

# HERBERT SMITH FREEHILLS SUCCESSFULLY ACTS FOR STAGECOACH AND ARRIVA IN BUS FRANCHISING TEST CASE

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News

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Herbert Smith Freehills has successfully acted for Stagecoach and Arriva in their response to a proposal by Nexus, the transport executive of the North East Combined Authority (NECA), for a bus franchising scheme in Tyne and Wear. The independent Quality Contracts Scheme (QCS) Board found that the proposal failed to meet the required public interest criteria and that Nexus had failed to consult properly on the proposal. The decision is significant because it will have important implications for the future of bus regulation in the UK.

Nexus proposed to introduce a QCS in Tyne and Wear, which would have seen all local bus services in the existing deregulated market being brought back under public sector control as franchised services. In order for a QCS proposal to proceed legally, it needs to fulfil five 'public interest tests' and be subject to adequate consultation. A QCS Board was formed to give an independent opinion on whether these requirements had been met.

In the first ever decision on a proposal for bus franchising, the QCS Board concluded that:

- Nexus had failed to comply with the statutory consultation requirements by failing to reconsult when it identified material errors in its proposal, which meant that consultees

were potentially misled.

- The proposed QCS could not demonstrate it would increase the use of bus services: Nexus' predictions of fare increases without a QCS were overly-pessimistic and it was more likely than not that the QCS would run into funding issues which would put pressure on fares and the network.
- The proposed QCS did not provide value for money: in particular, the effectiveness of the QCS was significantly overstated due to errors within the modelling used to support it.
- The proposed QCS imposed negative impacts on bus operators that were wholly disproportionate to the benefits to bus passengers and citizens of Tyne and Wear.

The Herbert Smith Freehills team acting on this matter for Stagecoach was led by Partner Nusrat Zar, Senior Associate Anna Eliasson and Associates Anish Bhasin and James Wood.

Nusrat Zar commented: "As the first decision of the QCS Board in relation to a proposed Quality Contracts Scheme, this is a significant decision for the future of bus regulation in the UK. In particular, it shows the significant shift of financial risk from the private to the public sector that such proposals involve which puts pressure on the ability to maintain fares and the network. It also highlights the severe adverse impacts that such schemes have on existing operators."

A separate Herbert Smith Freehills team led by Partner Andrew Lidbetter and Senior Associate Natacha Heffinck acted for Arriva.

To read the full decision, please click [here](#).

## **About Herbert Smith Freehills**

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## KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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