



# Transport Select Committee - Response to Terms of Reference

## EXECUTIVE SUMMARY

**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.**

Since the 1980s DfT has produced generally helpful guidance on Section 19 & 22 Permit operations. However, this guidance (latterly the booklet PSV 385) has not adequately covered use of s19 permits on competitively tendered contracts for local authorities. Subsequent correspondence, investigations and guidance materials have over the years created a general understanding that local authorities who enter into contracts with community transport (CT) operators would be acting in a way compatible with the regulations.

European Regulation 1071/2009 made reference to the same term ('non-commercial') that had been used in previous EU Directives since 1991 and the CT sector assumed that this was in line with a derogation that was granted following representations to the European transport Commissioner in 1989, and which enabled some UK minibuss drivers (e.g. volunteers) to not require a second vocational driving test so long as the operating organisations were charitable and non-profit making. This assumption was confirmed in subsequent DfT and VOSA guidance.

Although there have been issues around interpretation and implementation of EU rules around procurement and state-aid, the DfT's letter of 31<sup>st</sup> July has been a shock to the CT sector (and local authorities) by adopting a significantly contrary position to the established and understood operational status quo. In particular, the letter does not present a coherent position, being ambiguous and legally imprecise, resulting in a confused message to the CT sector.

**The effects on commercial operators of the longstanding approach of licensing community transport services via Section 19 and/or 22 permits (Transport Act 1985).**

There is no evidence that the CT sector, en-masse, has had a detrimental impact on commercial operators. The scale of the CT sector (in terms of numbers of operators and vehicle licences) is only around 10% of that of the commercial bus companies,

and the areas of work that form its primary operations are largely those that the commercial sector does not provide.

Statistics show that of 34,000 s19 permits on issue, only around 6,000 of these are minibuses operated by CT operators. We note that in 2015/16 the four major bus operators made a pre-tax profit of £335,700,000 between them – which does not constitute a sector struggling due to unfair competition.

The single area where CT operators are sometimes in competition with the commercial market is for local authority contracts (Home to School transport for pupils with Special Educational Needs and Adult Social Care transport). There are no statistics to indicate the scale of CT contract provision using s19 permits in this field but it is estimated to be no greater than 5-10%. A much higher proportion will be undertaken by the taxi and private hire car sector. In many instances where the CT sector is undertaking contract provision, it is in response to requests from local authorities who have been unable to secure an acceptable quality offer from the commercial sector.

### **The safety, security and service quality implications of licensing community transport services via such permits.**

Under the current licensing system, the CT sector has not only continued to provide high quality services in which safety and security are paramount, but it has also been at the forefront of establishing optimum standards in terms of both operational practices, and vehicles and equipment. These standards have evolved from understanding and providing solutions for the mobility needs of the passenger, and also involving the passenger in service design and management.

The CT sector has spearheaded safety developments and standards that have been adopted by the wider minibus sector, including minibus design features, three-point seat belts, wheelchair occupant restraint systems, passenger risk assessments, British Standards 1756 pt2 (passenger lifts) and 8603 (wheelchair passports), and driver and assistant training standards (MiDAS & PATS).

Statistical evidence demonstrates that the CT sector has a good safety record – minibus accident rates are low, reflected in the fact that insurance premiums for CT vehicles are lower than equivalent PSVs. The Permit licensing system requires high levels of safety standards, differing only slightly with those that apply to full PSV operations. The CT sector has consistently made improvements in service delivery and invests time and effort in maintaining these.

### **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.**

Short term effects – requiring CT operators to convert to PSV 'O' Licence operations would have a significant detrimental impact on their ability to maintain operations. Some would attempt to convert to full PSV operations, but the cost may be prohibitive and the process slow. Some would downsize to using smaller vehicles, which would

increase accident rates and limited capacity. Some will cease operations altogether. The table below estimates the impact across three main modes of CT which are currently providing an estimated total of 36m passenger trips pa:

	Dial-a-Rides	Group Travel	Community Buses	Total
Vehicles	1,500	3,500	750	6,750
One-off change costs	£21m	£16.3m	£7m	£44.3m
Annual extra running costs (if volunteers)	£3m	£2.3m	£1m	£6.3m
Annual extra running costs (if paid staff)	£4m	£13m	£3.9m	£20.9m
Trips that are downsized	5.7m	4.4m	1.8m	12m
Trips lost altogether	5.7m	4.4m	1.8m	12m
Loss of value to users	£54.2m	£41.4m	£23.4m	£119m

Long term impacts –the 12m passengers left without any service (or be unable to afford higher fares) will be at risk of isolation (with higher incidences of loneliness, physical & mental health etc). This in turn will result in greater demands on the health and care sectors costing between £133m and £366m.

**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.**

CT Services are unable to self-finance through farebox – necessary quality aspects of the service (door-to-door, levels of assistance, need for full accessibility, serving rural communities) make them relatively expensive. The scope, scale and forms of CT means that a single funding model is not appropriate. In order to sustain CT services, some CT operators provide transport for local authorities (SEN school transport, social care) – this follows explicit government endorsement towards a social enterprise model, and also aligns with local authorities needs to secure high quality providers at lower cost. The Public Services (Social Value Act) also suggests a weighting should be applied to favour providers who can demonstrate additional social value (as CT operators clearly can).

Demand for CT services is increasing – commercial operations are not able to provide the necessary skills to meet this demand; additionally there is a dearth of accessible minibuses that are available as a resource that can be drawn upon. We have demonstrated that there is no safety case for the proposed changes. We have also demonstrated that there is no case for CT operators damaging the commercial sector – the latter are not interested in become a provider of CT services.

Suggested new approach - we believe that the current licensing regime can be improved to ensure consistency and clarity through the following measures:

- Use of Traffic Commissioners as single independent regulatory and issuing body, also responsible for guidance and road safety promotion
- Set up comprehensive database of all permit holders
- Distinction is made between operators who primarily provide transport and voluntary sector organisations who also run minibuses in support of other activities – the latter might have a less onerous maintenance regime
- General principle is accepted that some CT operators will tender for contracts that result in a surplus and that this does not constitute commercial activity as defined by EU Regulation 1071/2009 so long as any surplus is used to further charitable objectives
- Each permit holder be required to nominate a person who will take responsibility for safe operation of vehicles – such a person should commit to some continuous development training but not require the more onerous CPC transport manager qualification.

## **ABOUT MOBILITY MATTERS**

1. This response to the Transport Select Committee is from campaign group Mobility Matters, which was formed on 17th August 2017 to provide a collective response and challenge to the Department for Transport (DfT) following its letter of 31st July. The group is an unconstituted and unincorporated body with no formal links or affiliations to any other political body, membership organisation or business interest.
2. The group was formed because it was felt that a cohesive and robust response to DfT on behalf of the UK CT sector would be required. Many individual CT operators were expressing a common concern and a frustration that the Community Transport Association (CTA) were not best representing their interests on this matter. Mobility Matters has undertaken to work in collaboration with CTA and many of its supporters are also CTA members.
3. Mobility Matters was established and led by representatives of six leading Community Transport (CT) operators from across the country. These are Mark Arnold (Halton CT); Paul Beecham (Accessible Transport Group); Andrew Kelly (Westway CT); Sarah Leyland-Morgan (PAVO); Matt Roberts (CT Sussex) and Anna Whitty MBE (Ealing CT). The group is supported by 285 other CT operators and local authorities. The group's activities are coordinated and facilitated by the TAS Partnership Limited, a passenger transport consultancy with strong links to the CT sector. Additional advice and support has been provided by former Traffic Commissioner Beverley Bell CBE.
4. The collective experience and expertise of the Mobility Matters group is formidable. It includes the UK's leading CT authorities and practitioners, many long-established and successful CT operators (from large metropolitan and urban services, to smaller rural projects), and local authorities who have long-term experience and policies to support and develop CT services. This wide cross-section represents the authentic voice of the UK CT sector.
5. The group's activities and interests are focussed exclusively on ensuring that CT organisations in the UK are able to continue to operate to meet the diverse travel needs of individuals and communities, and that appropriate operational legislation is in place which reflects the specific operational conditions of CT, its need to deploy volunteers, and its non-profit status.
6. The Mobility Matters campaign has two primary goals:
  - (a) that DfT should undertake a full-scale review of the regulation of and sustainability of the community transport sector. We acknowledge that after 40 years the regulations do need review. However, this should be done broadly, so that any changes are designed to achieve improvements in social value, safety, capacity and quality, not the current perverse impact; and

(b) that until this review is complete, the government should make it clear publicly that it will not support any actions that disturb the settled licensing arrangements for the community transport sector.

7. It should be emphasised that the campaign is not setting out to uncritically defend the preservation of the s19 and s22 licensing system as it is currently operated and enforced. We accept that some CTs and commissioning authorities have unwittingly misused s19 in the competitive contracting arena, and that this has become a genuine concern.

## RESPONSES TO TERMS OF REFERENCE

***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.***

### GUIDANCE

1. Since the 1980s, the DfT has produced helpful guidance on the operation of passenger transport under Section 19 or Section 22 Permits in the form of a booklet, PSV 385. Over the years, this has grown in size and detail. This was last revised in November 2011 and was issued by VOSA. However, although the guidance has covered the interpretation of the statutory requirement for Section 19 Permit operations to be undertaken 'without a view to profit', it has not covered the issue of Permit operations undertaking work for local authorities under competitively tendered contracts. This is despite the fact that the Community Transport Association (CTA) and its predecessor have had considerable correspondence with the DfT about this issue in the past which concluded that although care would be required with pricing to avoid an intention to make a profit, there wasn't a legal bar on Permit operations undertaking such work. For example, on 2 March 1998, DETR<sup>1</sup>, in responding to a series of scenarios about contract work posed by the CTA, provided a detailed written response which included the phrase:

*"We do not believe the 'competitiveness' or otherwise of individual contracts is necessarily a legal issue in terms of the S19 permit system – provided, as you say, that the client group are within one of the classes [of passenger] on the permit itself."*

Of course, this correspondence was, as all correspondence from DfT, explicitly caveated by a statement that the DfT does not provide definitive interpretations of the law, which is a matter for the courts, and interested parties are advised to obtain their own legal advice. However, this and similar correspondence explain why individual community transport organisations have been confident they have been operating in a way that is consistent with the legislation that governs Permit operation, when they have tendered for school or day care transport work from a local authority.

2. Of particular note is the fact that there was no new guidance from the DfT following the implementation of European Regulation 1071/2009 (which has triggered the current problem) about any possible impact that might have on the CT sector. Our assumption is that the DfT, like those in the CT sector, assumed that given that 1071/2009 deployed the same term ('*non-commercial*') as a means

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<sup>1</sup> Department for Environment, Transport and the Regions

of exempting certain operators as had been deployed previously in European Directives back to 1991, that it was not intended to have a different effect.

3. The Community Transport sector based its understanding of the meaning of '*non-commercial*' on formal correspondence between the European Transport Commissioner, Karel van Miert, and various UK MEPs during consultation on the 2<sup>nd</sup> European Driving Licence Directive in 1989 which, as originally drafted would have required all minibus drivers to pass a second driving test. Following a successful lobby, the Commission accepted the significance of community transport minibus use in the UK, in particular for people with restricted mobility, and therefore offered a derogation for new volunteer drivers to be allowed to drive minibuses on their standard car licence, with the proviso that:

*"The organisations in question must be charitable and non-profit making."*

4. The resulting derogation formulated by the Commission used the term '*non-commercial*' to give effect to this commitment and this was accepted in the UK as equivalent to '*charitable and non-profit making*' which covered Permit operation.
5. This phrase was also used subsequently in Directive 2003/59/EC to create an exemption from compliance with the introduction of driver CPCs (Certificates of Professional Qualification) and periodic training. It was assumed this '*non-commercial*' exemption applied to Permit operations. This assumption was confirmed by the DfT and Driving Standards Agency guidance published at the time which made it clear that driver CPCs did not apply to Permit operation drivers. The DSA issued a briefing paper, "Driver CPC Q & As" which stated this in respect of s19 and s22 permits:

*"We believe that drivers of such buses are likely to be either outside the scope of Directive 2003/59/EC or covered by one of its exemptions. In those circumstances where the driver must hold a category D (or D1) licence, we consider it would be difficult to argue that they are operating commercially in the normal sense of that word. Whilst they may, in certain situations, carry passengers for hire and reward, the operation as a whole must be 'without a view to profit.' That does not easily fit with the usual interpretation of commercial activity. Consequently, we believe that these drivers would be covered by the exemption provided at Article 2(f) of the Directive ('vehicles used for non-commercial carriage of passengers...')".*

6. In order to ensure that domestic legislation was compatible with EU Regulation 1071/2009, the Road Transport Operator Regulations 2011 No. 2632 were introduced, accompanied by an Explanatory Memorandum prepared by the DfT. These Regulations specifically confirm<sup>2</sup> that section 18 of the Transport Act 1985 continues to apply (section 18 introduces s19 and s22 Permits). There is no reference to an impact on Permit operations in the Explanatory Memorandum.
7. In 2015, the DfT issued '*Guidelines on Community Transport Funding and the EU State Aid Rules*', following an infringement case considered by the EU relating to

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<sup>2</sup> Schedule 1, Para 2

funding from Derbyshire and Nottinghamshire County Councils. It is clear these Guidelines were discussed with the EU Commission before being issued; they are referred to in the EU's decision on the case. The Guidelines were targeted at local authorities and other public bodies. The particular focus is on these bodies avoiding breaching State Aid rules by providing above-threshold grants to CT operators that might cross-subsidise any commercial work:

*"For example, beneficiaries which receive public funding in the form of vehicles must in principle not use these vehicles to provide transport services procured by local authorities in competitive tenders."*

There was no suggestion in these Guidelines that local authorities should not contract with community transport operators – simply that they should ensure no 'double-funding'.

8. Other guidance issued since 1071/2009 has not helped with clarification. For example, the formal guidance from DVSA on drivers' hours and tachographs (PSV 375) used to be crystal clear as regards Permit operation. We set out below the key table from the 2011 version which spells out the position for volunteers and for paid staff driving permit vehicles:

Type of operation	Number of passenger seats			
	8 or less	9–12	13–16	17 or more
Private, non PSV and permit operations				
Police, fire and Armed Forces purposes	None	None	None	None
UK journeys – non-PSV public 'services' or 'utilities' purposes*	None	None**	Domestic	Domestic
UK journeys – non-PSV business use	None	EU/AETR rules	EU/AETR rules	EU/AETR rules
UK journeys – volunteer driving of Permit 19 and Permit 22 vehicles or private use	None	None	None	EU/AETR rules
UK journeys – employee driving Permit 19 and Permit 22 vehicles	None	Domestic rules	Domestic rules	EU/AETR rules
International journeys including private use	None in UK but must obey any domestic rules of country visited	EU/AETR rules	EU/AETR rules	EU/AETR rules
PSV operations				
Regular service on route not exceeding 50 km	Domestic rules	Domestic rules	Domestic rules	Domestic rules
National or international regular service on route exceeding 50 km	Domestic rules on journeys in UK***	EU/AETR rules	EU/AETR rules	EU/AETR rules
National or international non-regular service e.g. commercial excursions, tours or private hire	Domestic rules on journeys in UK***	EU/AETR rules	EU/AETR rules	EU/AETR rules

\* There are a number of specific exemptions from the EU/AETR rules that may apply to operations by public authorities while operating in the UK. See page 9 for further exemptions that may apply.

\*\* Public 'services' or 'utilities' purpose vehicles with 10 to 13 seats (including the driver) must comply with the GB domestic rules when operated under a permit by employee drivers.

9. By contrast, here is the version that replaced the above in 2016:

The following table will help you determine which rules apply.

Type of operation	8 or less passenger seats	9 - 12 passenger seats	13 - 16 passenger seats	17 or more passenger seats
Private, non PSV and permit operations				
Police, fire and Armed Forces purposes	None	None	None	None
GB journeys – non-PSV public ‘services’ or utilities purposes <sup>1</sup>	None	None <sup>2</sup>	Domestic rules	Domestic rules
GB journeys – non-PSV business use	None	EU/ AETR rules	EU/ AETR rules	EU/AETR rules
GB journeys - private use	None	EU/ AETR <sup>3</sup> rules	EU/ AETR <sup>3</sup> rules	EU/ AETR rules
International journeys including private use	None in GB but must obey any domestic rules of country visited	EU/ AETR rules	EU/ AETR rules	EU/ AETR rules
PSV operations				
Regular service on route not exceeding 50 kms	Domestic rules	Domestic rules	Domestic rules	Domestic rules
National or international regular service on route exceeding 50 kms	Domestic rules on journeys in GB <sup>4</sup>	EU/ AETR rules	EU/ AETR rules	EU/ AETR rules
National or international non-regular service e.g. commercial excursions, tours or private hire	Domestic rules on journeys in GB <sup>4</sup>	EU/ AETR rules	EU/ AETR rules	EU/ AETR rules

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## Footnotes

1. There are a number of specific exemptions from the EU/ AETR rules that may apply to operations by public authorities while operating in GB. See the section entitled “exemptions and derogations” for further details. ↩
2. Public ‘services’ or ‘utilities’ purpose vehicles with 10 to 13 seats (including the driver) must comply with the GB domestic rules when operated under a permit by employee drivers. ↩
3. For private use of a passenger carrying vehicle with between 10 and 17 seats (including the drivers) drivers will be exempt from EU/ AETR but only where the vehicle is used exclusively for the non-commercial carriage of passengers. If such a vehicle is used for any commercial purpose then any private use will be subject to EU/ AETR rules. ↩ ↩<sup>2</sup>
4. EU/ AETR rules do not apply but the domestic rules of GB and any other country passed through must be obeyed. ↩ ↩<sup>2</sup>

The rows making clear the position for drivers of permit vehicles have been removed without any explanation as to why that should be necessary. Footnote 2 doesn't deal with volunteer drivers nor with larger minibuses.

10. All of the above together explains why the letter from the DfT of 31 July 2017 came as such a shock to the CT sector. A copy of the response of Mobility Matters to the DfT letter and its reply is attached at Annex 1. The TSC will note the concessions made by DfT in its reply.
11. The letter has resulted in some authorities and operators taking unnecessary and premature action. In particular:
  - a) There is reference to a ‘decision letter’ and a ‘decision’ as if this was a final ruling. In fact, the case is still under discussion between DVSA and the CT operator in question which disputes both the facts of the case and DVSA’s legal interpretation. A definitive ruling can only come from a Traffic Commissioner in the first place and then, potentially, a court.
  - b) The letter starts the process of an administrative redefinition of the term “exclusively for non-commercial purposes” but then fails to carry this through, leaving readers in a suspended state. Examples where confusion is created, include:
    - ◆ The suggestion that operation on a ‘business-like’ basis would mean that the operation was commercial. In normal use, the term ‘business-like’ would be taken to mean that the operation is run competently and efficiently – all CT operations would aspire to operating in this way.

- ◆ The suggestion that an operation whose activities are 'essentially those of a bus company' would be commercial. CT operations under s19 Permits are not allowed to carry the general public or to run a bus service, so have been puzzled by this analogy – they are not like a bus company.
  - ◆ Footnote 4 states that the legal meaning of the term "non-commercial" is different from the colloquial use of the term to describe a bus service run under a contract with a local authority. Again, as s19 Permit operators cannot and do not run bus services, the reason for including this reference is unclear.
  - ◆ There is reference to charging fares to passengers at more than nominal rates, without any explanation of what a 'nominal rate' might look like. Most dial-a-ride services operated under Permits charge passengers a fare that is equivalent to a local bus fare, but because of the additional costs of dial-a-ride operation this comes nowhere near covering the actual operating cost. It is completely unclear whether such a fare might be considered 'nominal' or not.
- c) The statement<sup>3</sup> that if any activities are considered commercial then the whole operation is commercial is particularly problematic for those CT operators that do hold a PSV Operator's licence for a small part of their work but rely primarily on s19 Permits in order that they can make full use of volunteer input. There is no further clarification of this issue.
- d) Footnote 4 raises the possibility that it may be possible to come within the "non-commercial" derogation if contract work is being conducted in circumstances in which there is demonstrably no contestable market. But it does not then give any practical examples of how or where that might apply – how does one demonstrate the contestability of a market?
- e) The letter states that 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. Once again, CT operators using Permits do not see themselves as acting as bus companies. Those CTs that do act as bus companies, such as Hackney CT or Sheffield CT do so in full compliance with PSV Operator licensing, local bus service registration and so on. They do not use s19 Permits for this work.

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<sup>3</sup> Sentence in the middle of p3: "Where any of an operator's services are not being carried out "exclusively for non-commercial purposes", then the operator cannot operate any vehicles under a Section 19 or 22 permit, since it falls outside the scope of the derogation."

- f) The letter attempts to make a distinction between larger CT operators, who will be affected, but expects that “many (perhaps the overwhelming majority of) smaller and more traditional Section 19 and 22 permit holders are unlikely to have any compliance difficulties”. However, there is no explanation as to the distinction between larger and smaller operators, nor what would apply to the many operators who would see themselves as medium-sized. Moreover, many of the phrases used in the letter, such as acting on a business-like basis and charging more than nominal fares would apply equally to large and small operators.

**12.** The cumulative effect of the above is that, whatever its intention, this has created significant levels of fear and uncertainty within the community transport sector.

- a) The DfT letter has already begun to have an impact: An immediate short-term impact was concern that if services were not licensed correctly, then they would not be insured. CT Sussex had to suspend its dial-a-ride operations for a week in order to obtain reassurance from its brokers that it would be insured to continue to operate under Permits. This had a significant impact on its disabled users who had no alternative services during this period.
- b) A number of local authorities (e.g. Derbyshire, Nottinghamshire, Staffordshire) have already stopped issuing contracts to CT operators using Permits. A typical example is Clackmannanshire Council’s invitation on 30<sup>th</sup> October 2017 to operators to join its Dynamic Purchasing System (DPS) to provide transport to meet education and social care needs. In its official advertisement it states

*“Following advice issued by the department for transport, no contract service may be delivered by a vehicle operating under a section 19 minibuss permit after 31st December 2017.”*

This is in line with the precautionary guidance issued by the Association of Transport Coordinating Officers to its members following the DfT letter.

- c) The DfT letter has reinforced the position taken by those authorities that were already considering or in the process of withdrawing contracts with CT operators, having been approached by lawyers acting on behalf of the Bus & Coach Association. We are aware this has resulted in CT driver redundancies in Darlington and Wirral, with the former project closing down.
- d) Plans for CT service development have been put on hold whilst awaiting the outcome of the consultation that the DfT has promised.

**13.** A final point is the significant inconsistency between the approach taken in GB and that in Northern Ireland, which has a near identical equivalent to s19 Permits through its own system of s10B Permits. Whilst it is appreciated that Northern Ireland has its own legislation and independent regulatory framework, it is subject

to exactly the same European Regulation and Directives. The Department for Infrastructure in Northern Ireland has already started two separate consultations, with a closure date of 17<sup>th</sup> November, covering:

- a) The use of section 10B permits for road passenger transport in Northern Ireland, and
- b) Minibus driving licence requirements.

- 14.** The first of these consultation documents covers the need for changes to comply with 1071/2009 and refers to the DVSA investigation that is the subject of the DfT letter of 31 July 2017. It very clearly uses material sourced from the DfT (for example by repeated references to contracts with local authorities, when local authorities in Northern Ireland do not have transport powers or duties, nor do they carry out education or social care functions), but appears to be taking a much 'harder' line than is implied in the DfT letter by for example stating that:

*"As a general rule, if a transport service is provided by an undertaking, including a not-for-profit undertaking, in return for remuneration, that service should be treated as commercial. Remuneration includes any fares levied on passengers (either individually or in groups) and any other payments obtained from any third party (e.g. a local authority, under a contract or conditional grant arrangement) in exchange for the provision of the relevant service."*

This goes well beyond the issue of competitively tendered contracts and would encompass virtually every community transport operator, large or small.

- 15.** The second consultation document focuses on the requirement for Driver CPCs. Again, it goes well beyond what is implied in the DfT letter by stating that all paid minibus drivers require D/D1 licences and Driver CPCs regardless:

*"Confusion as to the requirements placed on those driving a minibus has largely resulted from the Buses (Section 10B Permits) Regulations (Northern Ireland) 1994. This regulation specifically allows drivers who hold a car driving licence (Category B) issued before 1 January 1997 to be paid to drive a minibus operated under the 10B permit scheme."* [This mirrors the arrangement in GB for s19 and s22 Permit driving.]

*"In reviewing the legislative framework, the Department has been advised that this derogation is in contravention of the requirements set out in the 1994 and 1996 Regulations. As a result, the derogation has no effect under the legislative framework and can no longer be legally applied. Therefore, all paid drivers require a full category D (all buses) or D1 (minibuses) driving licence and must hold a D CPC qualification. "Paid driver" means any driver who receives anything other than out of pocket expenses."*

It is of note that this ignores the written confirmation from the EU Transport Commission in 1989 that the Driving Licence Directive would not act

retrospectively i.e. that nobody who held an entitlement to drive a minibus before the Directive was implemented would lose that entitlement.

16. The apparent divergence between the Department for Transport and the Department for Infrastructure in their approach to this issue, when it is a matter of the same interpretation of European legislation and the two Departments have been sharing source material, has added to the worries within the GB community transport sector that the impact could be far greater than the DfT has so far made out.
17. Mobility Matters makes the general submission that the current guidance from the DfT, the Traffic Commissioners and DVSA now lacks clarity and so many CT operators simply do not know whether they should apply for a PSV Operator licence or not and we are very concerned that many will simply close down because they do not understand the guidance and cannot afford to take legal advice.

## **REGULATION**

18. Mobility Matters also considers there should be one regulator namely the Traffic Commissioners for the reasons referred to in its response to question 5. The TCs can then give proper guidance through the mechanism of the Senior Traffic Commissioner's Statutory Guidance and Directions.
19. In 2009/10 the North Eastern Traffic Commissioner reported concerns from commercial operators about abuse of the Permit system: *"This year has seen the formation of a Section 19/22 Action Group composed of interested PSV licensed operators. I have received many anecdotal complaints of abuse of the Section 19/22 permit system and I have asked for hard evidence so that this matter can be researched. The Action Group's original plan was to seek a judicial review, but that has been deferred in favour of presenting the evidence to a traffic commissioner to consider at a public inquiry. It is the intention of the Section 19/22 Action Group to present evidence in relation to a Section 19 permit holder demonstrating constant and repeated breaches of the regulations that show a disregard for the consequences."*
20. However, the following year he reported: "The complaints did seem to be well founded, but they had not been supported by evidence which would result in a full investigation at public inquiry. The Action Group that was set up did not deliver evidence which would allow me, as Lead Traffic Commissioner on this subject, to carry out a public examination of the issues and to determine the validity of the concerns, weighed against the legislation which allows holders of section 19 and 22 permits to operate. I await evidence of the concerns which were continually put to me, but until I receive this I am unable to take any further action on the matter."
21. All of the above shows it is not the case that there is no 'policing' of the Permit system, and that Permit operators can expect to be visited by DVSA albeit on a less frequent basis than might be ideal. Mobility Matters' understanding is that

DVSA targets the application of its policing resources on a 'risk' basis. The fact that unannounced inspections of Permit operators are relatively infrequent clearly reflects the DVSA's assessment of the risk to passengers.

***The effects on commercial operators of the longstanding approach of licensing community transport services via Section 19 and/or 22 permits (Transport Act 1985)***

1. It is clear that a very small but vociferous group of commercial operators feel strongly that community transport groups should not be allowed to operate some or all of their services under s19 (s10B in Northern Ireland) or s22 permits. Some of the representations in the trade press give an inaccurate picture of the community transport sector and significantly exaggerate any potential impact.
2. It is to be noted that when first issued Permits did not expire but that since 2009 they have to be renewed every five years. Given that the Permit discs that have to be displayed in vehicle windscreens do suffer from fading and therefore need to be replaced, the number of Permits in active use that predate 2009 is likely to be small.
3. Statistics<sup>4</sup> show that issue figures for the past 5 years as follows (permits currently valid but not necessarily active):
  - 34,084 s19 minibus permits;
  - 656 s19 large bus permits
  - 972 s22 Community Bus permits
4. Permits are issued from three sources:
  - Traffic Commissioners (55% of issues)
  - Local Authorities – primarily to themselves, schools and other educational establishments in their area and community councils (23% of issues)
  - Other bodies designated by Order (70 or so national organisations such as CTA, British red Cross etc) – to themselves and their members (22% of issues).
5. Two things follow from this. Firstly, given that many community transport groups obtain their permits from CTA and this is just one of 70 designated bodies, it is clear that the vast majority of permits are issued to organisations such as Barnardos, Girl Guides, Scope, etc. for whom the provision of transport is not a primary purpose. Secondly, the majority of Permits are issued through Traffic Area Offices under the control of Traffic Commissioners. Note also that Permits can be required by organisations that hire vehicles, if their users contribute to the costs – so the number of vehicles involved is fewer than the Permits in issue. The vast majority of work undertaken under s19 Permits therefore involves absolutely no element of competition with the commercial market as it is undertaken by organisations for their own internal purposes. This includes the many local

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<sup>4</sup> Compiled from past five years Traffic Commissioners' reports 2011-2016 - <https://www.gov.uk/government/collections/traffic-commissioners-annual-reports>

authorities which operate their own fleets using s19 Permits to undertake chargeable work for home to school or day centre transport.

6. There is no central registry of community transport services. In any case, a large number of community transport services are unaffected by 1071/2009 because they only utilise volunteers with cars to run a community lift-giving service or else accessible MPVs with 8 or fewer passenger capacity to provide a dial-a-ride service. Mobility Matters has used the national CT online web-based database<sup>5</sup> combined with additional local knowledge to estimate the number of CTs that operate minibuses in GB and the minibuses associated with them as:
  - 750 - 1,000 CT operators
  - 5,000 to 6,000 minibuses between them.
7. The scale varies with a few operations having more than 25 vehicles but most operating five or fewer vehicles. Overall this amounts to between 5% and 7% of the overall population of minibuses in use in GB which is reported as 88,700 in 2016<sup>6</sup>.
8. By contrast in 2015/2016 the commercial PSV sector numbered 9,332 operators and 93,978 vehicle discs<sup>7</sup> (including International licences). So in terms of scale the CT sector represents is only 10% of all operators and has around 6% of all vehicles. This contrast is further emphasised by the combined pre-tax profit of four of the biggest bus and coach companies is £335,700,000. In terms of scale and resources the CT sector is too small to present a commercial threat, and the profits gained by the commercial bus sector are by no means modest. The social value provided by the CT sector, however, is immense and cannot be readily measured.
9. Community transport operations do not for the most part intrude into areas of commercial interest. The type of core work undertaken falls broadly into three groups in declining order of frequency:
  - Minibuses that mostly provide services for other third sector organisations but which may also be used to enable groups of people with mobility difficulties to travel together e.g. on organised shopping journeys
  - Minibuses used to provide door to door services such as dial-a-ride or dial-a-bus
  - Community buses that provide a scheduled bus service in areas where there is no commercial provision.

However, many groups undertake more than one of the above functions and a few provide all three.

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<sup>5</sup> <http://www.ctonline.org.uk/>

<sup>6</sup> DfT Vehicle Licensing Statistics, Table VEH0601

<sup>7</sup> Traffic Commissioner's Annual Reports 2015/2016

- 10.** It can be seen from this that the vast majority of work undertaken by community transport groups is a response to market failure – primarily the absence of affordable transport for individuals or groups who are generally on a low income and who simply do not have the financial capability to make frequent journeys by taxi or private hire car. Undertaking this work, which is inherently loss-making as regards income from charges to service users, is fundamentally not a commercial proposition. Even in the minority of cases where the core work is funded on a cost recovery basis (still not-for-profit) by a transport authority as a parallel public transport service for those people who cannot make effective use of conventional bus services, there will still be a requirement for other fund-raising by the charities involved.
- 11.** Community buses under s22 Permits are a response to the absence of bus services serving communities, usually in deeper rural areas. The voluntary ethos and community involvement means that many such services have proved remarkably resilient over the years, despite operating in areas with relatively sparse population. There is very little overlap with commercial bus networks. Where s22 Community Buses do receive financial support on a contract basis from their local transport authority this is generally offered on a 'de minimis' basis by the authority's transport unit after they have been unable to find a commercial provider within their budget. This is an increasing problem for English authorities in particular as supported bus service budgets have been progressively reduced, and this partly explains the recent growth in s22 Permits issued. If anything, the impact of community buses on commercial bus operators has been positive – by maintaining rural links, they have kept some older and/or disabled people active and independent and continuing to use conventional bus services either through interchange or in other locations.
- 12.** Amongst those community transport groups that operate s19 Permit minibuses, only a minority undertake competitive contracts for public authorities, albeit these are more likely to be the larger CTs. Most do not want to take on the legal responsibilities involved and do not see that their role as charities extends to undertaking statutory work for public bodies. However, some authorities have moved away from grant funding, partly reflecting concern about State Aid issues, and now provide all support for CT services under contract. But these are contracts to provide the core CT services such as dial-a-ride, social car schemes and group minibus hire. They may, in principle and practice, be competitively tendered but in many cases it is unlikely that there actually is any contestable market in place and it is certainly not the case that this market, which will involve recruiting and managing volunteers alongside paid staff, as well as committing to additional fund raising to add to the services supported, has any attraction for the commercial sector.
- 13.** The primary focus of complaints from commercial operators is about community transport incursion into undertaking home to school or day centre contracts. In 2014, in the Best Practice Guidance for the DfT on Tendering Road Passenger

Transport<sup>8</sup> contracts this market was estimated as having an annual value of ca. £850m made up of:

- Home to School transport for pupils with special educational needs £613m
- Transport provided for adult social care purpose £240m

Whilst it has not been possible given the notice period to undertake a comprehensive survey to better inform the Transport Committee, we would be surprised if community transport operators using vehicles operated under Permits have as much as 10% of this market, and more likely no more than 5%. A much higher proportion will be undertaken by the taxi and private hire car sector.

- 14.** Moreover, where the CT sector does operate in this market it will often have done so in response to a request from local authorities that have been unable to obtain an acceptable quality offer from the commercial sector. A key factor to take into consideration is the high quality ratings that CT operators receive from local authorities that do contract with them. No operator, commercial or community-based, has a right to contract work from public bodies – they have to be able to deliver a reliable quality service that meets the authority’s quality thresholds. CT groups have obviously had some success in providing services on this basis. It would be a disbenefit to service users and authorities alike if the CT sector were to be effectively excluded from this market.

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<sup>8</sup> <https://www.gov.uk/government/publications/tendering-road-passenger-transport-contracts-best-practice-guidance>

## ***The safety, security and service quality implications of licensing community transport services via such permits***

1. Safety, security and service quality are at the core of community transport operations and service design, and the objective record supports this. Whilst there are continuous opportunities for improvement, which the sector in fact pursues on its own account, there is no safety, security or service quality basis for any fundamental disruption to the current arrangements for licensing services under permits.
2. The community transport sector is a response to the failure of the commercial or public sectors to provide an affordable service of consistently good quality to individuals facing mobility disadvantage. Whilst the majority focus of the CT sector is on services for people with a disability or who are experiencing the physical and psychological impact of ageing, services also extend to others experiencing market failure, such as people living in rural areas where there are no effective bus services and young people who need to travel together securely.
3. The starting point for service design is the needs of passengers and this is reinforced by the widespread involvement of service users in the design and governance process. There simply isn't the incentive under these circumstances for CT operators to take shortcuts with passenger safety.
4. Review of the history of safety and security developments within the CT sector will confirm the continued focus on these issues:
  - a) Right from the outset, guidance produced within the sector focused on safety improvements and risk management, with a series of safety guides with practical effect – for example in outlawing the use of 'crew buses' with side-facing seats, despite their legal compliance.
  - b) The CT sector led the introduction of three point seatbelts for all minibus seats. This required a lot of experimental work with seat manufacturers as seats had to be redesigned to meet the forces required, and with coachbuilders as floors needed to be strengthened. This has now rolled out universally across all minibuses.
  - c) Reflecting concerns with the poor design of conventional minibuses, the CT sector pressed for improved ergonomic design. It participated actively in the resulting research, funded by the DfT, at the Motor Industry Research Association that covered step heights, handrails, seat spacing, passenger lift access, entrance design and the like. The CT sector then incorporated the results in the recommended specifications that it published to help bodies purchasing minibuses.

- d) A key issue for the sector has been safety for passengers using wheelchairs which was initially completely inadequate. Again, it has pressed for improved restraint systems and has for years been active in working with safety system manufacturers such as Unwin and Q'straint to develop their products. CT operators participated in the static and dynamic testing of restraint systems funded by the DfT and provided trial platforms for product development.
  - e) The sector developed specific approaches to assessing and recording the transport support needs of children using wheelchairs. This was consolidated through work commissioned by Cheshire County Council and published nationally by ATCO. This led ultimately to the development of the current Wheelchair Passport system released as a Code of Practice in 2010 and now formally incorporated as British Standard 8603.
  - f) The CT sector pushed for and then contributed significantly to the development of British Standard 1756 Part 2 – covering the design, maintenance and safety guidance for passenger lifts mounted on vehicles.
  - g) The sector pressed for access to criminal records checks even before the CRB process was introduced. CT operators were amongst the earliest umbrella bodies to be recognised under the scheme, in order to be able to disseminate its benefits down through the sector to smaller operators that would not have justified their own registration. Implementing the Disclosure & Barring process (and its equivalents in Scotland and Northern Ireland) is now a standard part of CT training.
  - h) The importance of appropriate driver induction and training was recognised from the outset, and the predecessor to the CTA developed a bespoke Driver Training package. This then led to the development of MiDAS, the Minibus Driver Awareness Scheme which was deliberately designed to be affordable and deliverable within the voluntary sector, and to focus on the needs of passengers. Alongside this, there was recognition of a need for equivalent training for passenger assistants working with vulnerable passengers. This led to PATS (Passenger Assistant Training Scheme). These two schemes are managed by the CTA with a continuous review process that results in regular updates and a requirement for trainees to go through periodic refresher training. The two schemes have become the accepted standards across the community, local authority and commercial sectors. They are referenced in almost every procurement in the UK that local authorities make of transport for home to school for children with special needs and for adult care transport.
5. The fact is that the sector's accident record is good. This is actually quite difficult to demonstrate by reference to official statistics such as Stats19, the comprehensive road safety data published by the DfT about the circumstances of personal injury road accidents in GB reported to the police, precisely because

there are relatively few minibuses involved in casualty accidents, as shown in the Table below. Three points are worth noting:

- This counts minibuses involved in all reportable road accidents regardless of the severity of the injury and that includes injuries to pedestrians and other road users, as well as occupants.
- There is no distinction as to who was at fault i.e. this counts a minibus as involved in an accident even if another vehicle drove into it whilst parked.
- The category 'Minibus' includes vehicles with 8 to 16 passenger capacity, including private vehicles, Permit vehicles, those operated by taxi and private hire operators under restricted PSV 'O' licences and those operated by commercial PSV operators. There is no means of separating them out.

Year	Injury Accidents	Involving Minibuses	%	Involving Bus / Coach	%
2016	136,621	366	0.27%	4,998	3.66%
2015	140,056	383	0.27%	5,381	3.84%
2014	146,322	409	0.28%	4,609	3.15%
2013	138,660	423	0.31%	4,606	3.32%
2012	145,571	485	0.33%	4,908	3.37%
2011	151,474	461	0.30%	5,611	3.70%
2010	154,414	462	0.30%	5,855	3.79%
2009	163,554	478	0.29%	6,107	3.73%

6. Vehicle registration data (Table VEH0601) for 2016 shows:

- 72,000 buses / coaches – this implies an injury accident rate of 0.069
- 89,000 minibuses - this implies an injury accident rate of 0.005

We cannot emphasise too strongly that this does NOT suggest that buses & coaches involve worse driving than minibuses. The fact is that only 5 bus & coach passenger fatalities occurred last year. The main difference is that a significant amount of bus and coach exposure occurs in dense urban areas where pedestrian accidents are more common and annual bus and coach mileage is much greater than minibus mileage with a consequent increase in exposure. Nevertheless, with reference to the annual mileage undertaken across the GB minibus fleet as a whole, the statistical record simply does not support any suggestion that there is a problem with how minibuses are maintained or driven.

7. A more immediate means of assessing the risks involved specifically in Permit operation is to consider insurance premiums. Given that insurers have now had 40

years of claims experience since the first Permits were issued in 1977, we believe this constitutes an objective measure that distinguishes Permit minibus use and, in particular, the more intensive use of minibuses made by community transport operators. It is significantly (one third to one half the cost) cheaper to insure a minibus for use under a Permit by a CT group than it is to insure an equivalent PSV minibus. This directly reflects the relative claims experience. Reports from brokers confirm that CT operators are perceived to deploy effective risk management, particularly in respect of driver recruitment and training. The latter is becoming more problematic in the PSV sector because of the shortage of available drivers. Concern was expressed by one broker that given this environment, the loss of volunteers, if replaced by recruitment from the standard industry pool, could paradoxically result in increased accident rates. Insurers understand that a part of CT operation is similar to self-drive hire for other community organisations, with the proviso that only MiDAS certificated drivers may be used. The insurance premium for a similar commercial operation was stated to be three times that which applies to community transport.

8. The current arrangements are often presented as if there is a significant divide between what happens in the community transport sector and what happens in the commercial sector. However, this is very misleading. The Table below sets out how the key issues are treated in each case:

Issue	How treated	
	Community Transport (s19 / s22 / s10B Permit)	Commercial (PSV 'O' Licence)
Vehicle standard	Identical construction standards set down in Schedules 6 and 7 of The Road Vehicles (Construction & Use) Regulations 1986 and delivered in practice through Type Approval. Includes tyres, first aid kits, fire extinguishers, passenger capacity markings, etc. The only exception is the extra requirement for the PSV operator name and depot to be marked on the exterior of their vehicles.	
Seat belts	Identical requirements to fit and use seatbelts	
Passenger lifts	Identical requirements – 6 monthly checks required by British Standard and subject to LOLER (Lifting Operations and Lifting Equipment Regulations 1998)	
Overloading	Identical prohibition on overloading – CTA's guidance to CT groups contains practical examples of how to estimate passenger weights and luggage and avoid overloading	
Roadside Vehicle Inspections	Identical arrangements apply. All vehicles can be stopped by the Police or, since 2002, DVSA for a basic check. In addition all minibuses can be stopped and inspected at any time by a PSV examiner or certifying officer. Minibuses operated under a Permit are PSVs for this purpose and examiners have the right to enter premises (i.e. depots) in order to examine vehicles.	

Issue	How treated	
	Community Transport (s19 / s22 / s10B Permit)	Commercial (PSV 'O' Licence)
Prohibitions from driving	Vehicle examiners can issue prohibitions on vehicles being driven. These powers are identical for Permit minibuses and PSV minibuses, and the same fines apply to any breach. Breaches will most likely lead to disciplinary action against the operator by the Traffic Commissioner.	
Speed limits	Identical speed limits and speed limiter fitment requirements apply	
Maintenance	Identical requirement to follow the DVSA Guide to Maintaining Roadworthiness. This sets out recommendations for walk-round checks, safety inspection content and frequency, inspection facilities, record-keeping and monitoring requirements. Distinctions:	
	<ul style="list-style-type: none"> <li>PSV Operator has to evidence maintenance contract with suitably equipped garage that is acceptable (will be checked) to DVSA</li> </ul> Penalties for failure:	
	Traffic Commissioner can revoke Permit	Traffic Commissioner can reduce number of vehicles authorised or revoke 'O' licence in extreme cases
Financial standing	No requirement	Easily available reserves required: £7,850 for first vehicle and £4,350 for each subsequent vehicle
Annual Test	Class IV for small minibuses Class V for 13 seats of more, undertaken only at designated (usually government) testing stations  Content of test is primarily mechanical / safety related but includes seats, seatbelts and other safety items	Class VI, undertaken by DVSA/DVA staff at their own stations, or at DVSA authorised testing facilities  Content of test is primarily mechanical but includes seats, seatbelts, other safety items and other issues relevant to passenger comfort e.g. soiled seat would result in a Class VI fail but not a Class V. Process is more detailed and thorough than Class V but won't cover passenger lifts and wheelchair restraint systems
Hours and Records	Domestic drivers' hours rules apply to employees. In practice CTs apply these rules to volunteers as well.  This means there is no requirement to fit or calibrate a tachograph	Domestic drivers' hours apply to regular services under 50km. Otherwise EU/AETR rules apply, which requires the fitment and use of a tachograph

Issue	How treated	
	Community Transport (s19 / s22 / s10B Permit)	Commercial (PSV 'O' Licence)
Transport Manager	No requirement for a named, professionally competent transport manager.	Requirement for named transport manager holding a Certificate of Professional Competence and with 'good repute'. This manager has personal responsibility and can be called to account by the Traffic Commissioner.
Operating Base	Nothing specified, but local restrictions will prevent on-street parking of minibuses in many areas  Subject to planning rules	Specific requirement for off-street parking  Subject to planning rules
Driver Licence	D1(101) for paid drivers  Volunteers may drive smaller minibuses (up to 4.25t GVW) if over 21  All drivers must go through MiDAS training and assessment. This includes a minimum 90 minute on-road driving assessment. The classroom training for an accessible MiDAS certificate requires 2 days and includes hazard perception and case studies  Self-certification of fitness to drive in line with DfT medical guidance  MiDAS Certificates last 4 years. Each renewal requires a further on-road driving assessment.  Distinction between MiDAS and D/D1 is that MiDAS focuses more on passenger safety and assistance.  Eco and defensive driving are common additional options	D / D1 required, along with a DCPC (35 hours training across 5 years)  PCV Test consists of: <ul style="list-style-type: none"> <li>• Medical check, then every 5 years from 45 and annually from 65</li> <li>• Theory</li> <li>• Hazard perception</li> <li>• Case studies</li> <li>• Driving</li> <li>• Practical demonstration</li> </ul> Typical D courses are 3 days training, then test. D1 only could be 10 hours training, then test.  Once issued, no further check on driving unless required by a court  Eco and defensive driving can be included in Driver CPC
Test Minibus	Accessible or non-accessible as required	Minimum 5m long and 4t GVW
Police checks	Criminal records checks are universal (DBS in England / Disclosure Scotland / AccessNI)	Checks are not required automatically but will normally be required if the driver works on a local authority contract

9. Furthermore, CT operators comply with the helpful guidance issued by the DVSA Guide to Maintaining Roadworthiness which equally applies to PSV operator licence.

Following this simple but very effective guide ensures that CT operators and drivers follow proper safety procedures such as essential driver daily walk round checks and regular preventative maintenance safety inspections. In addition, most CT vehicles do not cover long distances and the work is not arduous and so any risk is minimised appropriately.

- 10.** In summary, safety, security and quality issues are of absolute importance to the community transport sector which is driven by its commitment to the safety of its passengers. There is no evidence of consistent or endemic failure in respect of any of these issues by community transport organisations. The sector is not complacent – it seeks to maintain high standards through shared training and information. It would certainly support more frequent ‘policing’ if the resources for that were made available to DVSA. The record shows that the sector is constantly trying to make improvements to its service delivery, and is prepared to invest time and effort into this.

***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***

1. There is no doubt that requiring CT operators to obtain PSV 'O' licences will have a significant impact upon their ability to maintain their operations. More significantly, the CT sector collectively provides an estimated 36m passenger trips per year (excluding Council contract work for education and social care purposes), and the change from permits to full PSV status is likely to reduce this by a third (by CTs ceasing operation). The loss of 12m trips per year will have a devastating impact for the individuals effected and whole communities, especially as these passengers have moderate to severe mobility impairments or other vulnerabilities.
2. Whilst the DfT letter suggests that it will be possible to constrain the impact of 1071/2009 only to the larger CT operations, it provides absolutely no objective basis for this assertion. The case<sup>9</sup> in the European Court of Justice that the European Commission is relying on for setting out the meaning of 'non-commercial', which is the crux of the issue, equates this with '*carriage by a private individual as part of a recreational activity outside his professional activity*' and also '*where the carriage ... is not performed with a view to earning income therefrom*'. The court's final ruling on the concept of 'non-commercial' includes the phrase '*and where no payment is made for that carriage per se*'.
3. The whole point about Permits is that they allow the operator to make a not-for-profit charge for carrying passengers – this is the core business model for the UK's community transport sector. Taken at face value therefore, and the DfT has provided no basis for anyone to interpret this differently, the ECJ ruling means that the UK's s19, s22 and s10B Permits system is incompatible with 1071/2009 except where specifically exempted. Exemptions are limited to:
  - a) Operations which don't charge (or which make 'purely nominal' charges);
  - b) Operations using vehicles with a capacity for no more than 8 passengers;
  - c) Undertakings which have a main occupation other than that of road passenger transport operator;
  - d) Operations which only have a minor impact on the transport market because of the short distances involved.
4. Exemption a) is of very limited benefit as most if not all CT schemes make charges that are more than 'nominal'. Exemption b) covers community car schemes and those dial-a-rides that only use accessible MPVs. Exemption c) covers non-transport bodies such as Age UK, Scouts, Boys Brigade and so on. Exemption d) is designed to apply in limited and specific local geographies and doesn't differentiate between Permit or commercial operations. Consequently, the ruling would appear to encompass:

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<sup>9</sup> ECJ Case-317/12 Daniel Lundberg

- All community transport group travel and minibus brokerage projects;
- The majority of dial-a-ride services;
- All s22 Community Buses.

This is clearly a major issue for the CT sector.

5. Faced with this we think that CT operators will need to decide between four options:

- a) Upgrade to PSV operation;
- b) Downsize their vehicles to 8 passengers or fewer;
- c) Cease operation;
- d) Close down, but back their minibus operation into a larger, non-transport, organisation such as a Council for Voluntary Service.

This last option will create definitional problems for the DfT in writing guidance and for DVSA and the Traffic Commissioners in implementation. In particular it raises the question as to whether local authorities are exempted and, if not, whether they may end up taking over some CT operations.

6. It is the case that a small number of CTs (we estimate less than 50) are already in possession of a PSV 'O' licence and so would forego some of the costs involved in upgrading. However, these CTs operations are still largely based on s19 Permits for the bulk of their work, and the majority of their drivers would still need training to full D level.
7. Taking s22 Community Buses as an example, whilst there are ca. 970 Permits in issue, a proportion of these are not in use. We estimate that there are 750 Community Buses in operation. Taking a typical Community Bus operation such as the Soar Valley Community Bus<sup>10</sup> on the Nottinghamshire – Leicestershire border – this is run by an unpaid volunteer committee of 7 and some 30 volunteer drivers. It runs two accessible 16 seat Bluebird Orion minibuses. It operates seven scheduled bus services each week under a 'de minimis' contract from Nottinghamshire CC of £67/day. It also runs a door to door dial-a-ride service to facilitate community care and shopping in the village of East Leake, as well as day trips out and work for local schools, etc. Their bus operations carried 12,040 passengers last year; with a further 3,266 on their dial-a-ride and group travel. They only have one driver with a D driving licence and he is well over 70. They are clear that they could not transfer to PSV operation both because of the costs and the inability to attract volunteers with a D licence. They would have to cease operation with the result that many of their passengers would be virtually housebound, losing their independence and with their quality of life and health diminished.

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<sup>10</sup> See <https://www.soarvalleybus.co.uk/>

8. Applying Soar Valley's productivity suggests that s22 Community Buses deliver around 5.7 million trips each year. A significant proportion of these passengers are elderly and benefit from or require level (via a passenger lift) or low floor access to be able to use a bus.
9. Estimating what Community Buses would do if they could no longer use permits is difficult. We don't think that there are obvious organisations that they could back their operations into, so that option is discounted. Perhaps, then:
  - 250 will try to upgrade to a PSV operation – these are most likely to be the Community Buses that already have one or more paid drivers;
  - 250 will downsize, converting into a voluntary car scheme with one or two MPVs;
  - 250 will cease operations.

### **UPGRADING TO PSV OPERATION**

10. Upgrading to PSV operation involves significant extra costs which will need to be paid for somehow. This will be very challenging for operations that are already working on the margins of financial sustainability. There can be little expectation that local authorities that are already facing budget difficulties with their support for bus services will simply be able to pick up these additional costs.
11. Every indication is that the requirement to obtain a D1/D driving licence, including the periodic medical for older drivers, and for continuing training under Driver CPC arrangements will act as a major deterrent to the retention of many current volunteers, and recruitment for the future, particularly given the current age profile of Community Bus drivers. This loss of volunteers is bound to have an impact on the viability of the bus services either because there won't be enough people to drive them or because there isn't enough income to pay someone to drive.
12. Additional costs include licensing<sup>11</sup>, annual testing<sup>12</sup>, bus service registration<sup>13</sup>, insurance, training the manager to obtain their Professional Competence<sup>14</sup> and some other minor changes. There are no additional maintenance costs because CTs already meet the required standards. However, the largest costs come from the need to train existing drivers to obtain their D1/D driving entitlement<sup>15</sup> or, faced with the loss of volunteers to recruit and train replacements and potentially to convert from a volunteer driven to a paid driver operation. Assuming 1.5 paid (part-time) drivers per vehicle and 5 volunteers, the cost of upgrading from a s22 operation to a PSV operation is likely to be around £12,000 per vehicle with a continuing annual additional cost (mostly relating to the need to continue

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<sup>11</sup> £209 for an 'O' licence, compared to £55 for a s22 Permit

<sup>12</sup> £127 compared to £60

<sup>13</sup> £60 compared to £13

<sup>14</sup> £2,000 for an intensive residential course e.g. from [Friendberry.co.uk](http://Friendberry.co.uk)

<sup>15</sup> Cost of training varies from £450 to over £1,000. Tests cost £315. Staff need to be paid whilst training. There was a 41% PCV test failure rate in 2016/17 so an allowance for retests is required.

recruiting and training drivers) of around £4,000 per vehicle. This excludes additional costs that would follow a decision to replace volunteers with paid drivers.

13. For the 250 vehicles that it is assumed might upgrade, this implies an immediate additional financing requirement of £3m, with at least an extra £1m p.a. thereafter. This would simply allow them to keep running exactly the same services that they are now.
14. A sample of 6 recent Community Bus annual accounts showed an average annual turnover of £34,474 which underlines just how difficult the change to PSV operation will be for their business model. In the longer term it seems likely that this will prove too challenging and we will see further closures.

### **DOWNSIZING THE VEHICLES**

15. Downsizing the vehicles has a number of implications. Where there is a move to a social car scheme, then concessionary fares will not apply and BSOG (Bus Service Operators Grant) is also lost. There will be a transfer of costs to users who will in future be paying on a per mile basis. An MPV-based service will also lose concessionary fares eligibility but will be able to claim some BSOG if accessible. Again, there will be a transfer of costs to users whose fares will go up. We estimate the additional cost to users that will derive from downsizing as ca. £6.3m p.a.
16. In addition the organisations would require to replace existing minibuses with at least 2 accessible MPVs if effective capacity is not to be lost. A second-hand minibus will not fund two accessible MPVs so additional finance would be required to make this change, estimated as a one-off £4m.
17. A further impact of downsizing would be to double or treble the vehicle movements required which would inevitably result in an increase in accidents with, because of the move from a larger to a smaller vehicle, an associated increase in the severity of such accidents.

### **CEASING OPERATION**

18. A proportion of the bus services that would be lost may be bought back in by the local authorities affected, but with an increase in costs. This might end up costing authorities £300k extra per year. The majority (say 90%) of services will close, however. This would result in the loss of 1.8m passenger journeys a year, with a significant impact on social welfare, health & wellbeing resulting in additional costs to the NHS, to adult social care and to friends and family. Some passengers will be forced to take taxis, but note that whereas the majority will have travelled for free on the Community Bus under the National Concessionary Travel Scheme, they will have to pay for their taxi journeys which in rural areas will be expensive. If all 1.9m trips were replaced by taxi journeys at, say, £9 a trip, that would amount to an additional cost to users of £17.1m p.a. – that is the crude value of the loss that would occur.

**19.** In summary, the impact on 750 s22 Community Bus services will amount to:

- e) One-off change costs of £7m
- f) Additional running costs of £1m p.a. – assuming existing volunteers can be trained as PCV drivers or £3.9m p.a. if drivers are employed on minimum wage to cover 30 hours a week
- g) 1.9m trips converted to car or MPV no longer eligible for concessions
- h) Loss of 1.9m trips altogether
- i) Loss of value to users £23.4m p.a.

**20.** Of course, this only applies to the smallest part of the CT operating sector. There remain some 1,500 or so dial-a-ride vehicles operating under s19 Permits with a further 3,500 providing group travel and minibuss brokerage operations. Quite apart from the additional costs of operation and the further costs to users that would result from a need to convert these to PSV operation it is frankly inconceivable that this can be undertaken within even a 2 year timescale given the current shortage of PSV qualified drivers. Even if all the CT operators were to move now, there isn't the capacity in the training and testing infrastructure to cope with the surge in demand that this would create. Recruitment of new drivers will be challenging. According to Trapeze Group, transport management software providers, almost half of new drivers recruited in the UK leave within the first twelve weeks of their employment. They also estimated commercial recruitment and training costs of £3,500 per driver.

**21.** Estimating the costs involved in converting s19 services to PSV operation is even more challenging. A higher proportion of the dial-a-ride services for disabled people already use paid drivers, but for those that use volunteers the impact on the cost per trip of an enforced move to paid staff will be very significant because the time taken for each trip reflects the additional care and assistance that is required. There is no doubt that many of the smaller dial-a-ride schemes will either close down or downsize. With the larger funded schemes, the reality is that they are unlikely to receive any additional funding from their local authorities, so the additional costs will be managed by cutting back on services.

**22.** We have assumed that on average, dial-a-ride vehicles are 50% more productive than Community Buses, whilst group travel minibuses are 50% less productive, and that the same three options – PSV / downsize / close down – are considered. Most dial-a-rides services are not eligible for concessionary fares and few group travel trips are. This reflects the fact that including s19 services in concessionary travel schemes is discretionary and almost all authorities that used to include their dial-a-rides have now ceased to do so. Most such services are eligible for BSOG when they are carrying qualifying passengers, but this eligibility could be lost on converting to PSV operation. The financial impact on passengers could be mitigated if dial-a-ride services were to be registered as bus services after conversion to PSV operation. This would mean that passengers would be able to

use their concessionary entitlement. However, this would require a change in the rules for flexible service registration as well as opening these services out to the general public. Although as registered services they would, in principle benefit from BSOG, in practice they would be considered 'supported services' – in England<sup>16</sup>, this would mean no additional payments would be made to the local authorities involved.

**23.** Taking all the above into account and scaling up the results suggests the following impact:

	<b>Dial-a-Rides</b>	<b>Group Travel</b>	<b>Community Buses</b>	<b>Total</b>
Vehicles	1,500	3,500	750	6,750
One-off change costs	£21m	£16.3m	£7m	£44.3m
Annual extra running costs (if volunteers)	£3m	£2.3m	£1m	£6.3m
Annual extra running costs (if paid staff)	£4m	£13m	£3.9m	£20.9m
Trips that are downsized	5.7m	4.4m	1.8m	12m
Trips lost altogether	5.7m	4.4m	1.8m	12m
Loss of value to users	£54.2m	£41.4m	£23.4m	£119m

**24.** The figures may seem high, but it must be remembered that the majority of trips concerned involve accessible services that require additional care and support to the passengers – these are high value trips. The CT sector currently benefits from some 25,000 volunteers, some driving regularly and some occasionally, but between them donating at least 10 million hours of their time every year. Replacing this, even at the minimum wage of £7.50 per hour will explain the scale of the costs set out above.

**25.** The above analysis has focused on the impact on CT operators. We anticipate that the various contributions that the Committee will receive directly from CT services themselves will make crystal clear the ways in which their passengers benefit the user-friendly nature of the services and the devastating impact on individual lives that will occur if they are lost. For many CT passengers, these services are much more than simply a means of getting from A to B. They are an integral part of the local care and support system that enables them to maintain their independence.

**26.** Whilst the personal impact is paramount, the loss of CT services will also have an impact on other areas of the economy, particularly health and adult social care. The impact of loneliness and isolation is a growing problem for the UK with 14 million over the age of 60 of whom various estimates suggest that some 4 million

<sup>16</sup> BSOG and travel concessions are devolved issues and are treated differently in the four parts of the UK. The issue is the same though – there would be a requirement for changes to eligibility arrangements if the change to PSV is to be mitigated.

may be experiencing loneliness. The immediate impact of this on their wellbeing includes depression, disrupted sleep, anxiety and stress. In turn this results in pressure on carers as people lose their independence, more visits to GPs and additional social care costs. The estimates of the additional costs to the UK economy that result from loneliness and isolation range between £1.3b and £2.9b p.a., reflecting:

- Increased use of home care services
- More domiciliary GP visiting
- Higher rates of non-elective hospital admissions
- Earlier admission into residential or nursing care
- More likelihood of visits to A&E

**27.** Community transport is an effective mitigation to loneliness amongst the elderly by bringing people together and providing them with access to facilities and activities. A recent analysis by Deloitte<sup>17</sup> suggests that community transport provision in the UK currently mitigates the costs of loneliness by between £400m and £1.1bn. If the impact of enforced change from Permit operation to PSV operation does result in the loss of roughly one third of the trips currently delivered, then this would result in longer term additional costs to the health and care sectors amounting to between £133m and £366m.

**28.** With the UK population continuing to age rapidly, this issue is becoming more and more important and perhaps more than any other explains why there really is a requirement to look at CT provision from the point of view of overall social benefit and added value, and not simply from a narrow viewpoint of technical regulation.

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<sup>17</sup> Why Community Transport Matters - [http://ectcharity.co.uk/files/uploads/ECT\\_Why\\_community\\_transport\\_matters\\_Final\\_version4.pdf](http://ectcharity.co.uk/files/uploads/ECT_Why_community_transport_matters_Final_version4.pdf)

***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***

**BACKGROUND**

1. CT services are the least likely of all modes of public transport to be able to finance themselves through a conventional farebox model. They are targeted at individuals and groups for whom the conventional commercial market does not provide a good quality affordable solution because of:
  - the need for door to door, or even room to room, service;
  - the need for accessible minibuses (at significant cost), additional accessibility equipment and features on the vehicle;
  - the need for additional personal care and assistance boarding and alighting;
  - the need to serve more isolated rural communities meaning longer journey times and limited potential for multiple pick-ups.
2. These factors add significantly to the cost of journeys and make them unaffordable for significant numbers of passengers. Whilst the use of technology (such as automated dispatch systems) can reduce cost the main cost of labour time cannot be reduced. In some areas, primarily metropolitan<sup>18</sup>, there has been political acceptance that CT passengers have a right to fully funded transport with paid staff but generally complete full cost funding is not available. CT groups have therefore adopted a variety of ways to deliver their services including:
  - the use of volunteers to reduce labour costs in both frontline delivery and management;
  - charitable fund-raising, either directly or via trusts, the Big Lottery or equivalent;
  - implicit or explicit internal cross-subsidy.
3. The enormous variation in the scope, scale and forms of CT and the services they operate means that a single funding model is not appropriate to all circumstances. The primary funding agency is generally the local authority, who in most cases combine the functions of passenger transport authority, social work authority and education authority as well as taking responsibility for planning and community development<sup>19</sup>. This should allow for an integrated approach to funding,

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<sup>18</sup> e.g. TFL's support for dial-a-ride in London, TfGM's support for Ring & Ride in Greater Manchester, Centro's support for Ring and Ride in West Midlands.

<sup>19</sup> This model does not apply in London and the metropolitan districts where there needs to be close liaison between the transport authority and the local authorities for integrated funding to work. It also does not apply in Northern Ireland where three completely independent agencies have responsibility. As in London and the Metropolitan areas, it is the public transport agency (Department for Infrastructure) that has taken the lead in CT funding and which is currently struggling to engage the education and social work agencies in a transport integration programme.

recognising that CT services are designed around user needs that cross departmental boundaries. For example, a young person with disabilities may need specialist transport to school (a statutory function), as well as using the same transport to participate in after-school activities, an evening youth club or holiday clubs.

4. It makes little sense for these arrangements to be specified, commissioned and funded completely separately leading to duplication of effort, confusion for the passenger and paying for two lots of peak costs but this silo-based approach has unfortunately been the norm for most CT operators and their passengers. CT operators have charitable objectives that stretch beyond local authorities' basic statutory duties and therefore add value to local authorities by combining their individual department and general responsibilities to facilitate coherent communities. For example, many CT passengers are older people who can no longer use conventional public transport. CT enables them to go shopping, meet and make friends and make use of their local community services which in turn combats loneliness and social isolation, maintains their independence and ensures they continue to contribute to society. As a result, they don't need to call upon expensive local authority social services or NHS facilities. However, there are currently no funding streams which reflect this and so in the current economic climate local authorities have retrenched towards providing services that focus on the greatest need but this provides poor value in the longer term.
5. The issue that has led to the current regulatory 'crisis' has arisen as a direct result of the above. CT operators are committed to delivering affordable accessible services that are outside local authority core statutory duties in respect of school transport (including mainstream and SEN) and day centre transport. This contrasts with local authority in-house provision which minimises costs by restriction to peak-hour operation only. It also contrasts with the commercial sector which has no incentive to integrate funded core services with under-funded additional services which will never be financially sustainable through the farebox.
6. A combination of:
  - the gap between the demand for CT services and the funding available for those services;
  - explicit government endorsement<sup>20</sup> of the 'social enterprise' model for CT;
  - direct requests from local authorities that are facing difficulty in obtaining suitable quality providers;
  - awareness of the potential to make better use of available resources;

has resulted in some CT operators bidding for contracts to undertake home to school and day care transport.

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<sup>20</sup> e.g. Hackney CT is cited as a case study in the transport section of **Social Enterprise in the UK: Developing a Thriving Social Enterprise Sector** (British Council 2015). See: [https://www.britishcouncil.org/sites/default/files/social\\_enterprise\\_in\\_the\\_uk\\_final\\_web\\_spreads.pdf](https://www.britishcouncil.org/sites/default/files/social_enterprise_in_the_uk_final_web_spreads.pdf)

7. This has the following benefits for local authorities and CT passengers:

- high quality reliable providers;
- lower costs;
- added social value from the CT services provided using the vehicles and staff when not being used on contracts.

## **THE ISSUES RELEVANT TO THE CT SECTOR**

### The tensions between the competing functions of passenger transport, social work and education

8. Mobility Matters understands why from a purely regulatory viewpoint there has been a call for a 'level playing field' even though there is no safety or quality case for this, but it must be recognised that the Permit system was introduced to keep costs as low as possible in situations where there is no incentive to cut corners on safety or quality. There is no reason why a local authority, as a not-for-profit organisation should not benefit from lower costs by contracting with a CT operator utilising Permits.
9. In principle, the local authority might support the additional CT services by pursuing the integrated 'Total Transport' model that is generally recommended as 'best practice', including by the Transport Select Committee itself<sup>21</sup>. It could do this by taking the additional social value that CT operators create into account in the procurement process. However:
- this would not eliminate the introduction of unnecessary extra costs into the process;
  - despite the introduction of the Public Services (Social Value) Act 2012, the actual experience of the CT sector is that very few local authorities actually implement that effectively in passenger transport procurement. The vast majority utilise 'lowest cost' as the award criterion, giving no opportunity for CT bidders to propose an offer that provides the authority with 'best value' by taking cross-departmental benefits into account. This applies even where Integrated Transport Units undertake the procurement, because the pressure from Children's Services and Social Work client departments is for maximum short-term savings from the procurement of their specific transport, and this has greater weight within authorities than any cross-sector benefits that could be pursued, let alone savings for the future in terms of, for example, care costs.
10. To actually deliver integrated statutory and non-statutory services using this model would require:

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<sup>21</sup> *Passenger transport in isolated communities; Transport Committee – Fourth Report, July 2014, §38-42*

- The Public Services (Social Value) Act to be strengthened to make it a duty not merely to consider the issue but to apply it – at least one authority has met its duty under the Act by explicitly stating it has considered social value in respect of school transport procurement and concluded there are no circumstances where it could apply;
- Practical guidance given to Integrated Transport Units on how to implement social value assessment for passenger transport procurement. The experience in Scotland, which is more advanced than England & Wales, is that simple social value metrics are chosen such as the number of apprenticeships created. These are inappropriate for the CT business model.

#### The increased demand for CT

11. Current statistics around population growth and increasing aging of communities means that demand for CT is on the increase and that this increase will continue. In addition, grant funding from local authorities has been cut year on year and consequently CT operators have to find alternative funding solutions. This is compounded by the fact that local authorities report a shortage of good quality accessible minibuses available to them from the local commercial PSV market. The alternative for the authority, if they cannot use CT minibuses, is to hire in more accessible taxis and private hire cars, which significantly increases costs because more drivers and passenger assistants are required.

#### The operator and driver shortage and skills gaps

12. There is also a shortage of operators who understand disability and age-related issues. A significant amount of empathy is required for owners and managers to develop the skill set required and the ability to recruit and motivate staff to serve this passenger group. This is as much about caring as it is about providing transport.
13. Finally, there is a shortage of drivers in the CT sector with the appropriate skills and interest which is compounded by the fact that there is also a shortage in the bus and coach industry for conventional service work. The lack of spare capacity is confirmed by the recent figures for PCV Drivers claiming Jobseeker's Allowance shown below – only 150 people whose usual occupation was bus and coach driving were claiming JSA in September 2017.
14. Two reports<sup>22</sup> by People 1st, the passenger transport sector lead training body make a number of relevant points:
  - Driving PSVs is still a predominantly male activity with 91% men, despite various positive action programmes<sup>23</sup>. Much school and day care transport,

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<sup>22</sup> Skills and workforce profile - Bus and coach, People 1st, January 2017; Bus and Coach – A greying workforce, 2015

<sup>23</sup> In the last 5 years, the proportion of PCV Licence holders who are women has risen from 5.4% to 5.9% - DVLA Driver Licence Data Table DRL0110

being strongly peaked, only creates part-time work opportunities<sup>24</sup> and will therefore not be financially feasible for those who are the primary family earner.

- 25% of drivers are migrant workers, reflecting the underlying lack of interest in bus and coach driving amongst the indigenous population, probably caused by relatively low rates of pay. Of these migrants, 42% come from within the EU. With net migration predicted to fall until 2023<sup>25</sup> this labour source will become more difficult to tap into.
- There is an ageing workforce - 20% of bus and coach drivers are aged between 60 and 64. Attracting young people in particular has been difficult given the minimum age restrictions to drive passenger carrying vehicles, the cost of insuring younger drivers and the costs of training, with the result that only 7% are under 30.

**15.** If the contention from the Department for Transport that work which is currently being undertaken by drivers using restricted D1 driving licences will now require full D/D1 licences in future was adopted the loss of the potentially available labour pool is graphically illustrated in the two tables below taken from the latest dataset published by the Driver & Vehicle Licensing Agency.

**16.** Key data shows:

- 1.95 million drivers hold a full D1 or restricted D1(101) entitlement to drive a minibus. By contrast, only 225,000 drivers hold a D entitlement<sup>26</sup>
- 45% of D1 licence holders are female against 5% of D licence holders
- D1 licence holding tails off at age 70 when a specific medical test is required for the entitlement to be renewed

**17.** 38 is a critical age for D1 entitlement because driving licences issued to drivers who first passed their standard driving test before 1 January 1997 contain that entitlement. This reflects a written commitment from the EU Commission that the impact of the 2nd Driver Licensing Directive which harmonised driver licensing tests and categories across Europe would not act retrospectively. Current DfT proposals would breach that commitment, resulting in the opportunity to be employed driving a minibus<sup>27</sup> for the CT sector and potentially any employment driving a minibus using their current entitlement being unilaterally withdrawn.

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<sup>24</sup> 21% of bus and coach driving is part-time – Office for National Statistics, EMP04: Employment by Occupation - Quarter 2 : Apr-Jun 2017

<sup>25</sup> National Population Projections: 2016-based statistical bulletin, Office for National Statistics, October 2017

<sup>26</sup> Category D is the standard required to drive any bus with more than 8 passenger seats and is attained following an additional PCV driving test and is subject to ongoing CPC requirements. Category D1 and restricted D1 (101) entitlements do not necessarily require the PCV test and restrict the size and weight of vehicle to 'minibus' size (up to 16 seats).

<sup>27</sup> The Department for Infrastructure in Northern Ireland is interpreting the European Regulation to mean that all paid minibus drivers will require an unrestricted D1 driving licence and a Drivers Certificate of Professional Competence. See: <https://www.infrastructure-ni.gov.uk/consultations/consultations-proposed-changes-section-10b-permits-and-guidance-minibus-driving>

18. This provides compelling evidence that introducing a requirement for employed CT drivers to hold unrestricted D/D1 and the Driver CPC qualification would be impossible to implement, in the short or medium term, regardless of the costs involved. The scale of the proposed change is simply too large and not possible to achieve.
19. In addition, PSV driving test failure rates are significant – 41% failed in 2016/17<sup>28</sup> and it is reported<sup>29</sup> by the Trapeze Group (major passenger transport management software supplier) that almost half of new drivers recruited in the UK leave within the first 12 weeks of their employment. They also estimated commercial recruitment and training costs are £3,500 per driver.

### Funding issues

- BSOG is payable for some CT journeys and provides vital income to CT operators and also prevents total reliability on a single funding source such as the local authority.
  - The DfT Minibus Grant Scheme (and its equivalent in Scotland) provides a vital resource to small and medium-sized CT operators and reflects the traditional model of replacing vehicles through fund-raising rather than through charges to users, which may be feasible for smaller groups but not for larger CT operators
  - Historically concessionary fares provided a valuable income stream to CT operators but very few local authorities now include CT schemes e.g. when Lancashire County Council took over transport from the Districts it excluded CT operators thus cutting off a £600k income stream (across all the CTs in Lancashire) at short notice
20. CT operators cannot self-finance through user charges alone and so the model of grants from local authorities has been replaced by some CT operators tendering for contracts from local authorities to subsidise their charitable activities.

### **THE SUGGESTED NEW APPROACH**

21. Operator licensing is based on road safety and fair competition and it is vital that any new approach recognises those key objectives. The call for a 'level playing field' on licensing reflects the interests of PSV operator licence holders and not those of passengers and the wider community which the CT sector serves so well.
22. As shown in the earlier section [**The safety, security and service quality implications**] there is no safety case for the proposed change.
23. As shown in the earlier section [**The effects on commercial operators**] the vast majority of CT journeys are undertaken by CT operators which commercial PSV O licence holders have no interest (financial or social) in operating.

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<sup>28</sup> DVSA0601 - Passenger carrying vehicle (PCV) driving test data, July 2017

<sup>29</sup> <http://www.trapezegrup.co.uk/article/cost-of-driver-attrition-what-to-do-about-it>

- 24.** Mobility Matters welcomes much greater clarity regarding the legislative framework within which the CT sector works and welcomes new guidance as to how their work complies with both domestic and European legislation where there may be an apparent conflict between the two.
- 25.** It also recognises that in goods operator licensing those whose main business is not the commercial carriage of goods are required to hold a restricted operator licence (in certain cases) but are not required to comply with the requirements of financial standing and professional competence. Mobility Matters sees no reason why this principle should not be extended to the CT sector.

#### A new suggested approach to licensing

- 26.** The current permit licensing scheme is outdated and no longer fit for purpose. It is in need of substantial review. Both Traffic Commissioners and the industry have been calling for change for many years. The Department for Transport has always resisted this change. To ensure a licensing scheme which suits the rigours of 21st century vehicle operation and the complex needs of passengers served by the CT sector Mobility Matters considers that the following licensing regime would address all issues identified above.
- Only one independent regulatory body, namely the Traffic Commissioners, should issue permits. These permits can only be issued to those legal entities who have clear charitable status. This would have the following benefits
    - ensure consistency of decision making through Statutory Guidance and Directions from the Senior Traffic Commissioner
    - ensure the promotion of road safety through Statutory Guidance and Directions from the Senior Traffic Commissioner which would make it clear that permits will only be issued to those CT operators where transport is their main business who will undertake to adhere to the DVSA Guide to Roadworthiness
    - ensure that regulatory action taken against non-compliant permit holders is carried out in a consistent manner through Statutory Guidance and Directions from the Senior Traffic Commissioner
    - prevent conflicts of interest and self-serving activities where local authorities grant themselves permits when another regulatory issuing body has refused to do so.
    - ensure proper separation and clarity of the role of the Community Transport Association which is currently part funded by Government and yet which currently issues permits.
  - A comprehensive electronic database should be instituted and maintained of all permit holders.

- Guidance should be issued which ensures that the distinction between CT operators who primarily provide transport and those who use it to support their charitable activity such as Scouts, Churches and schools is properly understood and that those who use it to support their charitable activity might have less onerous maintenance regimes.
- It should be accepted as a general principle and guidance should be issued that some CT operators will tender for contracts which will result in a surplus and that provided this surplus is used to fund its charitable objectives that this does not bring the operation into the field of commercial activity as defined by EU Regulation 1071/2009.
- It should be accepted as a general principle and guidance should be issued that (regardless of whether the primary purpose of the CT operator is to provide transport or not) that there should be an individual person nominated and named on the licence who undertakes to take responsibility for the safe operation of the vehicles. This named individual would not have to take and pass the onerous transport manager CPC examination but would commit to annual continuous professional development training of, for example, a minimum of one day per calendar year. The CT operator would also undertake to notify the Traffic Commissioner in the event of that person ceasing to have that responsibility and the TC would then require (through statutory guidance) the nomination of another individual. This would strike an appropriate balance between the onerous transport manager requirements in PSV operator licensing and the need to ensure named individuals are familiar with the requirements of vehicle operation at a modest cost.
- It should be accepted as a general principle and guidance should be issued (regardless of whether the primary purpose of the CT operator is to provide transport or not) that their drivers must have a full driver assessment before they are employed either as a volunteer or in a paid capacity and that they must then ensure they receive MiDAS training through the standard MiDAS course and then refresher training of, for example, a minimum of 1 day a year. This would strike an appropriate balance between the onerous D1 licence requirements and the driver CPC in PSV operator licensing and the need to ensure drivers are familiar with the requirements of vehicle operation at a modest cost.