

Community Transport Association

Keeping our communities moving

CTA Members' Meeting

Bill Freeman

Chief Executive

Why are we here today?

- To give CTA members a chance to hear CTA's take on the DFT letter
- To explain what CTA is doing on this matter
- Discuss what it means for organisations and services
- Hear your concerns and views
- Decide how we can work together on this

What we will cover today?

The DFT letter

- What does it say?
- What are the implications?
- What will the consultation be about?
- Key concerns

CTA activities

- Policy and Position
- What has CTA been doing about this since the letter came out?
- What are CTA asking for?
- What campaigning can I do?

Running services

- What does this mean for your services?
- What should my board be discussing?
- Can we still use MiDAS?
- What should I be saying to local authorities I work with?

Background to the issue

- In 2015 the European Commission told the UK Government to address how its directives on operator licensing were interpreted into UK law.
- The focal point for this is what rules operators should follow when fulfilling local authority contracts and how derogations from the regulations apply.
- Alongside this there has been a campaign to force a settlement through threats of legal challenges to CTA members, local authorities and DVSA to create a 'level playing field'.
- In attempting to reach a settlement the UK Government is intending to issue new guidance which will limit the types of work and services that can be operated under these permits.

Background to the issue

- CT unique to UK and EU rules to manage market competition don't easily read across to our country's circumstances, culture and conventions.
- The permit system, although not under threat in itself, has served us well.
- Permit system created to provide a proportionate level of regulation to enable communities to do things that bus companies won't or can't do in a safe and legal manner.
- We've always set high standards for ourselves, going beyond statutory requirements in some instances.

Background to the issue

- The ‘bandwidth’ of the sector has widened massively over the last three decades.
- Many organisations now compete with bus companies for contracts let through tenders...
 - Because it fits with their core purpose
 - Public policy has pushed charities to a social enterprise model
 - That’s how local government likes to pay for work, even where genuine contestable markets don’t exist
 - To cross-subsidise other important services

DFT Letter: The DVSA's action

- The first part of the DFT letter refers to a live case where DVSA has investigated a community transport operator following a complaint.
- They have reached a view that the nature of their minibus operations is such that they cannot use derogations from 1071/2009 because:
 - they did not have “a main occupation other than that of road passenger transport operator”
 - The type of work they are doing did not justify a conclusion that this was “exclusively for non-commercial purposes”
- The operator would “need to take action to bring its operations into line with all applicable legal requirements”

DFT Letter: wider implications

- Although the case refers to a single operator the DFT believes that the problem applies more generally owing to the type of work being undertaken.
- “developments in passenger transport provision during the last two decades (in part encouraged by successive governments) may mean that the types of contracted work and driver employment/ training/licensing arrangements described in this letter are not unique to this community transport operator”
- “Guidance has not kept pace with these developments”

DFT Letter: principles they are working to

- They set out some principles:
Section 19 or Section 22 permits, as exemptions from PSV Operator Licensing, must only be issued in circumstances meeting both:
 - a) the conditions set out in the relevant section of the Transport Act; and
 - b) one of the derogation criteria set out in Article 1(4) of EU Regulation 1071/2009.

DFT Letter: who can use the derogations?

The only derogation in Article 1(4) of Regulation 1071/2009 which is likely to be applicable to an operator wishing to operate vehicles under a Section 19 or 22 permit is the derogation for operators *“engaged in road passenger transport services exclusively for non-commercial purposes or which have a main occupation other than that of road passenger transport operator”*.

DFT Letter: what is not non-commercial?

An operator whose activities are essentially those of a bus company (in that it employs salaried drivers and carries out passenger transport services under contracts won in contestable markets and/or in exchange for fares charged to passengers at more than nominal rates) cannot be regarded as carrying out its activities “*exclusively for non-commercial purposes*”.

DFT Letter: Exemptions for drivers

The exemption in Regulation 3(2)(f) of the Vehicle Drivers (Certificates of Professional Competence) Regulations 2007 applies only where the vehicle is *“being used for the non-commercial carriage of passengers or goods for personal use”*.

DFT Letter: who do they think it will affect?

- “compliance with these principles is more likely to be an issue principally for larger operators who are essentially acting as bus companies and competing for contract work and/or charging fares to passengers at more than nominal rates”
- “many (perhaps the overwhelming majority of) smaller and more traditional Section 19 and 22 permit holders are unlikely to have any compliance difficulties”

DFT Letter: the consultation

- They will hold a public consultation in the autumn.
- This will set out the detailed changes which are required in order to update current guidance, together with proposed amendments to the Transport Act 1985, all of which may help to clarify for permit issuing authorities and permit holders the relationship between the conditions set out in that Act and the derogations set out in Regulation 1071/2009.

Key concerns

- The DVSA letter to the CT operator was not a decision, relates to specific case circumstances and is not authoritative in law so should not have lead to any assumptions or pre-judgements being made.
- They have accepted a narrow, technical meaning of the undefined phrase “non-commercial” from a vested interest and concluded that CT activities are anti-competitive.
- Any re-interpretation of well established interpretations of regulation and guidance needs to follow a full consultation in which the position of community transport is fully represented and analysed.
- The community transport sector deserves, through the consultation, a fair and reasonable opportunity to present its true nature and its counter-arguments.

Key concerns

- Even if the DVSA/DfT position is technically correct, the wider public policy considerations must properly and reasonably be fully considered.
- Essentially this means acting to recognise and protect the distinctiveness of community transport services within the commissioning environment and the social value they create.
- If formal guidance is to change then community transport organisations, which have reasonably relied on the displaced guidance, should have adequate transition time and financial compensation where such reasonable reliance causes financial loss, including transition cost.

CTA Activities

I've signed

'Keep our communities moving'

**because I support the incredible
work of community transport.**



CTA policy and position

- For three years we have informed members of the likelihood that some change may be required as an outcome of DFT action to reach a settlement with the European Commission.
- Our promise and priority would be to limit and manage the scope and impact of any proposed changes if they were required.
- Our policy therefore was, and continues to be, to protect the continued success and sustainability of not-for-profit transport operators.
- And to ensure this objective is also integral to the UK Government's own policy, which we currently believe it is.
- However, we accept that this cannot be all on our own terms.

CTA policy and position

- Our best shot at getting the UK Government to refine its proposals and limit the impact is to frame this as a public policy issue rather than just a legal issue.
- Yes they have to regulate in the right way and work to rules designed to create fair markets, but...
- ...they should also commit to ensuring we have a thriving CT sector and commit resources to enabling that.
- This doesn't have to be an either or and that's why CTA has said it is prepared to work with the UK Government and its counterparts in the devolved nations to find a way to do both.

CTA Approach - immediate response

- Once the DfT letter of 31 July 2017 was issued, we immediately introduced stronger calls for policy intervention to deal with (what appears to be) a legal settlement which the UK Government has concluded is necessary.
- We led on push for impact assessment so DfT fully understands implications of going ahead with this.
- We committed to working with the CT operator mentioned in the letter as the main route through which this could be challenged on legal grounds.

CTA Approach – communication with members

- We communicated with members about the nature and scope of the letter and consultation to follow:
 - Guidance changing rather than legislation.
 - The permit system will continue to exist and be used by most organisations.
 - Less clear about Driver CPC but likely to be some protection for smaller organisations with volunteer drivers.
- We put more resource into managing member enquiries and correspondence and capturing local intelligence.

CTA Approach – setting out the tone and terms

- Recognition of unique contribution of CT sector
- Nobody to blame for working in good faith to guidance
- Championing our resilience as a 'can do' sector
- Pushing authorities to accept liability for solving a problem associated with their own guidance they now view as defective
- Call for positive and sensitive approach from enforcement agencies and commissioners

This will be the hardest thing many of your organisations have had to deal with, but we are a resilient sector. We are always the last people to walk away from a problem and say nothing can be done.

CTA Approach – framing the debate

- We also sought to open up a wider debate about:
 - This is not just about transport. Its about the kind of country we want to live in.
 - The need for rethinking how services are commissioned to prioritise ‘social goods’ and deal with them away from market solutions which don’t always fit with what local authorities might want to achieve.
 - Placing a premium on ‘social value’ and maintaining distinctiveness of CTs where they do compete in markets.
 - Need to address wider problems about the availability of drivers within the transport industry.

CTA Approach – engagement

- Meetings with DFT , DVSA and OTC officials and Minister
- Meetings and liaison with MPs
- Engagement with agencies such as ATCO and LGA



Q: How do people get around in your constituency?



A: Community Transport

CTA Approach – campaign actions

- Keep our communities moving petition.
 - <https://you.38degrees.org.uk/petitions/save-community-transport>
- Encouraging members to write directly to DFT
 - email BUSES@dft.gsi.gov.uk with any questions, thoughts or responses
- Encouraging members to write to their local MPs.

I've signed

'Keep our communities moving'

because I support the incredible work of community transport.



CTA
@CTAUK1

#charitytuesday sends us some
❤️ 4,600 have signed!!
#CommunityTransport needs
your support PLEASE keep RT &
SIGN [Lnkd.in/gTvKYNc](https://lnkd.in/gTvKYNc)



CTA Approach – support we're asking for

- Full impact assessment – consultation to gather and analyse how CT operators work and will be affected.
- Help to work out how we create a more CT friendly approach to Driver CPC that aligns with MiDAS – an objective of the 2015 national driver training commission
- New guidance on commissioning for social value in transport
- Advice on how good financial standing requirements could be dealt with through mutual support
- Advice on permissible subsidiary models:
 - Dual operations
 - Consortia
- Apprenticeship scheme for CT

UK Parliament Transport Committee

- Inquiry announced on 10 October.
- Deadline 3 November.
- CTA issued a blog on 10 October with immediate response.
- More detailed guidance and recommended lines to take to be issued this week.

UK Parliament Transport Committee - Terms

- **The effectiveness of the DfT, DVSA and Traffic Commissioners' guidance to, and regulation of, community transport:** in particular, the DfT's role in providing clarity to the sector about the implications of EU Regulation [EC 1071/2009](#) and the July 2017 outcome of a relevant DVSA licensing investigation of an individual CTO
- **The effects on commercial operators** of the longstanding approach of licensing community transport services via Section 19 and/or 22 permits (Transport Act 1985)

UK Parliament Transport Committee - Terms

- **The safety, security and service quality implications** of licensing community transport services via such permits
- **The potential effects in the short and longer term on different types of CTOs,** and the people who rely on their services, of a move away from permits towards PSV operator and PCV driver certificates and licences
- **Suggested approaches to the funding, commissioning and licensing of community transport** in the short and longer term, to ensure community transport services, particularly for vulnerable and potentially isolated people, can be safely maintained in a sustainable and value-for-money way

Running your services



Running your services

- What does this mean for your services?
- What should my board be discussing?
- Can we still use MiDAS?
- What should I be saying to local authorities I work with?

Key questions

- Consider the full range of your operations and where they sit within terms of the proposed revisions to guidance?
- What does it mean for services, passengers, jobs and income?
- What do you need to know more about in order to have a better picture of the situation?
- If forced to change how you operate what changes would you need to make?

Questions, comments and summary

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