



Department for Transport

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Sarah Huntley
Mobility Matters
(by email)

Web Site: www.dft.gov.uk

19 October 2017

Dear Sarah,

Thank you for your letter of 21 September.

The Department for Transport believes, strongly, that community transport operators provide vital services that both encourage growth and reduce isolation by linking people and communities to existing transport networks, jobs, education, shops and services. This is a hugely important transport sector and, within the existing legal framework, we are committed to allowing as many community transport providers as possible to continue operating as well as retaining service provision for community transport passengers.

It is evident from your correspondence that the key point of the Department's letter of 31 July has been understood clearly. We are obliged to you for summarising it. In your words:

- there will be some CT operators who will require a PSV operator's licence; and
- their drivers will need a D1 licence and a driver CPC.

That is the essential message which the letter sought to convey. As explained in that letter, we expect that compliance 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.

In relation to the points made in your correspondence:

1. The Department does not accept that its letter was in any way misleading or incorrect. It was addressed "*for the attention of Section 19 and Section 22 permit issuers*" because, as you observe, DVSA is not responsible for issuing permits. That responsibility rests with Traffic Commissioners¹ or (in the case of certain section 19 permits) a body designated for that purpose by the Secretary of State². The decision letter mentioned in our letter was issued by the DVSA in its capacity (to which you refer in paragraph 8 of your letter) as an enforcement agency in

¹ See sections 19(4), 19(5) and 22(2) of the Transport Act 1985.

² See sections 19(3) and (7) of the Transport Act 1985.

relation to relevant road traffic legislation³. The DVSA's responsibilities include⁴: supporting Traffic Commissioners to license and monitor the operators of buses and coaches; and conducting checks on drivers to make sure that they follow safety rules.

2. Power to revoke permits rests with Traffic Commissioners or (in the case of certain section 19 permits) the relevant designated body⁵. DVSA has separate enforcement responsibilities as outlined above.
3. So far as we are aware, no decision which is relevant to this discussion has been made by any Traffic Commissioner in relation to the CT operator whose activities were described in the letter. This reflects the proportionate nature of the enforcement approach taken by DVSA. Rather than pursue the option of immediate prosecution or immediate referral of the operator to a Traffic Commissioner, DVSA instead advised the operator of the legal requirements and asked the operator to explain the steps it would take to comply with those requirements. In our view that approach is in the best interest of passengers who might otherwise have been faced with a sudden termination of services on which they rely.
4. The legislation referred to in the Department's letter constitutes either directly applicable EU legislation⁶ or UK legislation⁷ which (so far as relevant to this discussion) implements EU legislation⁸. It was entirely appropriate for the Department to issue its letter of 31 July as the Secretary of State has the ultimate responsibility for ensuring the proper application and enforcement of EU law.

Both the Senior Traffic Commissioner and the Community Transport Association were broadly aware of the likely contents of the Department's letter, but had not seen its precise terms before it was issued. Traffic Commissioners are, of course, independent and free to take such decisions on particular cases as they consider to be appropriate having regard to all applicable legal requirements. Potential updates to the text of the guidance on gov.uk will form part of the Department's forthcoming consultation.
- 5-9. Your comments are noted but plainly you accept the key point made in my letter, as summarised above. Our forthcoming consultation will explain the issues at greater length and will also address the likely impacts. It will provide your members, and the public, with the opportunity to engage transparently in an appropriate dialogue and discussions in relation to the concerns to which you refer. The consultation will aim to address any continuing confusion and to mitigate those concerns. In the meantime we would appreciate your support in reassuring the many operators who are unlikely to be affected by these issues.

³ For this purpose, offences arising under section 12 of the Public Passenger Vehicles Act 1981; section 87 of the Road Traffic Act 1988; and regulation 10 of the Vehicle Drivers (Certificates of Professional Competence) Regulations 2007.

⁴ A list of DVSA's responsibilities is published at <https://www.gov.uk/government/organisations/driver-and-vehicle-standards-agency/about>.

⁵ See sections 20(5) and 23(6) of the Transport Act 1985.

⁶ Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC.

⁷ The Vehicle Drivers (Certificates of Professional Competence) Regulations 2007; section 18(2) of the Transport Act 1985; and regulation 4(2) of the Section 19 Permit Regulations 2009.

⁸ Directive 2003/59/EC of the European Parliament and of the Council of 15 July 2003 on the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods or passengers; and Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences (Recast).

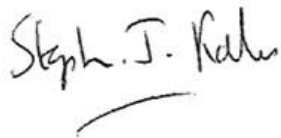
In response to your other requests:

- we are not aware of any case law which addresses authoritatively all of the issues which may be of concern to your members and local authorities; and
- you have accepted the key point made in the Department's letter. It follows that you also accept that the operators to whom you refer are not compliant with applicable UK and EU legislation. It is not necessarily helpful to those operators, therefore, to encourage them to delay taking action to ensure that they comply with the law.

Further to the correspondence with your colleague Meera on 4 September, we would be interested to see any evidence you are able to provide of the specific impacts on operators to which Mobility Matters has referred on a number of occasions.

I hope that this reply is helpful in clarifying the key issues and concerns that you raise.

Yours sincerely,

A handwritten signature in black ink that reads "Steph. J. Fidler". The signature is written in a cursive style and is underlined with a single horizontal stroke.

Stephen Fidler