assumptions of a modest increase in patronage arising from the form of simplified ticketing that would be introduced through the QCS.
- (d) As a result of this review, Nexus is content that its approach to assessing the impact of the Soft Measures delivered by the QCS is appropriate and supported by the evidence available.
- (e) In respect of the specific concerns relating to fares, Nexus accepts that cheaper tickets targeted at specific market segments may have the effect of stimulating additional demand, particularly if the ‘standard’ tariff is not appropriate for that market segment. However, no evidence has been put forward to demonstrate that the additional demand which arises in these circumstances is due to customers placing a value on the breadth of ticketing options available to them per se. Instead, it seems more likely, based on Black Book elasticities, that in these cases the additional demand is generated due to the lower pricing than the ‘standard’ tariff being available to certain customers. While Nexus acknowledges that this

type of targeted ticket structure is removed in the QCS, this reduction in choice will not reduce value to customers because the QCS Proposal aims to grow patronage by introducing a ticketing structure that is simpler and easier to promote, which Nexus believes will benefit the majority of passengers. Other Consultees have supported Nexus' assertion that passenger benefits will be derived from providing an understandable and affordable ticketing structure.

- (f) The simplified fare offer, underpinned by a zonal structure which ensures that many customers pay the same as (or less than) they do currently, is a key feature of the QCS Proposal. Whilst, overall, nearly 80% of customers will pay the same or less in the QCS Proposal, Nexus accepted that an undesirably high number of travellers from specific wards in Gateshead would experience a high increase in single trip fares under the proposed QCS Proposal.
- (g) It is acknowledged that the larger Operators in Tyne and Wear have their own customer charters, which take different forms. Additionally, Nexus notes that a common charter is proposed in the VPA Proposal although it is unclear whether this would replace Operators' own charters, or whether they would operate in tandem. The QCS Proposal introduces a single Customer Charter, with one set of contact information for customers, and a single customer promise covering all journeys. This will eliminate customer confusion, and promote a unified and connected network. Having one contact for all matters and all services in a QCS provides differentiation to the current and VPA Proposal offers and therefore provides additional benefit. In any event, Nexus has applied the benefits of a simplified Customer Charter to its modelling for both the VPA Proposal and the QCS Proposal.

- (h) Nexus has reviewed its position with regard to environmental benefits of the QCS Proposal, and concluded that the mandating of an accelerated introduction of buses that achieve Euro V emissions standards or better, coupled with the reduction in car traffic that will arise from the modal shift delivered by the QCS Proposal, will indeed lead to environmental benefits. Nexus accepts that the proposed relaxations in requirements outlined within the Supplemental Consultation would also reduce the level of environmental benefits that would be delivered as part of the QCS, and criterion (b) has been updated to reflect this. Further, it should be noted the vehicle (and other) specifications are intended as minimum standards. Bidders offering an enhanced vehicle specification, and other quality enhancements which will ensure a continued improvement in standards over the life of the QCS, will be rewarded in the tender evaluation.
- (i) Nexus considers that the assertions made by Consultees regarding the desirability of a greater say for bus users in the development of the Bus Network are misguided. Buses provide a public service, and the public are a key stakeholder in the process of deciding where services should operate.
- (j) The QCS transfers ultimate responsibility for achieving standards of operation from Operators to Nexus. However, Nexus's approach to QCS procurement, as set out in the QCS Proposal and confirmed in the QCS, will ensure that appropriate incentives to deliver a high standard of service will be applied to the Operators that win Quality Contracts, and that failure to meet those high standards will lead to contractual remedies in order that high standards are restored and maintained.
- (k) It is expected that Operators will continue to deliver the standard of service that has generated high passenger satisfaction ratings, but

this standard will be guaranteed through the performance regime of Quality Contracts. The measures that are most important to customers, in particular punctuality and reliability, will determine the financial performance of the contract, thus retaining Operators' motivation to perform to a high standard. Customer satisfaction will also be measured and, should this be subject to deterioration, contract remedies may be triggered. Therefore, passenger satisfaction will remain a priority for all parties.

- (l) Nexus has carefully considered the financial viability of the QCS in terms of the standards to be maintained, the fare levels to be charged, the maintenance of a stable network and other costs that arise from implementing a Quality Contracts Scheme. Nexus is content that the delivery of the benefits associated with the QCS remains financial viable.
- (m) Nexus has reviewed the Consultation feedback that suggests maintaining current service levels cannot be classified as a benefit of the QCS. Nexus considers that the QCS must demonstrate that it brings "benefits to passengers by improving service quality". It is considered entirely appropriate to consider those benefits against a scenario with the Scheme absent.
- (n) Nexus considers that its Governance structure is not unwieldy, it successfully balances high level decisions about annual changes to the network and fares, with the desire to engage with local interests and bus users.
- (o) Nexus has considered the potential for Operators to suspend or cancel services should the QCS progress, in advance of QCS Commencement. Nexus accepts that this is a course of action that Operators may take albeit a course that would run counter to their commercial goals.

- (p) Any surpluses generated by the QCS are intended to be put back into improving bus services. This is set out in the QCS in section 12, which sets out the approach to net proceeds derived from the QCS.

9.5.4 Steps taken to address the issues raised

- (a) In response to the Consultation feedback the following changes have been made or steps taken:
 - (i) Nexus has modelled the effect of adjusting the boundary between zones 1 and 2 in Gateshead, so that Gateshead Interchange is on the boundary and therefore in both zones 1 and 2. This had the effect of greatly increasing the number of one-zone trips within Gateshead, such that the proportion of passengers paying over 20% more than they do at present reduces significantly. This was set out as an option in Supplemental Consultation, and Gateshead Council welcomed the proposed change although Operators suggested that Nexus had underestimated the financial impact of the proposed change. Nexus has reviewed its modelling and considers that the proposed change remains affordable. In light of this, the changes to the zonal boundary in Gateshead will be carried forward into the QCS.
 - (ii) (i) In light of the responses received in Supplemental Consultation, the changes in vehicle standards regarding emission standards, livery and refurbishment will be carried forward into the QCS. The requirement to have a fully compliant Euro V fleet at QCS Commencement has been partly relaxed for the first two years of the QCS. The maximum average fleet age has also been relaxed for the first two years of the QCS, to aid Operators in assembling a compliant fleet, and the optional last three years of the QCS when investment

horizons are limited. The maximum average fleet age during the main period of the QCS represents an improvement on current fleet provision.

- (iii) In light of limited comment or support in Consultation feedback for the proposal to introduce an additional 18 vehicles into the QCS Network, Nexus has removed this proposal. This change has been reflected in the Nexus Affordability Model.
- (iv) In the Supplemental Consultation, Nexus proposed the establishment of a Tyne and Wear User Consultative Forum, in order to provide a means of stakeholders and passengers to engage directly with Nexus on how the Network can be improved. This proposal was widely welcomed, and will now be progressed in the QCS. The User Consultative Forum will be established with an independent Chair appointed to guide its work, and will consider all public transport modes in Tyne and Wear, including the bus.
- (v) Should an Operator cancel or suspend bus services in advance of a QCS commencing, Nexus can use its existing powers to intervene and ensure those bus services are retained and passengers can continue to use the bus until such time as the QCS is established. Retaining these bus services, which are commercially viable services, can be achieved at minimal cost to the public purse.

9.6 Theme 5: Concerns that the costs of the proposed QCS have been underestimated

9.6.1 Introduction

- (a) As set out in section 5 of the Public Interest Test Report, section 124(1)(d) of the Transport Act 2000 requires that "the proposed scheme will contribute to the implementation of those policies in a way which is economic, efficient and effective".
- (b) In preparing and updating the QCS Proposal, Nexus carried out affordability modelling both in respect of the affordability of the QCS Proposal and in assessing the value for money offered by the QCS Proposal.
- (c) During Consultation on the QCS Proposal feedback was received surrounding the cost assumptions detailed within the QCS scenario within the Nexus Affordability Model, including:
 - (i) Omitted Costs – where the feedback received identified costs that Consultees felt Nexus should have had regard to in its modelling; and
 - (ii) Underestimated Costs – where the feedback received identified costs that Consultees felt Nexus had included within its modelling but not to the extent that the Consultees felt was appropriate, for example the risk contingency, the cost of bus operating hours etc.

9.6.2 The issues raised

- (a) The issues raised were:
 - (i) Nexus has understated the wage rate and wider staffing costs – a more realistic wage rate significantly increases costs;

- (ii) The Proposal fails to take into account external factors such as fuel price rises or reductions in BSOG;
- (iii) Fare increases in the Proposal are linked to RPI, whereas tender prices will be based on bus operating costs, which often have inflation higher than RPI;
- (iv) Operators will incur bidding costs, and tendering and evaluation will be costly;
- (v) Retendering costs at the end of the QCS have not been taken into account, and re-tendering will be harder because the pool of potential Operators will have been depleted;
- (vi) The rebranding of the entire fleet of Tyne and Wear buses is likely to increase costs;
- (vii) Nexus has not taken account of the on-going costs of staffing, monitoring, compliance and administration;
- (viii) A QCS would be subject to political pressure and would therefore be inefficient;
- (ix) Operators will lose the incentive to grow passengers;
- (x) Lack of flexibility, particularly the complex and expensive procedure required to vary contracts, will lead to increased operating costs as problems will be allowed to persist for longer;
- (xi) The procurement approach is flawed, costly and will not generate competition or Value for Money;
- (xii) The QCS Proposal does not reflect the impacts of additional costs of a higher vehicle specification and vehicle financing costs;

- (xiii) The QCS Proposal does not reflect the availability of and additional costs of new depots;
 - (xiv) The QCS Proposal does not consider a number of other costs which will be generated by a QCS;
 - (xv) Contingency funding levels and allocation is inappropriate;
 - (xvi) Analysis of operating and accountancy measures is flawed, and this impacts on the overall assessment of affordability;
 - (xvii) A relaxation in vehicle standards for the early years of a QCS, whilst reducing quality standards, would also not improve affordability as bidders must plan at the outset for any requirements which would be required at a later stage.
- (b) Concerns that the costs of the QCS had been underestimated or omitted entirely were principally raised by the larger incumbent Operators.
- (c) The three larger Operators jointly retained an economics consultancy, Oxera, to assess the validity of Nexus' core assumptions used within the Nexus Affordability Model. The output of this assessment is termed the 'Oxera Clean Team Report'. This report concluded that Nexus had underestimated the total operating costs of a QCS and therefore overestimated the potential operating profit margin.
- (d) Oxera was also retained by two of the larger incumbent Operators on an individual basis to analyse the QCS Proposal on behalf of those Operators. This work also identified costs that were said to be either underestimated or omitted; some of these costs are considered in more detail in Theme 8, Adverse Effects on Operators.

9.6.3 Nexus response to the issues raised

- (a) Nexus has carefully considered the feedback to Consultation and reviewed its approach to assessing the costs of the QCS. As a result, Nexus accepts that some adjustments are necessary as detailed in the following section.
- (b) However, Nexus does not accept the following issues:
 - (i) **The Oxera Clean Team Report:** Nexus has considered Oxera's analysis of the validity of the assumptions modelled within the QCS and has engaged with Oxera regarding its analysis. Consequently, Nexus is now clear that the statistical dataset on which Oxera's figures were based, relate to a Bus Network that is substantially different in scope to the one actually covered by the QCS Proposal. There were inconsistencies between the three larger Operator's input into Oxera's calculations and this resulted in the Oxera Clean Team Report being inconsistent in a number of areas with Nexus' approach. Oxera's analysis included some bus services which operate wholly outside Tyne and Wear. Furthermore, Oxera did not consider smaller Operators in their analysis. Nexus has highlighted its concerns in correspondence with Oxera, however Oxera did not revise its Consultation response. Therefore Nexus is unable to attach material weight to this analysis.
 - (ii) **Concerns regarding the value of the contingency:** Nexus has applied various risk assumptions within its modelling, and the QCS Proposal included a risk contingency of £80 million over the 10 year duration of the QCS. The total risk contingency allowed over the life of the Scheme has been subjected to a risk simulation exercise which has concluded that there is an 80% probability that the contingency will not be fully utilised.

Thus Nexus considers that the risk contingency has been set at a reasonable level.

- (iii) **Incremental operating costs:** Nexus has considered Consultee's claims of omitted or underestimated costs in respect of contract incentivisation (to replace the loss of direct incentivisation through farebox performance) and variation, internal management costs and future tendering exercises beyond the term of this QCS. Nexus has not included any additional provision in the Nexus Affordability Model as a result of this feedback, for the following reasons:
- (A) Following a re-evaluation of resource requirements within the QCS, Nexus maintains that sufficient resource was already included within the Nexus Affordability Model to allow for the successful management and implementation of the QCS.
 - (B) The QCS relies on the expectation that Operators will compete for contracts and invest in delivery of those contracts over a seven to ten year period. In addition, a Performance Regime will be included within all contracts.
 - (C) Any costs resulting from future tendering exercises, which will fall outside of the term of this QCS, have not been considered relevant to this assessment.
- (iv) **Vehicle leasing:** A suggestion was made in Consultation feedback that bus operations within a regulated market would lead to materially increased costs because Operators would lease vehicles rather than owning them outright. There were two reasons given for these higher costs: firstly, that leasing mitigates the residual-value risk and upfront finance costs associated with ownership by transferring these risks to the

leasing company at the expense of a higher annual charge per bus; and secondly, that costs incurred on certain types of leasing arrangements have a direct bearing on EBIT margins whereas interest payable on more traditional methods of financing assets e.g. bank loans are not included within the EBIT calculation. It is therefore contended by Operators that there will be a higher EBIT margin being required by Operators than that assumed by Nexus in the Nexus Affordability Model. Nexus has not included any additional provision in the Nexus Affordability Model as a result of this feedback, for the following reasons:

- (A) In response to other matters raised in Consultation, Nexus has revised both its approach to procurement and its vehicle specification (see Theme 8: Adverse Effects on Operators). As a result of this, Operators will be able to include many of their existing vehicles in bids for Quality Contracts if they so wish;
- (B) Whilst Nexus is aware that in London it can be the case that Operators lease vehicles rather than purchasing them, it does not follow necessarily that the same would be applicable in Tyne and Wear. London buses have particular features that make them different from buses used throughout the rest of the country (the most significant of which is both an entry and an exit door), and so are more difficult to redeploy outside London when the contract expires. This would not be the case in Tyne and Wear as the minimum QCS specification would be met by any existing Euro V (or greater emission standard) vehicle, of which many are currently deployed across the country including in Tyne and Wear. Therefore there is no requirement for Operators to

acquire an entire fleet of new buses in order to produce a compliant bid, although of course they would be free to do so. At the end of the seven-year contract (which may be extended up to ten years), the vehicles would be entirely suitable to be redeployed elsewhere in the country, or on further contracts within Tyne and Wear.

- (C) Notwithstanding the above statements, Nexus is not in a position to second-guess the vehicle procurement strategies of bidders for Quality Contracts, nor of the accounting practices that they may employ. Procurement for Quality Contracts will be a competitive process, and the successful bidders will be those that put forward the most financially advantageous bids, whilst meeting the quality requirements.

- (D) Nexus does however consider it of relevance to note that: a) Stagecoach Busways Ltd appears to currently lease its entire fleet from a company within its own group, and since it adopted this practice in 2012 its EBIT margins do not appear to have changed significantly from previous trends; b) Go North East currently appears to own the vast majority of its fleet; the interest charges shown in its company accounts are very small in comparison to depreciation costs and so would not materially affect its margin if included in the calculation; and c) Arriva Northumbria currently leases its fleet, and its resultant EBIT margin has already been taken into account in Nexus' calculations.

9.6.4 Steps taken to address the issues raised

- (a) The following changes have been made as a result of feedback received :
- (i) **Procurement Strategy:** Nexus has revised its QCS Procurement Strategy. Further detail is provided under Theme 8, Adverse Effects on Operators. As a result of the revised procurement strategy, Nexus expects some of the additional costs identified by Operators to be mitigated.
 - (ii) **Underestimated/Omitted Costs of a QCS:** Nexus has now included the following costs within the Nexus Affordability Model :
 - (A) Where new buses are required by bidders in order to meet the Quality Contract specification, they may be more expensive to purchase than new vehicles have been in the past. This is because the industry standard has been increased to Euro VI, with engine features that are more costly to produce and buy. Nexus has allowed for the additional incremental costs of new Euro VI vehicles that may be required during the QCS.
 - (B) Nexus has included a provision for the cost associated with the accelerated requirement to repaint vehicles in line with the QCS contract requirements.
 - (C) In respect of employee costs, Nexus has provided for additional costs in relation to Basic Hourly Rate (for bus drivers only), a living wage (for all other in scope employees), No Compulsory Redundancy Protection (for two years) and an allowance for staff travel costs. Further information can be found in Theme 7.

- (iii) In light of limited comment or support in Consultation feedback for the proposal to introduce an additional 18 vehicles into the QCS Network, Nexus has removed the cost of these vehicles from the Nexus Affordability Model.
- (iv) Nexus considers that all costs arising from the QCS have now been included within the Nexus Affordability Model and accurately inform the assessment of the Public Interest Test.

9.7 Theme 6: Cross boundary concerns

9.7.1 Introduction

- (a) Section 4.5.2(a) of the QCS Proposal notes that:

“The QCS covers all local bus services that operate within the QCS Area, except where they belong to a class of services that has been specifically excluded, or services which have been granted a Clearance Certificate. This will deliver benefits to people in Tyne and Wear by ensuring that local bus services [are]:

- (i) Operated to a consistent standard;*
- (ii) Covered by a common fare structure; and*
- (iii) Managed through a standard approach to governance.”*

- (b) Section 4.5.2(e) of the QCS Proposal goes on to state that:

“A number of existing cross-boundary services which provide important passenger movements within the QCS Area will be tendered as part of the QCS Network. The portion of the service that is not within the QCS Area will not be covered by the QCS and thus will operate in a deregulated environment and be exposed to competition. The services will nevertheless be contracted to ensure that the benefits ... are preserved for the entire route...”

- (c) In Consultation feedback, a number of stakeholders expressed concern about various cross-boundary matters. Feedback was principally received from the larger incumbent Operators, with other feedback also received from neighbouring Local Authority areas.

9.7.2 The issues raised

- (a) The issues raised under this theme were:

- (i) Local transport policies of neighbouring authorities have not been considered;
- (ii) Inclusion of cross-boundary services has a major impact on certain Operators;
- (iii) Reduced fares on cross-boundary services will increase demand, potentially requiring deployment of additional resources;
- (iv) Cross-boundary depots may close, leading to the withdrawal of other services that are not related to the QCS;
- (v) The basis for Nexus's decisions regarding which services are included or excluded is unclear;
- (vi) Concern from adjacent authorities that the ticketing structure proposed may cause significant disruption to people in their area;
- (vii) Adjacent authorities wish to play a meaningful role in the governance of QCS services affecting them;
- (viii) Implementation of a QCS would result in Nexus controlling sections of Network outside of Tyne and Wear; and
- (ix) The Cross Boundary Collaboration Agreement is insufficient remedy.

9.7.3 Nexus response to the issues raised

- (a) Nexus accepts that the direct consideration of transport policies for neighbouring counties was not explicitly detailed in the QCS Proposal because at the time of the QCS Proposal being developed there was no requirement to do so. However, the creation of the NECA, a single transport authority for the Tyne and Wear, Northumberland

and Durham areas, now means that an assessment must be undertaken of all of the NECA's transport policies.

- (b) The Local Services included within the QCS Proposal are those which Nexus consider were required to meet its objective of extending the proposed benefits of the QCS to all persons living and working within the QCS Area. Where it was possible to exclude a particular cross-boundary Local Service without adversely compromising the benefit to persons living and working within the QCS Area then Nexus has done so. Only those cross-boundary Local Services which were considered absolutely necessary to assist in the achievement of the objective have been included. Nexus therefore consider that the inclusion of a number of cross-boundary services necessary, feasible and proportionate.
- (c) Nexus accepts that the introduction of the QCS, and the inclusion of cross-boundary bus services within that QCS, may have impacts on existing Operators of bus services either excluded from the QCS, or operated exclusively outside the QCS Area. Nexus also accepts that its proposals for simplified ticketing on QCS Services may give rise to further impacts on these non-QCS services.

9.7.4 Steps taken to address the issues raised

- (a) In response to Consultation feedback the following changes have been made or steps taken:
 - (i) Additional engagement with neighbouring Local Authorities has facilitated further development of the NECA Cross Boundary Bus Collaboration Protocol. This provides reassurance to neighbouring areas that existing levels of service provision will be maintained should the QCS lead directly to a reduction in service.

- (ii) The adverse effects raised by Operators in their response to Consultation relating to cross-boundary services have been considered and assessed within the updated Public Interest Test (criterion (e)).

9.8 Theme 7: Concerns over employee impacts

9.8.1 Introduction

- (a) Section 4.10.4 of the QCS Proposal states that:

“Protecting jobs and employment standards are considered to be of utmost importance to the success of this Proposal. The effective delivery of the quality improvements demanded by this Proposal will in large part depend upon a stable, professional and experienced workforce.”

- (b) There are two distinct areas of concern which have been raised in feedback in relation to employees. Firstly, the effects of the transfer of employees between Operators, which may occur at QCS Commencement and, secondly, the employment standards of those employees working under contract throughout the term of the Quality Contracts.
- (c) The Transport Act 2000 (and associated Regulations) and the 2006 TUPE Regulations provide protection (including pension protection) for transferring employees. Nexus also proposed to build additional employee protections into the Quality Contracts, which are intended to protect the employees in transfer and protect employment standards thereafter throughout the contract term.

9.8.2 The issues raised

- (a) The issues raised under this theme were :
- (i) It will be complex to determine which employees are ‘principally affected’ for the provisions of TUPE to apply;

- (ii) The complexity of the Allocation Arrangements and the risk of employees not transferring will result in redundancies and with incumbent Operators having to fund such redundancies;
- (iii) Risk of detriment to employees transferring under TUPE;
- (iv) Unions seek to "harmonise up" and otherwise generally improve terms and conditions of staff transferring from different employers and extend such benefits to those joining in the future;
- (v) Unions seek a requirement for a RPI-related pay increase;
- (vi) Unions seek membership of the Local Government Pension Scheme (LGPS) for all bus employees;
- (vii) Unions seek a minimum duration of 10 years for each Quality Contract to offer staff certainty of employment;
- (viii) Unions seek an agreement preventing any compulsory redundancies;
- (ix) Concerns that employees will be forced to transfer to new depots under the new QCS Proposal;
- (x) Clarification sought over application of TUPE and other benefits to depot, clerical and subcontracted staff;
- (xi) Concerns that competitive bidding process or annual contract increase mechanisms may see Operators bidding low to win but then failing in their obligations to, or being constrained in the offers they can make to, staff at a later date ;
- (xii) Incumbent Operators who bid unsuccessfully may find that the defined benefit pension schemes become underfunded;

- (xiii) Defined benefit pension benefits will be eroded on transfer to a new employer. Employees will not have broadly similar benefits following transfer;
- (xiv) Defined benefit pension costs will be priced into bids for Quality Contracts, and may present costing challenges or potential disadvantages for some operators;
- (xv) TUPE will not apply to services operating cross-boundary which creates a real risk of redundancy;
- (xvi) The QCS must mandate operators to recognise relevant unions and ensure the appropriate machinery is developed;
- (xvii) Unions seek the introduction of a Value the Bus Worker policy;
- (xviii) The lack of commercial and contractual relationship between an operator who is forced to exit the market and an incoming operator may have unforeseen consequences;
- (xix) The complexities of existing terms and conditions are significant;
- (xx) The imposition of a basic hourly rate is ineffective and would distort remuneration packages;
- (xxi) Whilst offering certain benefits, a defined contribution multi-employer pension scheme procured by Nexus for use by all contracting operators will be costly;
- (xxii) Unions request a range of minimum employment standards for bus employees;
- (xxiii) Unions seek to ensure the procurement process includes appropriate consideration of employment issues;

- (xxiv) The requirement on operators not to affect any compulsory redundancies for 2 years forces operators to accommodate any surplus employees which is costly, unreasonable and inefficient. The NCR will also affect staff morale and would not result in a level playing field for bidders.
- (b) Consultation feedback relating to employees was mainly received from Trades Unions and larger incumbent Operators. The Trade Union that represents the vast majority of bus workers (Unite the Union) supported the employee protections proposed, but requested a higher level of protection and a general raising of employment standards for bus workers. Feedback was also received from Unison, which was fully supportive of the QCS Proposal. Operators on the other hand were highly critical of the QCS Proposal; criticisms centred on the transfer of employees and the potential problems and financial loss that could arise for Operators and employees.
- (c) Unite and the TUC raised a number of concerns in relation to the protection of employees being transferred and any threat to their conditions working under contract. Unite listed specific requests that it wished to see in the Proposal and within the contracts. These requests related to harmonisation of terms and conditions, guarantees of no detriment to employees, minimum employment standards and incentive schemes for bus workers. They also requested RPI related pay increases and longer contract terms to offer certainty to employees.
- (d) Operators were critical of the Allocation Arrangements, saying they were unclear and would not work in practice. They were also concerned that it would be difficult to determine which employees were 'principally connected'. Clarification was sought as to the application of TUPE to depot, clerical and subcontracted staff.

- (e) Operators criticised the 'surplus pool' proposed in the QCS Proposal as well as the contract structure proposed in relation to employees. They gave examples of how the TUPE transfer would not work effectively and would lead to numerous (and sometimes contradictory) problems including overstaffing, understaffing, redundancies, harmonisation of terms and conditions, staff working on different terms and conditions, high costs to Operators, a decline in industrial relations and low staff morale.
- (f) Operators also gave a number of reasons why they considered that there would not be 'level playing field' for bidders due to the TUPE transfer of employees and stated that the lack of a contractual relationship between an exiting Operator and an incoming Operator could have negative effects on service delivery.
- (g) Operators criticised the No Compulsory Redundancy protection and the Basic Hourly Rate for drivers proposed in Supplemental Consultation, stating both were costly, unnecessary and would damage staff morale. Unions supported both but requested that the No Compulsory Redundancy Protection be in place for the full length of the contracts.
- (h) The risk of redundancies being caused by the QCS, both within the QCS Area and in neighbouring areas was a major concern for a range of Consultees including Unions, Operators and Councils, who wanted to ensure that jobs were protected and that there were no redundancies in their areas.
- (i) Some employee related feedback was also obtained through the supporting Public Engagement Exercise. This feedback mainly took the form of verbal questions from members of the public at consultation events and a small number of written responses. The

main concern raised was that TUPE would not provide adequate protection for transferring employees.

- (j) Feedback from employees was also obtained via a Go North East survey of its employees. Whilst the leading questions in the survey have affected the weight it can be given, comments from individual employees indicated concerns over redundancies and staff being forced to travel further to work.
- (k) In relation to pensions, Operators stated that an existing Operator's ability to fund past service benefits of its defined benefit pension scheme would be compromised by the QCS. Furthermore, if an existing Operator failed to win any Quality Contracts, it might be forced to make an immediate payment of its pension deficit resulting in a large payment to the pension fund. Operators also stated in feedback that defined benefit funds may seek higher contributions from Operators on the basis that the guarantee of business is only for a 7 year term.
- (l) Unions and Operators also raised the concern that employees could lose value in their defined benefit pensions when transferring to a new employer. In particular, the Local Government Pension Scheme (LGPS) was an area of concern for Operators both in relation to the contributions made by Operators and the effect on employees.
- (m) Unions also requested assurances that pensions would be protected and requested that all employees be offered membership of the Local Government Pension Scheme or a multi-employer pension scheme in order to avoid employees having to change pension scheme every time a contract is re-let.

9.8.3 Nexus response to the issues raised

- (a) Nexus considers that the legislation gives employees a high level of protection in terms of the TUPE transfer and in respect of pension provision. Nexus' additional proposed protections reduce the risk that employment standards will drop during the contract term and give employees a level of certainty as regards minimum standards and job security in the QCS.
- (b) Nexus has put in place a number of protections for employees in addition to the protection provided by TUPE, the QCS TUPE Regulations and the QCS Pension Regulations. Nexus also intends to use the procurement process to ensure that Operators do not put in unrealistic tender bids and later cut pay and conditions. Nexus intends to seek from Operators a commitment to pay a Basic Hourly Rate for drivers and the Living Wage for all QCS staff which will reduce the risk that employment standards will drop.
- (c) Nexus has considered Operators' criticisms of the Basic Hourly Rate, however, Nexus considers that the proposed Basic Hourly Rate is a necessary, proportionate and appropriate method to achieve the aims stated in the Guidance. It would only affect remuneration packages in so far as it would raise the level of the lowest paid drivers and Nexus calculates this at less than 10% of all drivers. The BHR will only result in a wage increase in a limited number of cases, and is also intended as a protection for employees against any Operator who may seek to reduce wages. Operators will not be forced to increase all other wages as a result of the BHR as employees and Unions recognise its value in protecting the lowest paid drivers and protecting others from wages being cut.
- (d) Nexus does not intend to mandate Operators of Quality Contracts to harmonise all terms and conditions for employees, as it considers

that employers must retain flexibility over the management of their workforce – despite contracts being operated to a specification defined by the public sector, the delivery of services remains a matter for the private sector. All large Operators currently manage their staff successfully despite them all having staff on different terms and conditions within depots. It is not therefore accepted that staff working on different terms and conditions under the QCS would cause any disharmony or low morale, as it would not materially alter the current position. Nexus considers that one of the most important factors in terms of staff morale and motivation is for employers to have good levels of engagement with employees and Trades Unions. Bidders for Quality Contracts will be asked to describe in their delivery plan, which will accompany their tender, how they intend to engage with employees and Trades Unions. In addition, Unions will play a part in QCS governance processes thus giving employees and their representatives a greater say in how bus services are run in their area.

- (e) In any TUPE transfer it can be difficult to determine which employees transfer and which employees remain with their employer. However, in a QCS TUPE transfer there is much more clarity than in a standard TUPE transfer due to the QCS TUPE Regulations. These ensure that TUPE applies to the transfer, give the Local Transport Authority the right to obtain Workforce Information and further oblige the Local Transport Authority to describe Allocation Arrangements. In order to develop Allocation Arrangements Nexus has carried out detailed work analysing the employee information and has consulted with Operators and Trade Unions. This has ensured that the Allocation Arrangements are now much clearer and identify real organised groupings. The Allocation Arrangements state that employees who spend more than 50% of their time on 'affected local services' which will cease to be provided

on the coming into force of a Quality Contract, in the 6 month period up to QCS Commencement, will transfer to a new Operator. The procurement structure (depot based) and the network (replicated from the current network) also simplify the process for determining which employees are 'principally connected' to each contract.

- (f) Nexus accepts that depending on which Operators are successful in the bidding process, the scale of the employee transfer could vary. The QCS Proposal could lead to a small number of employees transferring to a new employer, a large-scale TUPE transfer throughout the QCS Area, or something in between. In any case Nexus is aware that adequate preparation, planning and communication throughout the process should ensure that it proceeds successfully. The Allocation Arrangements are part of the planning process and will be regularly updated in the lead up to QCS Commencement. Nexus proposes to make a further request for updated Workforce Information and intends to provide a dedicated facilitator to work with Operators, employees and Unions throughout the transfer process.

- (g) Nexus has considered whether Operators may make redundancies due to a QCS as suggested in Operator feedback. This is considered in more detail in the Public Interest Test criterion (e). In summary, employees who are Relevant Employees (as defined in the regulations) should not be made compulsorily redundant, for a defined period, due to the No Compulsory Redundancy Protection included in the Scheme by Nexus which will be a contractual requirement on successful bidders. Other employees who are outside the scope of the QCS due to the fact they work on excluded services, services in neighbouring areas or work in Head Office/regional/national roles could be made redundant (as they could in the current market), but only if their employers' requirements for their roles has ceased or diminished, or where

there is a "place of work" redundancy situation. Whether an Operator continues to have a requirement for these employees will depend on whether and to what extent an Operator has been successful in the bidding process.

- (h) Nexus has considered Operators' criticism of the No Compulsory Redundancy protection proposed in Supplemental Consultation. Nexus does not consider that NCR is unreasonable and considers that on the small number of contracts where there may be surplus staff, Operators will employ measures to utilise those staff in the most efficient manner. Further, Operators will not be prohibited from implementing voluntary redundancy schemes.
- (i) Nexus has examined the staff turnover for Operators. This is high compared with other industries, which suggests that a number of staff will leave by choice or retire during the 2 year No Compulsory Redundancy period, cutting down the number of surplus staff without any costs to the Operator. Nexus also considers that an Operator with surplus staff would make operational and organisational plans to make good use of all staff and also consider bidding for small contracts to use its staff effectively. This will ensure that staff morale is not affected by some staff being underutilised.
- (j) The No Compulsory Redundancy requirement does not create an uneven playing field for bidders as any successful bidder would inherit the same staff under TUPE and any successful bidder would be bound by the same requirement, therefore every bidder would be in the same position.
- (k) Nexus can clarify the position in terms of the application of TUPE to various groups of staff. All depot staff (whether they be drivers, clerical or engineers) who are Relevant Employees will transfer

under TUPE and are included in the Allocation Arrangements. Subcontracted staff will not transfer under QCS TUPE Regulations and will continue to be employed by their current employer. If an Operator contracts with third parties for the provision of services and those services are no longer required, then it would be a decision for that Operator as to whether to terminate those contracts. Any Operator of a Quality Contract may consider a range of service providers.

- (l) Nexus response to Union requests for RPI-related pay rises is that annual pay increases are a matter to be agreed between employers and employees/Trade Unions. However, Nexus can confirm that annual contract payments to Operators will increase each year in line with a blended inflation rate that reflects the different elements of bus industry costs. The blended inflation rate includes the Annual Weekly Earnings (AWE) inflation rate, which relates directly to increases in staff costs (further explained in 3.8 of the Affordability Analysis). Nexus has considered substituting RPI for the AWE rate and has assessed the costs of doing so, however Nexus considers that it would not be economic to use RPI and in case believes that AWE is the most appropriate measure of future growth in wages, which unions and employers can reflect in their wage negotiations.
- (m) Nexus has considered Union requests for longer contract terms to ensure stability for employees. Quality Contract legislation does not allow contracts for longer than 10 years. Nexus intends that contracts will be for 7+1+1+1 so there will be certainty for staff for at least 7 years and potentially 10 years.
- (n) Nexus accepts that some transferring employees may be required to move depot and has therefore put in place a travel allowance for such employees, which is explained in more detail below.

- (o) Nexus has considered Operator concerns that the lack of commercial and contractual relationship between incoming and outgoing Operators may cause problems in terms of the TUPE transfer. Nexus is of the view that most Operators will have experience of TUPE transfers. The unusual part in a QCS is that the outgoing Operator does not have to comply with contractual exit provisions. However, Nexus does not consider that Operators will take a wholly uncooperative approach in respect of transfer of employees as they will retain a duty of care to their staff. Furthermore, even if Operators have been unsuccessful on one contract they may have been successful on another contract and therefore will have an on-going relationship with Nexus and an incentive to assist with a smooth transition.
- (p) In terms of pensions, Nexus has analysed the Workforce Information provided and has obtained further details where possible in relation to particular pension schemes. Nexus considers that the concerns relating to employees losing value in their defined benefit pension schemes have been over-stated. By QCS Commencement most large Operators will have closed their defined benefit schemes to future accrual and there will be very few employees who are still active members of a defined benefit scheme. Most of those will be members of the LGPS and their pension rights should be unaffected as any new Operator of a contract will be able to apply to the LGPS for admitted body status.
- (q) In any event, employees are protected by the QCS Pension Regulations and any new Operator is obliged to provide 'broadly comparable pension rights.' The majority of employees will be members of defined contribution schemes by 2017 which are relatively easy for an employer to replicate.

- (r) Operators' concerns regarding immediate repayment of pension deficits and payment of higher contributions have been examined as possible adverse effects on Operators, in Section 6 of the Public Interest Test report. While Nexus considers that it is likely that there will be some effect on the ability of Operators to fund their defined benefit pension schemes, Nexus considers that the scale of the effect will not be at the level expressed by Operators and is of course dependent on whether or not they are successful in the bidding process. The likelihood of Operators having to make immediate payments of their total deficit is not considered to be high.

9.8.4 Steps taken to address the issues raised

- (a) In response to Statutory Consultation feedback a number of employee related changes were proposed in Supplemental Feedback. The following have been taken forward and included in the QCS:
 - (i) **No Compulsory Redundancy Protection for a period of 2 years:** this will be a requirement on Operators of Quality Contracts and will ensure that Relevant Employees are protected from redundancy for a period of time after the transfer process.
 - (ii) **Basic Hourly Rate for bus drivers:** Nexus will seek a commitment from bidders for Quality Contracts to pay a minimum wage to bus drivers. Nexus will also seek a commitment from bidders to pay the Living Wage for all QCS employees. If these commitments are offered they will be contractualised for the term of the contracts.
 - (iii) **Multi-employer pension scheme:** provided there is enough interest from successful Operators to make the scheme viable, Nexus intends to procure a multi-employer defined

contribution pension scheme for all Operators to use to provide pensions for employees working on Quality Contracts.

- (iv) **Value the Bus Worker Procurement approach:** Within the procurement process Nexus intends to seek from bidders a commitment to develop, reward and motivate their employees.

- (b) Nexus has revised its overall procurement approach following Consultation feedback. The revised approach benefits employees and Operators in terms of the Allocation Arrangements and TUPE transfer of staff due to the fact that the large contracts are aligned with the current depot structure. This means that employees on similar terms and conditions in a depot will transfer together. It also simplifies the Allocation Arrangements (see Annex 5 of Scheme).

- (c) Nexus has further developed concepts mentioned in the QCS Proposal which were criticised in feedback as being unclear or lacking in detail:
 - (i) Nexus has revised the Allocation Arrangements following Consultation and receipt of the Workforce Information. The arrangements now provide more clarity for employees and Operators giving examples of organised groupings of employees at various levels and showing which Contract the groups could transfer to. The Allocation Arrangements will be subject to regular updating as stated in Annex 5 to the Scheme.

 - (ii) The concept of a travel allowance has been further developed and taken into account within Nexus financial modelling. Operators will be required to pay a travel allowance to employees whose primary workplace changes as a result of a TUPE transfer to a new Operator. This has been considered as an annual payment to an employee who has to travel further

(set mileage to be fixed) to his/her primary workplace as an employee engaged on Quality Contracts work than he/she travelled previously. It is envisaged that the payment would be made for the first 2 years of the QCS.

9.9 Theme 8: Concerns over adverse effects on Operators

9.9.1 Introduction

- (a) Criterion (e) under Section 124(1) of the Transport Act 2000 requires that the NECA must be satisfied that:

“any adverse effects of the proposed scheme on operators will be proportionate to the improvement in the well-being of persons living or working in the area to which the proposed scheme relates and, in particular, to the achievement of the objectives mentioned in paragraphs (a) to (d)”

- (b) The Guidance, to which regard must be had under section 134A of the Transport Act 2000, explains at paragraph 63 that criterion (e):

“is designed to ensure that the LTA has properly considered any adverse impacts on operators, taking them fully into account by weighing them up against the relevant benefits when determining whether to proceed with a QCS.”

- (c) The QCS represents a material intervention in the bus industry in Tyne and Wear, which if introduced will have significant impacts on incumbent Operators within the area. Such impacts are expected by Nexus to be predominantly but not exclusively adverse for the larger incumbent Operators.
- (d) As noted at paragraph 64 of the Guidance, the most direct impact of introducing a QCS is that Operators can no longer continue to run their existing services when the QCS comes into operation, but must instead operate services in accordance with and at the profit margin available to them under any Quality Contract(s) they are awarded. Nexus accepts that in a worst case scenario an existing Operator may fail to win any Quality Contracts and so would no longer be able to

operate the majority of Local Services within the area of the QCS (subject only to certain limited exceptions).

- (e) During Consultation on the QCS Proposal, the three large incumbent Operators expressed a range of concerns alleging significant and wide-ranging adverse effects on Operators that would arise from implementing the QCS.

9.9.2 The issues raised

- (a) The issues raised under this theme were :
 - (i) The methodology for considering adverse effects on Operators is not clear, is incomplete or is unreasonable;
 - (ii) Nexus has not properly considered the effects on individual Operators;
 - (iii) Nexus fails to recognise that the QCS would deprive Operators of material and valuable commercial freedom;
 - (iv) Nexus does not consider the impact on shareholders and UK quoted bus industry as a whole, including any loss of shareholder value and goodwill;
 - (v) Nexus underestimates the impact on unsuccessful Operators (either partially or fully), or on Operators who choose not to bid;
 - (vi) Nexus should take account of key adverse effects including: loss of profits, bidding costs, stranded asset impacts such as decommissioning depots and vehicles, vehicle specification impacts and redundancy costs;
 - (vii) TUPE and pensions implications are significant for outgoing and incoming Operators, and not sufficiently analysed;

- (viii) It cannot be guaranteed that any Quality Contracts would be won by incumbent Operators;
 - (ix) Adverse effect on Operators is not proportionate to any improvement in well-being of persons in the QCS Area;
 - (x) Nexus fails to recognise the adverse effect on Operators of excluded services;
 - (xi) The likelihood of adverse effects occurring is increased due to the proposed procurement approach;
 - (xii) The inclusion of services outside the scheme area generates adverse effects for Operators in those areas; and
 - (xiii) Adverse effects will result from the uncertainty in the period leading up to the commencement of the QCS.
- (b) Concerns in respect of the adverse effects of the QCS were principally raised by the larger incumbent Operators, Arriva, Go North East and Stagecoach. None of the small Operators responded to the Consultation.
- (c) Regarding the approach to procurement, Operators stated their belief that the original three contract proposal resulted in contracts that were too large. This generated a level of unacceptable risk, the likely effect of which would be complete exclusion of Operators from Tyne and Wear for one or more of the larger Operators, with knock on consequences for cross boundary services and services relying on the same supporting resources. Operators cited many resulting impacts including stranded assets and additional costs.

9.9.3 Nexus response to the issues raised

- (a) Nexus accepts that in the QCS Proposal the assessment of adverse impacts was based on the information which was then available to

Nexus, and hence it was in that sense incomplete. This was inevitable, because as stated in paragraph 69 of the Guidance, one of the purposes of the Consultation was to elicit the views of Operators on the potential adverse effects that they believe they may suffer should the QCS be implemented. The Consultation has successfully elicited such information.

- (b) Nexus' assessment of proportionality was therefore provisional at that stage, as Nexus clearly had not at that point been able to inform its judgment with the Consultation responses. The need to revisit the assessment of the impacts of the QCS Proposal after Statutory Consultation is a feature of the process of developing a QCS.

9.9.4 Steps taken to address the issues raised

- (a) Nexus has used the information provided by Operators during Consultation, alongside the information that it has developed itself through the Nexus Affordability Model and its knowledge of the bus market, to determine a full analysis of adverse impacts, improvements to well-being and the proportionality of those two balancing factors. This analysis is presented in Section 6 of the Public Interest Test Report, which also provides an analysis of the VPA Proposal offered by NEBOA in May 2014, and gives a commentary on the scale and likelihood of well-being benefits associated with that Agreement.
- (b) Nexus has carefully analysed each potential adverse effect that it or feedback from Consultees has identified including: loss of profits, bidding costs, stranded asset impacts such as decommissioning depots and vehicles, vehicle specification impacts and redundancy costs. In each case Nexus has carefully considered and sought to identify whether it accepts that a particular effect is an adverse effect of the QCS, whether it is an effect on larger or small Operators

and to ascribe a likelihood and value or range of values to that effect and a weight for the purposes of assessing proportionality - see Section 6.3 of the Public Interest Test Report.

- (c) To comply with criterion (e) and to inform its assessment of the proportionality of the QCS, Nexus has carefully considered the adverse effects of the QCS, taking into account the possibility of no contracts being awarded to existing Operators, as well as the impacts in the event that existing Operators win one or more contracts under the QCS but also lose part of their existing network.
- (d) Nexus acknowledges that the impacts of the QCS will be wide ranging, and will affect Operators' operations and profitability to differing degrees. Although it has not been possible to precisely quantify all of the impacts, Nexus accepts that they may be substantial, though the scale and nature of adverse effects will vary as between the large and small Operators and between Operators in each of those groups. Nexus considers that following Statutory Consultation and Supplemental Consultation it has given due consideration and appropriate weight to all of the heads of foreseeable adverse effect identified by the Operators in their Consultation responses and Nexus analysis of those adverse effects has been set out at an aggregate level (which considers all Operators as a whole) and, to the extent that it has been possible to do so, on an individualised Operator basis. Where an individualised assessment is not possible, Nexus has explained this in the Public Interest Test report to the NECA.
- (e) Nexus reviewed all the feedback from the larger Operators relating to their concern that Nexus would unnecessarily exacerbate the adverse effects of the QCS as a result of its proposed procurement approach. Following Supplemental Consultation on proposed revisions to the procurement structure designed to mitigate the

Operators' concerns, Nexus has recommended those revisions to the NECA and has assessed proportionality on that basis. The procurement structure developed by Nexus involves a revised structure for the Round 1 contracts, which are now assembled into 11 Lots representing groups of services currently operating from existing depots in the North East area. The Lots will be clustered in 3 tranches, each containing 3 or 4 Lots which will be tendered simultaneously with a phased deadline for completion of bids, allowing bidders to take the result of the previous tranche into account when finalising their bid for subsequent tranches.

- (f) The reduction in complexity for both bidders and Nexus of drafting and evaluating distinct delivery plans for each individual Lot simultaneously means only a single round of tightly controlled and time restricted negotiation is required, necessitating only a modest increase in timescales and resource. Although the award of the Quality Contracts will be phased, all Quality Contracts will commence simultaneously.
- (g) The approach to procurement for Round 2 Contracts remains unchanged.

9.10 Theme 9: Concerns over the modelling approach

9.10.1 Introduction

- (a) The Transport Act 2000 places a requirement on local transport authorities to ensure that a QCS provides value for money through criterion (d) of the Public Interest Test:

“... the proposed scheme will contribute to the implementation of those policies in a way that is economic, efficient and effective.”

- (b) Nexus is required to assess each of these ‘3Es’, along with the overarching measure of ‘value for money’ in order to evaluate whether criterion (d) can be met. This requires an assessment of the patronage, farebox and wider social and economic impacts of the QCS to be undertaken.
- (c) In addition, Nexus must also ensure that the QCS represents an affordable means to deliver the Objectives of the NECA. The QCS will generate fare and other revenues for Nexus, but the provision of the QCS bus services will incur new costs arising from the contracting of bus services with Operators, the provision of management of those contracts and the provision of services that support the operation of the QCS (such as marketing, journey information and smartcard systems). It is necessary for Nexus to assess those revenues and costs in detail in order to assure the NECA that the QCS Proposal can deliver its anticipated benefits in an affordable and sustainable way, and is able to cope with unexpected events that may change the revenues and costs of the QCS for a short or longer period of time.
- (d) In order to satisfy these two demands, Nexus has developed the Nexus Affordability Model. This model assesses the impact that various aspects of the QCS Proposal are likely to have on future bus patronage and farebox revenues. These are then compared to the

demand for bus services and fare revenues in a scenario without the QCS (the Do Minimum Scenario) in order to assess how the QCS Proposal can deliver improvements.

- (e) The model also looks in detail at what the costs of operating bus services will be, ranging from the cost of providing buses and drivers through to the administration of network planning, ticketing proposals and information on services.
- (f) The overall costs and benefits of the Scheme are then used to determine both the overall affordability of the QCS Proposal and, through a process of further analysis based on government guidance (WebTAG), what the wider costs and monetary value of passenger benefits are forecast to be. This work has been the subject of risk assessments to ensure the affordability and benefits are secure across a range of scenarios. To allow for such risks, a monetary contingency has been established as part of the affordability modelling, alongside the establishment of emergency procedures to allow Nexus to react to unanticipated events.

9.10.2 The issues raised

- (a) The issues raised under this theme were:
 - (i) The QCS should be compared to a VPA Proposal rather than 'Do Nothing';
 - (ii) Nexus modelling implies a reduction to Operator profit margins;
 - (iii) Nexus has used Fare Elasticity incorrectly, affecting the estimated impact of the ticketing offer on demand and revenue;

- (iv) Demand uplifts from Customer Charter and simplified ticketing are not based on sound evidence and are overstated;
 - (v) The Nexus 'Do Minimum' projections appear to imply implausibly high levels of Operator profitability in the long term;
 - (vi) The impact of the QCS on services outside Tyne and Wear has not been correctly modelled;
 - (vii) Incorrect assumptions have been used regarding fare increases;
 - (viii) The modelling of criterion (d) of the Public Interest Test is incorrect and not consistent with guidance;
 - (ix) Forecasting and historical trend analysis is incorrect;
 - (x) There are general concerns regarding modelling approaches and assumptions employed;
 - (xi) There are general concerns regarding the data used in modelling;
 - (xii) A suitable framework or set of assumptions which support consultation proposals has not been provided and impacts on the opportunity to provide constructive feedback; and
 - (xiii) Issues raised by councils in Tyne and Wear regarding the assumptions made over the future availability of funding.
- (b) The feedback regarding affordability assessments and the modelling of 3Es, was mainly received from the three main incumbent bus Operators in Tyne and Wear, although further responses were received from other Statutory Consultees and members of the public. The three main Operators each employed economic advisors

to assess the affordability and 3Es analysis completed by Nexus (and its own economic advisors) and comment upon its appropriateness.

- (c) Much of the feedback received was necessarily of a detailed and complex nature and in some respects relied on commercially confidential data. Consultees asserted that:
 - (i) The way in which affordability and value for money was modelled by Nexus was subject to errors in key assumptions, such as demand elasticities and the impacts of Soft Measures on bus demand. It was argued that demand uplifts from the QCS Customer Charter and simplified ticketing were overstated and not based on sound evidence;
 - (ii) The value for money appraisal that underpins the analysis of the 3Es for the Public Interest Test did not correctly apply a number of aspects of the Guidance. For example, the indicator that Nexus selected to measure economy, and the composition of the efficiency ratio, was challenged;
 - (iii) The basis on which Nexus estimated the future growth in bus fares in the Do Minimum, and the impact that had on Operators' future profit levels, was questioned;
 - (iv) The assumption about how much profit successful bidders for Quality Contracts would actually make was questioned, suggesting it was unrealistic when compared to current performance in the London market;
 - (v) A suitable framework or set of assumptions has not been provided to support consultation proposals. This was particularly cited in the Supplemental Consultation as Consultees requested more information about the impact of

proposed revisions to the QCS Proposal on the affordability of the Scheme;

- (vi) The modelling of the proposed simplified fares was questioned, including the proposed change to the zone boundaries in Gateshead. For the latter initiative, some Consultees believed Nexus has overestimated the patronage and revenue impact; and
- (vii) Overall, and taking a different view across a range of assumptions made by Nexus, the Operators' economic advisors estimated that the QCS Proposal would only be affordable if fares rose ahead of the forecast increases in the Do Minimum Scenario, which would undermine the value for money case for the QCS.

9.10.3 Nexus response to the issues raised

- (a) Nexus has carefully considered all Consultation responses and engaged with economic advisors with the three large Operators in Tyne and Wear to discuss the matters raised in their responses. These discussions and further examination of Nexus' modelling approach and assumptions resulted in a number of changes.
- (b) Nexus also accepts that its specific treatment of each of the 3Es would benefit from adjustment in order to reflect the precise wording of the Guidance and to reflect the overall view that the 3Es are closely aligned with the concept of value for money.
- (c) Nexus has carefully considered the matter of its treatment of Soft Measures (Customer Charter and simplified ticketing) and concluded that they are robust, for the reasons set out below.
 - (i) The single Customer Charter offered by Nexus is a significant improvement on the current charters and conditions of

carriage offered by commercial Operators. The single and common zonal ticketing system across all bus services, delivered through a comprehensive and flexible smartcard platform, provides a highly simplified ticketing proposition to all passengers. Indeed for many passengers, the Nexus proposal provides flat fare travel.

- (ii) Nexus has reviewed the validity of its assumption that demand will increase because of the introduction of Soft Measures such as simplified ticketing and a Customer Charter, following comments received from Operators during Statutory Consultation and Informal Stakeholder Engagement. Having taken into account of all comments made, as well as conducting additional detailed market research among target customers, Nexus remains confident that the demand assumptions arising from Soft Measures that it has applied in the Nexus Affordability Model are both robust and prudent.

9.10.4 Steps taken to address the issues raised

- (a) Following Consultation feedback from Local Authorities, Nexus has made the modelling assumption in all scenarios (Do Minimum, VPA, QCS) that existing funding for bus services will be maintained in cash terms at 2013/14 levels for the 10 year period of the QCS rather than the previous assumption that resources in the QCS Proposal would grow with inflation after 5 years. This removes any disparity between the various scenarios and ensures that, in terms of available Public Sector Support, the financial models are comparable. The only exception occurs when the level of statutory Concessionary Travel Reimbursement for ENCTS increases above the available public sector resource.

- (b) The approach taken by Nexus to undertaking an assessment of the 3Es and value for money has been amended to more accurately reflect the Guidance, to eliminate the effect of costs and revenues transferring between Operators and Nexus in the QCS scenario, and to incorporate Operator's views on the key risks that apply to the QCS and VPA outcomes. These amendments are:
- (i) For Economy, the net change in costs of the QCS over the Do Minimum Scenario has been used as the indicator, rather than net present value;
 - (ii) For Efficiency, the dampening effect of the transfer of farebox revenue from Operators to Nexus has been reflected more accurately in the calculation of the Efficiency Ratio, with the result that the Ratio for the QCS has increased significantly;
 - (iii) For Effectiveness, the importance of the risk modelling in reflecting the certainty of the QCS delivering benefits over a wide range of risk scenarios has been further emphasised; and
 - (iv) Overall Value for Money, which the Guidance clearly states as an appropriate measure of the 3Es, has been assessed using the Net Present Value of the Scheme, taking account of costs and benefits.
- (c) Nexus considers that these alterations to its approach to 3Es address the concerns of Consultees and better reflect certain detailed aspects of the Guidance in respect of NAO definitions (whereas a greater focus on WebTAG was previously adopted, also in line with Guidance). The consequence of these changes is that the robustness of the Value for Money assessment is strengthened.
- (d) Nexus has thoroughly reviewed, and where necessary updated and amended, its Nexus Affordability Model and value for money

assessment in the light of these responses. A number of changes have been made to the models:

- (i) The Nexus Affordability Model has been updated to ensure its structure and layout fully meets best practice. All assumptions have been carefully examined to ensure they are supported by evidence wherever possible, and changes proposed by Operators have been incorporated where Nexus considers it appropriate;
- (ii) Changes to the QCS Proposal specification for vehicles and services have been included within the modelling where necessary. The incremental additional cost in the QCS of supplying vehicles that achieve Euro VI emission standards has been included;
- (iii) The assumptions about how fares will increase in the future have been modified such that they retain a strong relationship with recent trends but also better comply with Operators' feedback, which suggested fare increases should relate to future increases in bus operational costs, rather than retail prices. The previous assumption for annual increases in fares has been amended from RPI+3% to Bus-Costs+2%. This change addresses the feedback from Consultees regarding the Nexus Affordability Model suggesting excessively high Operator profits, in excess of current profit levels, in the Do Minimum Scenario;
- (iv) The assumption on how bus demand will change in response to changes in fares (price elasticities) have been amended in line with Operator feedback, from -0.48 to -0.46;
- (v) The impact of additional buses in the QCS and VPA scenarios, when compared to the Do Minimum Scenario, have been re-

examined and fully accounted for in terms of the impact on patronage, costs, revenues and benefits; and

- (vi) The impact of the revised zone boundary as outlined in Theme 4 has been modelled and incorporated.
- (e) Assertions made in error in Consultation feedback – for instance the assertion that the provision of its Scholars Services is a statutory duty on Nexus – have been examined but not incorporated.

9.11 Theme 10: The impact on well being

9.11.1 Introduction

- (a) The Consultation exercise for the Quality Contracts Scheme in Tyne and Wear received a considerable volume of positive feedback, identifying aspects of the QCS Proposal that Consultees considered would improve the well-being of people living and working in the QCS Area.
- (b) The quantity of positive feedback was outweighed by the quantity of negative feedback, received in particular from the three large incumbent Operators. This balance of response was to be expected given that as Statutory Consultees identified in accordance with section 125(3) of the Act, and given that these Operators will experience adverse effects as a result of the QCS Proposal and could therefore be expected to focus on that aspect of the QCS. This negative feedback, which addresses matters associated with well-being of people living and working in the QCS Area, is discussed under the relevant theme within this report.
- (c) However Nexus must equally consider the benefits and enhancements identified in feedback from other respondents. Where appropriate, it has sought to preserve valued characteristics of the QCS Proposal.
- (d) The section identifies the sources of these positive comments and outlines the key features which attracted support. Nexus accepts that the other themes are concerned with issues which could also have effects on well-being, and that the views of those opposing the QCS are that those effects would be negative. However, this Consultation Report addresses those themes separately.

9.11.2 The issues raised

- (a) The issues raised under this theme were:
 - (i) An emphasis on contracted, customer-focused performance standards is welcomed;
 - (ii) The QCS includes an improved fares and ticketing offer including integration with Metro, SMART and fare capping;
 - (iii) Bus deregulation has been a negative experience for passengers and staff;
 - (iv) The QCS includes enhanced governance arrangements and customer involvement;
 - (v) The QCS is supported by a robust business case;
 - (vi) The QCS is the best solution when compared to alternatives;
 - (vii) The Scheme could be geographically extended if successful;
 - (viii) The QCS supports true integration, and offers resulting benefits;
 - (ix) QCS offers the potential for modal shift and wider passenger benefits;
 - (x) The QCS may provide benefits for employees; and
 - (xi) Revised procurement proposals offer a fairer and more competitive tendering system.

- (b) Support for the QCS Proposal was principally expressed by Passenger Groups, the local Councils and trade unions and also from members of the public, local organisations and community groups. There was a belief that the QCS Proposal offered the best solution to existing

problems when compared to alternative options as respondents believed that some benefits can only be realised by a QCS.

- (c) The QCS Proposal fare offer attracted particular support. The simpler and integrated structure, improved affordability for the majority and the Smart Ticketing features of the system were welcomed. The improved fare proposals for young people and students were also well received.
- (d) The five Tyne and Wear Councils all noted the importance of a stable and affordable Bus Network that attracts growing ridership, to the successful achievement of their own policies in terms of economic development, social inclusion, sustainable land use planning and environmental improvements. All Councils in Tyne and Wear noted that the proposals in the QCS Proposal were likely to contribute to the achievement of these policies.
- (e) It was stated that the enhanced governance proposals will ensure the public have a greater connection with the decision making process than under any other arrangement. The proposed introduction of an Annual Development Cycle and Local Bus Boards were welcomed. The Supplemental Consultation also proposed the creation of a User Consultative Forum in Tyne and Wear. The initiative was generally supported as it was considered to give passengers a genuine voice, albeit that further clarity on the Forum's role and governance was sought by some Consultees.
- (f) Wider passenger benefits were attributed to the QCS Proposal by some respondents. An accessible network which was not driven entirely by demand but additionally sought to connect residents to local facilities and an overall improvement in vehicle quality offered the potential for modal shift. In addition to access, respondents highlighted the importance of maintaining the stability of the local

network and recognised that the QCS Proposal was an effective means of securing and improving network stability and Accessibility.

- (g) Specific matters raised in the Supplemental Consultation including the revised employment standards and an alternative option for the procurement of Quality Contracts were also supported.

9.11.3 Nexus response to the issues raised

- (a) Nexus has noted support for key features of the QCS Proposal or the variations as referenced in the Supplemental Consultation process. This has influenced elements of the QCS and is documented in the 'Changes made' sections across all Consultation themes.

9.11.4 Steps taken to address the issues raised

- (a) In response to the Consultation feedback the following changes have been made:
 - (i) Nexus will establish a Tyne and Wear User Consultative Forum, with an independent chair, to allow direct dialogue between Nexus and passenger representatives, businesses, other stakeholders and the general public.
 - (ii) Other changes were adopted in light of positive feedback to the Supplemental Consultation relating to employees, procurement, fares and vehicle standards.

9.12 Theme 11: Suggested features and inclusions in the QCS

9.12.1 Introduction

- (a) Many responses offered alternative suggestions or improvements relating to particular elements of the QCS Proposal. Each suggestion was considered by Nexus in relation to their contribution to achieving the Public Interest Test through their contribution to affordability, deliverability and customer benefit.
- (b) The sources of and key suggestions are outlined below.

9.12.2 The issues raised

- (a) The issues raised under this theme were:
 - (i) Variations to or inclusions in the QCS Consultation processes;
 - (ii) Variations to or inclusions in information provision in the QCS;
 - (iii) Variations to or inclusions in reporting and target setting in the QCS;
 - (iv) Variations to or inclusions in the QCS fares and ticketing offer;
 - (v) Variations to or inclusions in frequency, Accessibility and QCS network matters;
 - (vi) Variations to or inclusions in the procurement and transition process to a QCS;
 - (vii) Possible improvements to integration in the QCS;
 - (viii) Variations to or inclusions in QCS vehicle standards and capacity; and
 - (ix) Variations to or inclusions in the customer services offer.

- (b) Alternative suggestions were principally offered by Passenger Groups and the local Councils but also from a non-incumbent Operator, members of the public, business parks, local organisations and community groups.
- (c) There was a concern that the governance process outlined in the QCS Proposal did not provide suitable direct customer engagement. It was considered vital that the interests of passengers were more effectively represented to ensure equal access for all and a system which is responsive to passenger needs. The Supplemental Consultation featured a proposal for a User Consultative Forum, which was intended to address this matter. Whilst broadly accepted, several passenger groups stressed the Forum must be independent and have access to appropriate performance management data to play a meaningful role.
- (d) A number of suggestions were offered to further improve the fares and ticketing offer. These included the extension of child fares, the introduction of graduated fares to the age of 25 and the introduction of group, carnet and part weekly tickets to provide improved flexibility. Touch in and touch out Smartcard readers were proposed to speed up boarding and bespoke ticketing arrangements for corporate customers and business parks were encouraged.
- (e) Whilst the retention of existing local bus services and access to vital services was supported, there were a number of requests relating to specific bus routes in terms of improving frequencies or, in some instances, including the services in the QCS.
- (f) Proposals to ensure the procurement process offered a level playing field between incumbent and non-incumbent Operators (regarding asset control, depot provision, fleet standards and the procurement process itself) were received.

- (g) It was also recommended by a number of respondents that all new vehicles must be fitted with audio visual announcements, in line with the RNIB Bus Charter, and Nexus should review its position on the specification of Low Carbon Emission Buses vehicles and wi-fi provision. Any further relaxation in vehicle standards to that proposed in the Supplemental Consultation would not be supported.

9.12.3 Nexus response to the issues raised

- (a) Nexus accepts that a Tyne and Wear Consultative User Forum would make a positive contribution to governance of the QCS. The Forum would benefit from having autonomy and access to relevant information to effectively influence Local Services.
- (b) Nexus would welcome the opportunity to introduce extensions to child tickets and further improvements to fares for young people (noting that students in full-time education are already offered discounted tickets in the QCS). However after detailed fare modelling Nexus has concluded that to introduce such changes at this time would lead to an unacceptable revenue loss and affect the affordability of the QCS.
- (c) The Smartcard offered under the QCS Proposal will provide an opportunity to travel across Tyne and Wear on a Pay As You Go basis, with a cap on fares applied once the cost of a daily travel ticket for the modes used and the zones travelled in is reached. The Pay As You Go aspect of the Smartcard provides the ability to store up the value of tickets for irregular journeys, in a manner similar to a book of carnets or upgradable or extendable tickets. Therefore Nexus does not intend to introduce carnet type tickets at this point, although it will keep this matter under review.
- (d) Nexus intends to maintain a range of discounted tickets sold through members of a Corporate Discount Scheme, as is already the case for

Metro tickets. This will maintain the benefits of such schemes for those currently buying bus and multi-modal tickets through corporate schemes, and will indeed extend those benefits by reducing the need to select a particular bus operator for bus-only tickets.

- (e) The Smartcard proposal is intended to make smart travel a convenient and affordable preference for most public transport users, reducing the amount of cash handled on buses and speeding up bus boarding. However Nexus considers that there are reasons to not require touch-out for Smartcard journeys:
 - (i) many services will be wholly within a single zone and a flat fare for all travel on those services will apply;
 - (ii) asking passengers to touch out would slow down alighting times, which could have a negative effect on service journey times and reliability; and
 - (iii) the provision of a separate touch-out on posts would involve additional cost and is not well suited to vehicles with a single entry and exit door as envisaged by the Bus specification.
- (f) Nexus has changed the procurement structure and process in light of Consultation feedback (see Section 9.6). The revisions seek to ensure incumbent Operators are not materially disadvantaged, but that they and new Operators are able to bid for contracts on a level playing field. Nexus recognises the potential advantage that incumbent Operators have in owning depots and vehicles in the Tyne and Wear area. While it was suggested that Nexus should provide depots to remove this advantage, the acquisition of existing depot sites by Nexus is not considered affordable or desirable. However, alternative approaches to the provision of depots or suitable land sites, which would be available to all bidders, are being investigated

in partnership with the local authorities. Neither is it considered appropriate for Nexus to acquire vehicles for use by Operators of Quality Contracts. All Operators may have to invest in fleet replacement to meet the age and emission levels requirements within the specification. As Operators use a variety of methods to acquire buses, from outright purchase to rental or leasing, over the whole life of the contract Operators supplying new vehicles should not be disadvantaged against incumbents with vehicles already in place.

- (g) For reasons of affordability, Nexus is currently unable to consider further additions to the specification of QCS Services, beyond those set out in the Bus specification set out in Annex 4 of the QCS. During the procurement of Quality Contracts, the provision of on-board Audio-Visual Announcements will be encouraged but not mandated in the contract specification, with the inclusion of such facilities in bidders' Delivery Plans attracting an enhanced quality score. The specification will conform to all necessary disability legislation. However this matter will be kept under review, and further improvements may be made should additional funding become available, subject to approval from the NECA.

9.12.4 Steps taken to address the issues raised

- (a) In response to the Consultation feedback the following changes have been made:
 - (i) Nexus will include a Tyne and Wear User Consultative Forum in the governance of the QCS. This Forum will be chaired by an independent person and will cover all public transport modes in Tyne and Wear, including bus.
 - (ii) Nexus will revise its approach to procurement of Quality Contracts, assembling the bulk of bus services into 11 Lots

based around existing operational bases, rather than the 3 much larger Lots included in the QCS Proposal.

- (iii) The vehicle standards will be relaxed during the two years that follow QCS Commencement, in order to assist the transition to a higher specification fleet for both incumbent and new Operators that are successful in winning Quality Contracts.

10. VOLUNTARY PARTNERSHIP AGREEMENT DISCUSSIONS

- 10.1 The Local Transport Act 2008 created the statutory concept of a Voluntary Partnership Agreement (VPA). A VPA is a particular type of quality bus partnership, in which local transport authorities undertake to provide particular facilities (or to do anything else for the purpose of bringing benefits to persons using Local Services) and one or more Operators of Local Services undertake to provide services to a particular standard as to be permitted to use those facilities. A VMA, or Voluntary Multi-Operator Agreement, is a VPA that involves two or more bus Operators and one or more local authority.
- 10.2 This section outlines the approach Nexus has taken to the development of a Voluntary Partnership Agreement in response to the TWITA's instruction for it to explore the scope for a VPA as a potential alternative to a QCS.
- 10.3 In response to TWITA's resolution, NEBOA was founded in 2012. NEBOA's objectives include the development of one or more VPAs to cover Tyne and Wear, Northumberland and Durham. Membership of NEBOA is open to any local bus Operator, and Go North East, Stagecoach and Arriva are all active members. At its inception NEBOA listed the other small Operators in Tyne and Wear as members but Nexus is unclear as to the extent such Operators remain members and they are not listed as prospective parties to the VPA Proposal.
- 10.4 Since the inception of NEBOA, Nexus, the Combined Authority and TWITA have worked with Operators to develop a VPA that could help achieve the Objectives set out in the Bus Strategy for Tyne and Wear.
- 10.5 There has been no wider consultation on the VPA and such a process would not be appropriate. Unlike the QCS the VPA is essentially a contractual document. There is no equivalent to the statutory process that must be gone through before a QCS can be made. Nexus therefore considers that the basis of the VPA is a proposal from the relevant Operators which must reflect what collectively they are prepared to offer. Then, to the extent that there is scope to do so, Nexus can seek to negotiate the terms with the Operators and respond to any requests from

Operators for investment by Nexus or the local highways authorities in works required to facilitate the introduction and operation of the VPA.

- 10.6 The VPA Proposal has evolved over the last 18 months; a first proposal was put forward by NEBOA in October 2012 revised versions followed in May 2013, December 2013, and the latest proposal was provided in May 2014. Although NEBOA have suggested that there has been insufficient engagement by Nexus, in fact numerous meetings have been held between Combined Authority Officers and NEBOA to jointly develop and clarify the VPA Proposal.
- 10.7 The VPA Proposal has been analysed in detail in the Public Interest Test Report and has been compared to the QCS, so as to allow the NECA to make a direct comparison and then make a well-informed choice on how to proceed.

11. CONCLUSION

11.1 This section considers whether the process and rigour employed by Nexus has complied with Section 125 of the Transport Act 2000 and the ITA's Direction and Guidance to Nexus on Consultation such that:

- The process has been sufficiently robust to engage all the necessary parties;
- Sufficient and suitable information has been provided to allow the parties to interpret and respond to the Consultation; and
- Nexus has appropriately considered and responded to all relevant points made by respondents to the Consultation.

11.2 In the first instance, Nexus is satisfied that all stages of the Consultation comply with the requirements of the 2000 Transport Act and all other legal requirements necessary for the conduct of a lawful consultation. In response to a query from Nexus, on 29th August 2013, the QCS Board confirmed that in considering the information available to them at that time, 'the Board is of the opinion that [Nexus' Consultation proposals] meet the minimum statutory requirements'.

11.3 Nexus is satisfied that it has consulted with all the persons and bodies required to be consulted as listed in Section 125(3) of the Transport Act 2000 and those additional persons and bodies identified for the purposes of Sections 125(3)(d) and 123(3)g.

11.4 All relevant documentation, including the Consultation Document, Direction and Guidance and instructions to and legal opinion of Counsel, were made available to Statutory Consultees, Non-Statutory Consultees and the public. In some instances, information was provided in hard copy or via printed literature but all information was available via the Nexus Consultation website which was accessible to all Statutory Consultees, Non-Statutory Consultees and the public free of charge.

- 11.5 Nexus has sought in all instances to give due and prompt consideration to all reasonable requests for clarification and further information from those participating in the Consultation, and published the request and Nexus's response on the Nexus Consultation website.
- 11.6 Nexus convened meetings with Statutory Consultees and other relevant public/ interest groups to seek feedback and discuss issues relevant to the Original QCS Proposal and the QCS Proposal. Records of all feedback have been made and published.
- 11.7 On receipt of Consultation responses, Nexus is satisfied:
- The responses have been reviewed, analysed and placed on the QCS website;
 - Any necessary revisions to the QCS documentation have been made to reflect the outcome of the Consultation responses; and
 - Appropriate decisions regarding the need to re-consult and extend Consultation periods have been made.
- 11.8 As requested in the Directions and Guidance, this report will be included in a suite of documentation to be considered by the NECA when deciding the whether to progress a QCS or VPA. As part of that documentation, the NECA will be directed to confidential unredacted copies of responses to the Consultation. Redacted copies of those responses have already been published on the Nexus Consultation website.
- 11.9 Finally, Quality Assurance of BSDP has been provided by SYSTRA Consultancy. In the course of the assurance process they have reviewed and considered Nexus' preparation for consultation, the Consultation process followed and the actions undertaken as a result of feedback received, and found all aspects to be satisfactory.

APPENDICES

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APPENDIX A - BACKGROUND TO QCS PROPOSAL

Background to the QCS Proposal

- a. On 24 November 2011 the TWITA resolved to consider alternative operational structures for the delivery of bus services within Tyne and Wear as a means both to preserve existing services within the current funding constraints and to deliver the Tyne and Wear Bus Strategy. The TWITA resolved on 24 November 2011 that Nexus should be directed to investigate the possibility of developing a QCS across the region as a possible mechanism for achieving the ITA's objectives and in parallel engage with bus Operators to see whether a VPA could be developed through dialogue that would provide an effective alternative mechanism to a QCS and report as appropriate to the TWITA on the two proposals once developed.
- b. A first stage of Informal Stakeholder Engagement was completed by Nexus over a three-month period between December 2011 and February 2012 considering options for the future delivery of the bus network in Tyne and Wear.
- c. The Informal Stakeholder Engagement consisted of meetings with Councillors in all five districts plus up to three meetings in each district for invited stakeholders, as well as a series of meetings for Operators. There were also a number of meetings for specific interest groups including Northumberland and Durham Councils, regional MPs and Trades Union representatives. In addition, information about the proposals and an opportunity to respond was available on the Nexus Consultation website and through printed literature.
- d. In total, 234 people attended Councillor and stakeholder meetings and 111 written responses were submitted. Except for the Operators, the responses showed a substantial majority positive reaction to the proposals, with a potential Quality Contracts Scheme receiving substantially more support than the alternative delivery option of Voluntary Partnership Agreements.
- e. An informal Stakeholder Engagement Results 2012 report was produced and distributed.

- f. The initial draft QCS proposal was developed, based on a theoretical bus route network which it was 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.
- g. Following informal consultation between Nexus and the large Operators in particular; during which Nexus provided Operators with details of its financial modelling, Nexus was persuaded that this proposed approach was not sustainable and therefore could not be recommended to the ITA. Nexus therefore decided to abandon the first proposal and to develop a revised QCS Proposal based exclusively on the current route structure in day to day operation across Tyne and Wear. Requests for detailed information were made prior to the drafting of material, and during the Informal Stakeholder Engagement itself. Nexus gave clear assurances that it would maintain the confidentiality of any commercially sensitive material disclosed to it.
- h. Nexus also made requests for information from the Operators in order to assist it with its assessment of the QCS, in particular in relation to the impacts of the Proposal on the Operators themselves. Although some information was provided, the Operators were generally not forthcoming with the detailed information to back up their position on the alleged likely impacts of the QCS which Nexus had requested.
- i. In developing the revised Proposal dated July 2013, Nexus took full account of the feedback it had received in respect of the previous version of the QCS. Subsequent versions of the proposal refer to that feedback where relevant to explain the way in which the QCS Proposal has evolved.
- j. Nexus carefully considered the comments from Operators and others in undertaking the statutory proportionality test and related analyses.
- k. Based on that analysis Nexus recommended to the TWITA that the QCS Proposal was sufficiently robust for the TWITA to proceed to formal consultation if it determined to do so.

- l. On 26th July 2013, the QCS Proposal was presented to the TWITA for consideration. At this meeting, the TWITA resolved to proceed to Statutory Consultation on the QCS Proposal and Nexus was directed to undertake the consultation on its behalf subject to directions from the TWITA as to how the consultation should be conducted.
- m. A period of Formal Statutory Consultation then ensued from 30th July 2013.
- n. It should be noted that on 29th May 2014 the Transport functions of the former Tyne and Wear Integrated Transport Authority (TWITA) transferred to the North East Combined Authority (the NECA), (i.e. the discharge of all functions of the former TWITA that are provided for within the Transport Acts 1968, 1983, 1985 and 2000, the Local Government Act 1972, the Transport and Works Act 1992 and the Local Transport Act 2008).

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APPENDIX B - DIRECTION AND GUIDANCE TO NEXUS ON CONSULTATION

1. GENERAL

Pursuant to a resolution of the ITA dated 26 July 2013 Nexus is directed and hereby authorised to conduct a formal consultation into the QCS Proposal referred to therein pursuant to section 125 of the Transport Act 2000 ("Act").

Subject to an overriding requirement to use its discretion to ensure that at all stages the consultation will comply with the requirements of the Act and all other legal requirements necessary for the conduct of a lawful consultation, Nexus is directed to:

- 1.1 use the QCS Proposal as provided to the ITA on 17 July 2013 in conjunction with such ancillary documents as may be required as the basis of the consultation document for the purposes of section 125(1)(A) of the Act;
- 1.2 send this Direction and Guidance document to all statutory consultees and to publish it on the QCS Website (established in accordance with paragraph 1.6 below) so that the basis on which Nexus has been directed by the ITA to consult is made known to all relevant parties and the procedure to be followed by Nexus is clear:
- 1.3 make available, in addition to the consultation document, to all consultees and the public by download from the internet copies of the following:
 - 1.3.1 the instructions to and legal opinion of counsel provided to the ITA for its meeting on 26 July 2013; and
 - 1.3.2 any other relevant documents not included in the QCS Proposal;

Provision of one hard copy of the consultation document to each statutory consultee shall be free of charge. As provided below, Nexus shall provide internet access to documents for all persons free of charge. Nexus will be entitled to charge a reasonable copying charge for the provision of hard copies to any non-statutory consultee who requests such a copy of any document and to statutory consultees who request additional hard copies of any document.

- 1.4 give notice pursuant to sections 125(1) and (2) of the Act in appropriate newspapers circulating in the Tyne & Wear region, such notices to be published on or before 30 July 2013;
- 1.5 liaise with the QCS Board (once formed) as required in respect of the consultation process
- 1.6 establish and maintain a QCS Website which will be accessible to all statutory consultees and the general public free of charge and should include as a minimum:
 - 1.6.1 all information provided to the statutory consultees;
 - 1.6.2 copies of all documents to be made available to the general public for information purposes relating to the QCS Proposal;
 - 1.6.3 once they have been reviewed and assessed by Nexus copies of all formal/substantive responses to the consultation process;
 - 1.6.4 the ITA's resolution and all formal documents of the ITA relating to the conduct of the consultation and the development of the QCS;
 - 1.6.5 the draft QCS Scheme and related documents once produced by Nexus;
 - 1.6.6 any revisions to the QCS Proposal and/or other reports and/or other documents prepared by Nexus and provided to statutory consultees during the consultation process;
 - 1.6.7 any other non-confidential documents that Nexus considers are relevant to the QCS Proposal and may properly be placed in the public domain;

- 1.7 commence the formal consultation process on 30 July 2013 or as soon as reasonably practicable after that date and to allow such process to run for a minimum of 14 weeks;
- 1.8 as provided in Appendix B to the QCS Proposal (Stakeholder Consultation List) consult all the persons and bodies required to be consulted as expressly listed in section 125(3) of the Act and those additional persons and bodies included in the said Appendix for the purposes of sections 125(3)(d) and 125(3)(g) of the Act;
- 1.9 give due and prompt consideration to all reasonable requests for clarification and/or further information from persons participating in the consultation and publish the request and Nexus's substantive response on the consultation website;
- 1.10 request consultees to provide substantive responses to the consultation by no later than 5 November 2013. Nexus should then:
 - 1.10.1 review and analyse all the responses and place them on the QCS website;
 - 1.10.2 make any revisions to the QCS Proposal or draft QCS Scheme Order necessary to reflect the outcome of the consultation responses;
 - 1.10.3 consider whether it needs to refer any matters to the ITA or otherwise seek guidance from the ITA;
 - 1.10.4 consider whether it needs to re-consult with any of the statutory consultees in relation to any changes made to the QCS Proposal or draft QCS Scheme Order;

1.11 keep under review the time period permitted for consultation and to give due consideration to extending that period in relation to:

1.11.1 any reasonable request from a statutory consultee or other interested party that the period should be so extended;

1.11.2 permitting other consultees to consider and respond to any responses made by Nexus to questions/requests for additional information during the consultation period;

1.11.3 allowing analysis and consideration of any additional data/information disclosed to Nexus by consultees during the consultation process; and

1.11.4 any amendments to the QCS Proposal or draft QCS Scheme Order made by Nexus following consultation.

In respect of sub-paragraph 1.11.4 above Nexus may, in its sole discretion, decide to close the initial period of consultation following the conclusion of the prescribed 14 week period and then undertake a second phase of Supplemental Consultation;

1.12 proceed on the basis that the consultation and all consultation responses shall be in the public domain save that:

1.12.1 Nexus may, upon the reasonable request of any consultee made at the time of or in advance of any disclosure/communication, redact any commercially sensitive data or other information provided to it as part of the consultation provided that:

1.12.1.1 the un-redacted material may if requested be produced to the QCS Board and such redaction will not materially disadvantage other consultees; and/or

1.12.1.2 to the extent that Nexus places reliance on the information or refers to it in any report or submissions to the QCS Board the nature of the reference and Nexus's reliance on such information can be properly and clearly understood despite the redaction; and

1.12.2 Nexus may, also, redact the names of any private individuals referred to in any consultee responses for data protection reasons and redact any other sensitive information that is not required to be disclosed publically for the consultation process to be effective;

1.13 proceed on the basis that any correspondence or document sent to Nexus that is marked private and confidential or legally privileged or the equivalent is not intended to be a response for the purposes of consultation and should not be processed by Nexus as such.

1.14 seek, during the formal consultation period, to convene meetings to seek feedback and discuss issues relevant to the QCS Proposal or draft QCS Scheme:

1.14.1 with the statutory consultees individually and/or in such groups as Nexus considers relevant; and

1.14.2 with any other relevant public/interest groups who wish to obtain further information about the QCS Proposal or draft QCS Scheme and/or to provide feedback to Nexus.

Nexus shall keep a record of all questions/feedback obtained from such meetings and shall publish that material on the QCS website and provide it to the QCS Board at the appropriate time;

1.15 prepare, following the conclusion of formal consultation, a report to the ITA reporting on all matters arising from the formal consultation process that Nexus considers relevant, including

- 1.15.1 an analysis of all relevant issues arising from the consultation responses and any data received during the consultation process;
 - 1.15.2 any independent expert analysis required to analyse/comment on any consultation responses;
 - 1.15.3 Nexus's responses to any key criticisms of the QCS Proposal or draft QCS Scheme and/or any suggested amendments or variations to the QCS Proposal or draft QCS Scheme;
 - 1.15.4 Nexus's proposals for any amendments to the QCS Proposal and/or the draft QCS Scheme following consultation;
 - 1.15.5 Nexus's assessment of any revised Draft Voluntary Partnership Agreement provided to Nexus for consideration;
 - 1.15.6 having taken into account the consultation responses, Nexus's assessment of the compliance of the QCS with the section 124 Transport Act Test and, in particular, the proportionality of the QCS either in its current form and/or if any proposed amendments are adopted by the ITA; and
 - 1.15.7 Nexus's recommendations to the ITA as to whether and if so how to proceed with the QCS and any proposed changes to this document and /or any draft resolutions that Nexus requests the ITA to consider.
- 1.16 submit the report to the ITA for submission to a meeting of the full ITA and shall provide all assistance necessary to the ITA's officers to prepare for such a meeting.

APPENDIX C LIST OF STATUTORY CONSULTEES

(Based on Information available at 17.07.13)

Name of body/ person	Address
Bus/Taxi Operators	
A-Line Coaches	Unit 1, Green Lane Industrial Estate, Pelaw, Gateshead NE10 0UW
Adapt (North East)	Burn Lane, Hexham, Northumberland, NE46 3PU
Anthony Kane Taxi Services	24 Alwinton Gardens, Lobley Hill, Gateshead NE10 OAP
Arriva Durham County/Northumbria	Admiral Way, Doxford International Business Park, Sunderland SR3 3XP
Astley Private Hire	6 Western Avenue, Seaton Delaval, NE25 0EA
Bells of Stamfordham	Burnside Garage, Grange Road, Stamfordham, NE18 0PF
Blue Line Taxis	31-35 Sycamore Street, Wallsend, NE28 6TH
Budget Buses	34 Vernon Close, South Shields NE33 5DF
Caris Coaches	Sunnyside High Lane, Heworth, Gateshead, Tyne and Wear, NE10 0ED
Community Transport Newcastle	The Grand, 6 Heaton Terrace, Byker, Newcastle upon Tyne NE6 1HR
Compass Community Transport	11-12 Sandmere Rd, Leechmere, Sunderland SR2 9TP
Compass Royston Travel	Bowesfield Lane Industrial Estate, Stockton upon Tees, TS18 3EG
Coopers Tourmaster Travel Ltd	Riverside Garage, Kitty Brewster Bridge, Bedlington, Northumberland NE22 7BS
Dean Taxis Ltd	415 Durham Road, Low Fell, Gateshead NE9 5AN
Dreadnough Coaches	198 Allerburn Lea, Alnwick, NE66 2QR
Durham City Coaches	Brandon Lane, Brandon, DH7 8PG
East Coast Taxis	21-23 Station Road, Whitley Bay, Tyne & Wear, NE26 2QY
ELCAP	Easington Lane Community Access Point - Brickgarth, Easington Lane, Sunderland, Tyne & Wear, DH5 0LE
Eurocar Private Hire	13 Wheattall Drive, Sunderland SR6 7HD
Five Star Taxi Services	81 High Street, Gosforth, Newcastle upon Tyne, NE3 4AA
Gardiner Brothers Ltd	Coulson Street, Spennymoor, County Durham, DL16 7RS
Gateshead Central Taxis	53 High Street, Felling NE10 9LU
Gem Travel	31 North Leigh, Tanfield Lea, Stanley, Co Durham DH9 9PA
Glen Valley Travel	Glen Valley Tours, Station Road, Wooler, NE71 6SP
Go North East/Go Northern	117 Queen Street, Bensham, Gateshead NE8 2UA
Henry Cooper Coaches	Lane End Garage, Annitsford, Northumberland NE23 7BD
Howard Snaith	Coach House, Otterburn, Newcastle, NE19 1HB
Hunter Brothers	The Garage, Tantobie, DH9 9TG
Ian's Travel Services	10 Dunstanburgh Court, Gateshead NE10 8DW
James Cooper & Son Ltd	Burnside Garage, Annitsford, Cramlington, Northumberland NE23 7BD
J and M Travel	132 Charnwood Avenue, Longbenton, Newcastle upon Tyne NE12 8SL
Jim Hughes Coaches Ltd	The Chase, Foxes Covert, Front Street, Dipton, Co Durham DH9 9JH
Kimberley Coaches	43 Cameron Road, Prudhoe, NE42 5AJ
Kingsley Coaches Ltd	Unit 20, Penshaw Way, Portobello Industrial Estate, Birtley DH3 2SA
Megabus	Buchanan Bus Station, Killermont Street, Glasgow, G2 3NW
Nightingale Coaches	Units 21/22, Greencroft Ind Estate, Stanley, Co Durham DH9 7XP
National Express Group Ltd	National Express House, Birmingham Coach Station, Mill Lane, Digbeth, Birmingham B5 6DD
Newcastle Park and Fly Ltd	Prestwick Industrial Estate, Ponteland, NE20 9DA
North East Equality & Diversity (NEED) Ltd	Alnwick Fire Station, South Road, Alnwick, Northumberland NE66 2PA
Northumbria Mini Coaches	59 North Seaton Road, Ashington, Northumberland NE63 0AG
Northumbria University	Estates Department, Ellison Building, Ellison Terrace, NE1 8ST
Perryman's Buses Ltd	Ramparts Business Park, North Road, Berwick upon Tweed, TD15 1TX
Peter Hogg	Bank End South Industrial Estate, Jedburgh, TD8 6ED
Premier Bus & Coach Ltd	Coniston Road, Kitty Brewster Industrial Estate, NE24 4RN
Priory Bus Coach Ltd	59 Church Way, North Shields, Tyne & Wear NE29 0AD
Pygall's Coaches	Unit 8a, Sea View Industrial Estate, Peterlee, County Durham, SR8

	4TQ
Readypay Ltd (t/a Phoenix Coaches)	Northumberland Taxi & Coach Centre, Phoenix House, South Albion Retail Park, Blyth, Northumberland NE24 5BW
Rothbury Motors Ltd	Lionheart Enterprise Park, Alnwick, NE66 2HT
Rowell Coaches	3B Dukesway, Prudhoe, NE42 6PQ
Scarlet Band	Welfare Garage, Ferryhill, DL17 9LA
Stagecoach Cumbria	Second Floor, Broadacre House, 16-20 Lowther Street, Carlisle, CA3 8DA
Stagecoach North East (Busways & Cleveland Transit)	North Bridge Street, Wearsheaf, Sunderland SR5 1AQ
Stanley Travel (North East) Ltd	The Bus Station, Stanley, Co Durham DH9 0NQ
Station Taxis (Sunderland) Ltd	11 Riverside Road, Southwick, Sunderland SR5 3JG
TGM – Classic	Classic House, Morrison Road, Annfield Plain, Co Durham DH9 7RX
Travelsure	67 Main Street, Seahouses, NE68 7TN
Tyne Valley Coaches	Tyne Valley Coaches Ltd, Acomb Garage, Hexham, Northumberland, NE46 4QT
Wearside Motor Services	Unit 1 Virginia Buildings, Prospect Road, Crook, Co Durham DL15 8JN
Wearside Bus Company	Brisbane House, West Park Road, Cleadon, SR6 7RR
Wright Bros (Coaches) Ltd	Central Garage, Nenthead, Alston, Cumbria CA9 3NP
User Representatives	
Bus Users UK	Terminal House, Shepperton TW17 8AS
Passenger Focus	Fleetbank House, 2-6 Salisbury Square, London, EC4Y 8JX
PTUG (Tyne & Wear Public Transport Users Group)	Contact via e-mail
Local Authorities	
Cumbria County Council	The Courts, Carlisle, Cumbria, CA3 8NA
Durham County Council	County Hall, Durham, Co Durham DH1 5UL
Gateshead Council	Civic Centre, Regent Street, Gateshead, NE8 1HH
Hartlepool Borough Council	Civic Centre, Victoria Road, Hartlepool TS24 8AY
Newcastle City Council	Civic Centre, Barras Bridge, Newcastle upon Tyne, NE99 1RD
North Tyneside Council	Quadrant, The Silverlink North, Cobalt Business Park, North Tyneside, NE27 0BY
Northumberland County Council	County Hall, Morpeth, Northumberland NE61 2EF
South Tyneside Council	Town Hall & Civic Offices, Westoe Road, South Shields, Tyne and Wear, NE33 2RL
Sunderland City Council	Civic Centre, Burdon Road, Sunderland, SR2 7DN
Police	
Durham Constabulary	Durham Constabulary Police Headquarters, Aykley Heads, Durham, Co Durham DH1 5TT
Northumbria Police	Northumbria Police Force Headquarters, North Road, Ponteland, Northumberland NE20 0BL
Trade Unions	
GMB	Regional Secretary, 1 Mosley Street, Newcastle, NE1 1YE
Trades Union Congress	5 th floor, Commercial Union House, 39 Pilgrim Street, Newcastle upon Tyne NE1 6QE
Unison	Unison Northern, 140-150 Pilgrim Street, Newcastle, NE1 6TH
Unite	55 Call Lane, Leeds, West Yorkshire LS1 7BW
Others	
Network Ticketing Limited	Stagecoach Depot, Shields Road, Walkergate, Newcastle upon Tyne, NE6 2BZ

APPENDIX D - LETTER FROM QCS BOARD DATED 25TH SEPTEMBER 2013

Office of the
Traffic Commissioner



John Furzeland
Central Licensing Office
Hillcrest House
386 Harehills Lane
Leeds
LS9 6NF

Mr B Garner
NEXUS
Nexus House
St James' Boulevard
Newcastle upon Tyne
NE14AX

DIRECT LINE: 07977 553529

E-MAIL: john.furzeland@otc.gsi.gov.uk

Website:
www.gov.uk/government/organisations/traffic-commissioners

Your Ref: BGG/AR/hb

Our Ref: QCS / jF

25 September 2013

Dear Mr Garner

PROPOSED TYNE AND WEAR QUALITY CONTRACT SCHEME FOR BUSES

Thank you for your letter of 29 August 2013 in which you requested procedural advice on the statutory consultation that Nexus is currently holding regarding the proposed Quality Contract Scheme in Tyne and Wear.

You requested the QCS Board's (the Board) view on whether Nexus' proposed consultation activities are sufficient to meet the statutory requirement as detailed in Section 125 of the Transport Act 2000.

In accordance with Section 1268(2) of the Transport Act 2000 the Board can provide advice on matters of a procedural nature. Having considered your consultation proposals and further correspondence on the matter from Nexus' Cathy Massarella, the Board is of the opinion that it meets the minimum statutory requirement. This advice is given without prejudice based on the information currently known to the QCS Board. The Board reserve the right to review this opinion in the event of further information coming to their attention.

The Board also wish to advise that it is the responsibility of the Local Authority (or Authorities) proposing the scheme to ensure that all interested individuals, businesses or other Bodies are consulted on these proposals and they must be able to demonstrate their approach to ensuring this.

In accordance with Regulation 8 of The Quality Contract Schemes (QCS Boards) (England) Regulations 2009 a notice of this request and the advice given will be published in at least one newspaper within the area of the proposed scheme and in Notices and Proceedings. A copy of the request for advice, the email received from Ms Massarella and this letter will be made available on request to any interested party.

Yours Sincerely

A handwritten signature in black ink, appearing to be 'John Furzeland', with a large, sweeping flourish at the end.

John Furzeland
For and on behalf of the QCS Board

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