

## **DCC Draft Response to the DfT Consultation on the use of Community Transport Permits**

Devon County Council (DCC) is a leading authority in the management of passenger transport. Our Transport Co-ordination Service (TCS) manages all aspects of passenger transport for DCC and other partners, including the NHS.

Through TCS, DCC:

- Supports and funds Community Transport (CT), including Ring & Ride (Section 19) and registered local bus services (Section 22).
- Procures public, education, social care and health transport services from the external market, which includes operators of minibuses under CT permits.
- Operate an in-house fleet of vehicles under Section 19.

Our local CT groups will be making their own responses and will be answering a series of context questions aimed at those operating using CT permits. Many of these questions are of a quantitative nature asking how many vehicles, drivers, staff etc they have.

DfT recommended the groups seek independent legal advice regarding operating models and compliance issues. Local CT groups have pointed out that specialist legal expertise regarding interpretation of transport legislation will be too cost prohibitive for many of them to obtain. It would make more sense for this to be carried out centrally by one parent organisation representing CT.

DfT are looking for as much help as possible to generate solutions from the responses they get to this consultation. DCC's response recognises that whilst the Government value the work of the CT sector, it is clear that the DfT consider **there is no flexibility in the law for the UK Government to introduce further exemptions**. This was reiterated at the DfT workshop in Exeter on 5<sup>th</sup> April 2018. Therefore, we are responding to DfT's request asking how they can provide further clarity on the proposed changes to guidance, potential impacts and likely effects the changes may have.

DfT have set out a series of questions, inviting suggestions for changes or additions to the proposed guidance. Below each question, we have set out the DfT explanation, where further detail is required, followed by the proposed DCC response.

### **Question 1**

**Do you have any comments on how the proposed guidance clarifications in respect of organisations "...engaged in road passenger transport services exclusively for non-commercial purposes" could be further improved or clarified? In particular, do you believe there are further examples of "non-commercial" activity which we should include?**

This question requires a breakdown of how CT operators can rely on the non-commercial exemption if all the services they operate fall within one or more of the following categories:

**1a: The service is free of charge**

**DfT explanation:**

No charge is imposed, either on passengers or any third party (such as a local authority). Voluntary donations (including money or time), grants which are not conditional upon the provision of any transport service and income from non-transport activities can be ignored.

**DCC response:**

The drive has been for CT to be as self-sustainable as possible. Therefore, all DCC supported CT services make a charge and grants are conditional on the transport service provided. Services would not be able to continue if no charge were made. To help sustain these services, CT groups also operate numerous small DCC contracts e.g. to provide home to school transport.

**1b: Any charge for service is substantially less than cost**

**DfT explanation:**

Any charge imposed on passengers or any third party (such as a local authority) is substantially less than the cost of providing the service because the cost is heavily subsidised (for example, by voluntary donations of money or time, unconditional grants or income from non-transport activities). As a broad rule-of-thumb, “substantially less than cost” means more than 10% less than cost.

**DCC response:**

A clearer definition of exactly what costs can be included should be set out. For example, can groups use full cost recovery, can vehicle depreciation be considered, is there an allowance for driver training and time, etc?

When hiring vehicles out to groups in the community could this be included as non-commercial if no other PSV operator exists? It is likely that these individual hires add up to less than 10% of the cost but presumably this could not be looked at in isolation.

**1c: Any charge for service equals (or exceeds) cost**

**DfT explanation:**

Even if a charge is imposed which equals (or exceeds) cost, if there is no competition for any of those services from the holders of PSV licences (‘commercial operators’). This includes situations in which no commercial operator:

- pre-qualifies or bids for any local authority contract; or

- provides any equivalent service (i.e. for a similar class of passengers, on a similar route and during a similar time period).

**DCC response:**

In some cases where DCC will tender a service there may be an option from the taxi and private hire operators. Clarity is therefore required whether this exemption applies if this sector bids or not. The wording in the consultation mentions only the holders of PSV licences.

**1d: Absence of competition**

**DfT explanation:**

If a CT operator is relying on the absence of competition from commercial operators, the CT operator must be able to provide appropriate evidence. For example, confirmation might be obtained from:

- the relevant local authority, to the effect that local commercial operators have shown no interest in competing for contracts; or
- local commercial operators, to the effect that they have no intention of bidding for contracts or operating competing services.

**DCC response:**

In order to help local authorities manage 'the absence of competition' evidence, the DfT will need to set out in the guidance a form of wording that gives a consistent approach across the UK.

LAs will require clarification on how long the 'evidence' will stand for. For example, would this be the length of the LA contract for which there was no response or will DfT specify the term in the guidance?

A new commercial operator could express an interest after the evidence has been received and the work is undertaken by the CT group on the basis of the nil response.

There is a concern from LAs that a commercial operator may submit an unrealistic price which would make the service unsustainable and unaffordable. Therefore LAs will need to be clear in their procurement process and tender specification what constitutes an acceptable bid. Guidance from the DfT in this area would be helpful in order to provide a consistent approach.

**1e: Occasional Services**

**DfT explanation:**

Even where the passengers pay for the cost, if the services are occasional and not regular in nature and are organised on a voluntary basis with an unpaid driver for a specific group of people (rather than members of the general public). This includes ad-hoc day trips for members of a recreational club or residents of a care home where the passengers share the costs.

**DCC response:**

A clearer definition of 'occasional service' is required, especially when taking into account the infrequent nature of rural transport in a county like Devon compared to a more urban setting.

Our understanding is that if a community bus driven by volunteers and subsidised by donations/grants is run by an CT group which also raises income through occasional private hire, then it fails the non-commercial test. This is likely to be true for all S22 operators in Devon as they cannot afford to offer unviable routes in remote rural locations without this additional income. We set out further concerns in this area under Question 2.

**1f: Incidental services****DfT explanation:**

Where vehicles are used by an organisation to carry individuals who have paid for non-transport services which are provided by the same organisation and the carriage is merely incidental to the provision of the other services. This includes attendance at a day centre or participating in lunch club.

The "non-commercial" test must be satisfied in relation to every service. If an operator provides a community bus service using a vehicle driven by volunteers and subsidised by donations or grants, the "non-commercial" test will not be satisfied if the operator also raises income through occasional private hire of that (or any other) vehicle.

**DCC response:**

Our response to this is covered in other areas as we feel that in deep rural areas there should be recognition of the fact that the hiring of a vehicle to community groups is their only option, especially for passengers with additional special needs who cannot be accommodated on conventional commercial vehicles.

There may also be unintended consequences in relation to how CT groups have bid for funding. For example, if groups have received funds such as Lottery grants for 3 years, which included a contribution towards paid driver costs, will they have to repay these if they can no longer pay a driver? i.e. these are public funds and probably 'conditional' in nature.

**Question 2**

**Do you have any comments on how the proposed guidance clarifications in respect of organisations "...which have a main occupation other than that of road passenger transport operator" could be further improved or clarified?**

**DfT Outline of proposed guidance:**

A permit may be awarded to any not-for-profit organisation whose main occupation is not road passenger transport.

An organisation's constitutional documents may be clear enough to justify a decision that road passenger transport is not their main occupation. This may, for example, include charities whose objectives are not primarily about transporting passengers.

In other cases, an organisation's main occupation may be obvious from their day-to-day activities.

Wherever an organisation's main occupation is unclear, the permit issuer or enforcement authority should consider the case on its own merits.

Organisations whose main occupation is not passenger transport can still use permits to operate transport that is a 'sideline' or incidental to their main activities. For example, this exemption will continue to cover vehicles operated by a wide variety of educational, religious, social, sporting and recreational organisations (e.g. Scout group minibuses) to provide transport.

A fixed criterion or test for the meaning of "main occupation" cannot be provided. Considering the wide diversity of uses for permits, any fixed criterion or measure may not be applicable in all circumstances. All cases should be determined on their individual merits by the relevant permit-issuer.

#### **DCC response:**

There are several groups in Devon which operate transport services but the income from which is unlikely to exceed their income for other non-transport services. We are aware that a small number of transport focused groups within Devon are considering changing their remit and charitable objectives to move their main interests away from transport provision. This could have the unfortunate effect of restricting the transport services they operate giving passengers less choice.

However, unlike in urban areas where non-transport groups such as Age Concern may have their own small fleets of vehicles, in Devon, these branches of national organisations are likely to be more widespread and smaller and instead of owning their vehicles, they are much more likely to hire a minibus from their local CT organisation. Therefore, the impact is not just upon the CT group but also any other community organisations who hire a vehicle.

Could there be a commercial test in deep rural areas where there are no commercial PCV operators to undertake private hires for community organisations? This is especially important for those requiring specialist accessible minibuses which are not widely available from the commercial market.

We are concerned regarding the lack of clarity in the consultation on the issue of Driver CPC requirements as this is likely to be a significant deciding factor in how CT groups cost and decide on their future operating options.

#### **Question 3**

**Do you have any views on whether and how the category "minor impact on the transport market because of the short distances involved" could be used in practice?**

**DCC response:**

We are unclear how this helps to achieve equity for the commercial and CT sectors and it is difficult to apply in deep rural areas.

A District level distinction is not workable even for those areas who remain two-tier. For unitary councils there are no districts! In addition, transport flows do not conveniently match local authority boundaries, even at a County level.

We are unable to offer any ideas on how this could be measured, and it would be open to challenge from the commercial sector.

Even a CT operator may operate services some distance from their base and have dead mileage to consider.

#### **Question 4**

**Based on how the Department proposes to apply the exemption for organisations "...engaged in road passenger transport services exclusively for non-commercial purposes"<sup>1</sup> (Table A, paragraphs 3.14 on page 12 to 3.18 on page 14), does your organisation fit into this exemption?**

**DCC response:**

As a local authority, yes.

#### **Question 5**

**Based on how the Department proposes to apply the exemption for organisations "...which have a main occupation other than that of road passenger transport operator"<sup>2</sup> (Table B, paragraphs 3.19 to 3.21 on page 15), does your organisation fit into this exemption?**

**DCC response:**

As a local authority, yes.

#### **Question 6**

**Based on how the Department proposes to interpret the exemptions to the Regulation, do you think that there could be impacts for specific groups in society?**

**DCC response:**

This has the potential to have a major impact on local services which focus on access for frail elderly and disabled persons and the rurally isolated who have

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<sup>1</sup> Regulation 1071/2009 Article 1 (4) (b)

<sup>2</sup> Regulation 1071/2009 Article 1 4 (b)

not access to alternative public transport. Any loss of transport services potentially increases pressure on the social care and NHS sector.

The CT sector in Devon accounts for approximately 239,000 passenger trips a year (2016 figures) Very few services can be sustained without on-going revenue support including grants from County, District, Town and Parish Council grants (all deemed 'conditional' grants).

Whilst a transport authority has the mechanism to move to a contractual based service other grant giving bodies, such as District, Town and Parish Councils may not have that flexibility and sources of income to sustain services will be lost.

The loss of transport services will have a knock-on effect for CTs running multiple related services alongside minibus transport including community car schemes and Shopmobility. If the CT group ceases to operate, these services will also be lost. The effect on passengers for these services could be far greater than simply the loss of a minibus service and could result in lack of access, isolation, decreased access to health appointments at doctors' surgeries and hospitals, depression and other physical and mental health issues.

If DCC replace services lost by the CT sector, we are very unlikely to replace anything but the most essential services meaning that all leisure or recreational trips and outings could be withdrawn for those not able to travel on conventional vehicles.

Many of the volunteers within the CT sector have been contributing their efforts for a significant length of time. We are already seeing some CT groups struggling to replace retiring volunteers, without the additional requirements which this change will bring.

DCC will aim to mitigate the impact wherever possible but continues to face challenging funding. Unlike many other council areas, DCC has not implemented large scale funding reductions for transport.