

Transport Committee

Oral evidence: [Community Transport](#), HC 480

Monday 27 November 2017

Ordered by the House of Commons to be published on 27 November 2017.

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Members present: Lilian Greenwood (Chair); Ronnie Cowan; Steve Double; Paul Girvan; Huw Merriman; Luke Pollard; Laura Smith; Iain Stewart; Martin Vickers; Daniel Zeichner.

Questions 88 - 189

Witnesses

I: Leon Daniels, Managing Director of Surface Transport, Transport for London; Sue Davey, Association of Transport Co-ordinating Officers; Dominic Davidson, Senior Transport Co-ordinator, Staffordshire County Council; and Peter Shelley, Head of Passenger Transport, Hampshire County Council.

II: Jesse Norman MP, Parliamentary Under-Secretary of State, Department for Transport; Stephen Fidler, Deputy Director Road Investment Strategy Client, Department for Transport; Peter Hearn, Head of Operations (North), Driver and Vehicle Standards Agency; and Kevin Rooney (Traffic Commissioner for the West of England), Traffic Commissioners for Great Britain.

Written evidence from witnesses:

- [Transport for London](#)
- [Hampshire County Council](#)
- [Department for Transport](#)

Examination of witnesses

Witnesses: Leon Daniels, Sue Davey, Dominic Davidson and Peter Shelley.

Q88 Chair: Welcome and thank you very much for coming along today. Would each of you introduce yourself with your name and the organisation you represent, for the record of our proceedings?

Peter Shelley: I am Peter Shelley, head of passenger transport for Hampshire County Council.

Dominic Davidson: I am Dominic Davidson, senior transport co-ordinator with Staffordshire County Council.

Sue Davey: I am Sue Davey, representing ATCO.

Leon Daniels: I am Leon Daniels, managing director of surface transport at Transport for London.

Q89 Chair: Thank you. I will begin with a question directed to you, Sue. The DFT note of 9 November clarifies the Department's understanding of what can constitute "non-commercial" community transport permit services. I think we all found it helpful to read their note. Do you agree that the definition set out in the note is broader than that implied in the letter of 31 July?

Sue Davey: Obviously ATCO is made up of 700 members and they all have very mixed views. I have tried to find a common theme in the feedback that has been provided. There are still some areas requiring clarification. These are not my views; they are the views of the members.

There are still concerns about the focus on smaller community transport operators, and not addressing those who are medium, with 20 to 40 vehicles, and larger operations. Fine: yes to all contracts where there are no immediate commercial operators in the area, but there are still some issues around how they might transition to commercial licensing.

It seems that there is some ambiguity around the reference to operating non-commercially, when charges are made for fares that are substantially less than the cost of providing the service. It is not clear what that refers to, in terms of how much—10%, 50% or 90%? There is still some further clarification required.

Q90 Chair: Do you think there is a view across the group of local authority staff that you represent that the effects will be less widespread in community transport than perhaps people thought when they first read the letter that came out at the end of July?

Sue Davey: There are still concerns that some operators may not be able to make the transition.

Q91 Chair: As you said, was that particularly the medium-sized ones? Do you think the smaller operators are not so much affected, but it is the ones in



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the middle?

Sue Davey: There are larger operators that still depend on volunteer drivers. There are concerns that those volunteers will simply not be able to go through the required level of training.

Q92 **Chair:** In terms of your ATCO members, is their concern primarily around wanting more clarification about what the DFT is asking them to do, or are they concerned about what the impact is going to be on the community transport service and its sustainability?

Sue Davey: There are concerns about the impact, but there are also obviously concerns about the timescales required for the transition. The majority of local authorities are not currently issuing contracts. Whether that is sustainable for the long term, in terms of budget constraints and the impact that it will have on the operators themselves financially, is very questionable.

Q93 **Chair:** You just said that local authorities are not issuing contracts at the moment.

Sue Davey: No.

Q94 **Chair:** Do you mean that they have put things on hold pending clarification?

Sue Davey: Yes, pending the consultation.

Q95 **Chair:** Is that widespread across a whole range of local authorities?

Sue Davey: Fairly widespread, through fear of potential legal challenge.

Q96 **Chair:** Has that been the case from after the 31 July letter was issued?

Sue Davey: Yes.

Q97 **Chair:** It must have been causing quite some concern in the sector.

Sue Davey: Very much, yes.

Q98 **Daniel Zeichner:** I want to step back slightly with a broader question. Back in 2010-11, counties such as mine—Cambridgeshire—moved back from rural bus subsidy, partly because of their financial constraints. There was a suggestion that community transport would fill some of those gaps. This is to the three of you, but it is perhaps less appropriate for London. Do you recognise that and how do you think it has gone? What effect did it have on the tendering processes, if any?

Sue Davey: Local authorities moved towards tendering services for the sector, almost to put them on level pegging with the commercial sector, to avoid that commercial challenge, to make them more sustainable and to move away from grant funding, which was also open to challenges of state aid. The authorities were doing the best they could within the budget restraints to make the sector sustainable, taking consideration of the total transport initiative.



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Dominic Davidson: In Staffordshire, in recent years the amount of grant we provide to community and voluntary schemes has broadly remained the same. What has happened is that a number of community transport schemes received grant funding from district and borough councils, and over time those CTs have lost that, so other forms of generating income to be able to carry out the charitable activities have become more important.

Peter Shelley: The experience in Hampshire is that community transport provides something different. It is the caring, door-to-door type services. The drivers all get special training. Where bus services have come off, we have used the commercial taxi sector to provide on-demand services. To be honest, community transport is not a cheap option. Taxis are cheaper for that, but community transport has a unique role. All the passengers are risk assessed. They know the drivers and that sort of thing. It is doing something different. For us, no, it has not been a way of replacing bus services. We have used the commercial sector, the taxis, for that.

Q99 **Daniel Zeichner:** Going back to what Sue said earlier—I think you probably hinted at this—whereas traditionally some of the core community transport services were supported by grant, they moved to tendering. What do you think was the main driver? Was it reductions in funding or was it, as I think you were suggesting earlier, to create a level playing field?

Sue Davey: A mix really. Essentially, there was a building up of the commercial challenge on the horizon, and it was evident that they needed to be seen to go through that competitive tendering process.

Q100 **Daniel Zeichner:** Was that something that was reflected in both your authorities?

Dominic Davidson: We have not tendered community transport as such, but there have been a number of demand-responsive transport services within Staffordshire that community transport has successfully bid for. It is quite close to their core work; community transport is a form of demand-responsive transport, so it is something that naturally lends itself to their type of operation.

Peter Shelley: In Hampshire, we have done open tenders for community transport, dial-a-ride, on the same basis as local bus since 2009. To be honest, it has been because of concerns about allegations of state aid. We wanted to show that there was open book transparency and all the figures were out there. That was our driver. All our services are competitively tendered.

Q101 **Daniel Zeichner:** Leon, would it be the same experience in London?

Leon Daniels: Yes, it is. We use community transport for about 20% of the dial-a-ride provision that we have in London. That sector has grown up, not just in London but across the country, on the back of guidance issued by the then Department, and indeed the EU, 30 years ago. That



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sector in London, and outside, has taken up the slack provided by the withdrawal of other types of services. That industry now performs a very valuable role across the country, especially for us in London.

Our London situation is that, if the CT sector was not able to operate, there would be some serious consequences. We would find ourselves in a situation where we had to change the basis of the operation. The inevitability of that is that there would be less volume, because it would cost us more to do, and the quality would deteriorate because, as has already been expressed, the sorts of people who provide community transport services for charities—the staff who work operationally and inside—are providing a particular sort of service. Those people work in the sector, and, as Sue has already said, whether you are paid or a volunteer working in the community transport sector, if it is the case that in effect you now have to become a bus driver, there is a very real chance that you will not bother. I am afraid that, if they do not bother, it will have quite serious consequences.

We are particularly concerned since, as we discovered recently when we put out our own dial-a-ride services to open procurement across the commercial sector and across the CT sector, the commercial operators all failed to pre-qualify. That is because, of course, the qualities we are looking for are not just about driving standards but about helping people. You need somebody who will take somebody's shopping basket from the door; lock their front door with the keys; escort them down the path; put them in the bus; strap them in; and take them to where they want to go and so on. Those are not necessarily qualities you get from a straightforward, ordinary commercial operation. We feel very strongly that the quality of the service that would be provided, as well as the quantity, would be negatively affected.

Q102 Daniel Zeichner: That is very helpful and seamlessly moves on to my next question. We were led to believe by Mobility Matters that there is not really a truly contestable market for such contracts, because those services do not hold much appeal for commercial operators. Is that your experience?

Leon Daniels: Again, the fact that commercial operators were interested in getting to the PQQ stage for our particular contracts suggests there is an interest. But it appears that the sorts of services they are used to providing—the quality and the requirements—are not the ones we are looking for. That is again, as I said, about the special quality of the staff.

The commercial sector would say, of course, that it is inhibited by a higher cost base. We would simply argue that since the charities are working solely for the benefit of their charitable objectives and reinvesting any surpluses in the community, and if you compare that with a commercial sector looking for an adequate return on its investment, we believe it is much better to have the money reinvested in the community, if at all possible. Nothing prevents the commercial operator bidding on a



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reasonable basis in order to provide this sort of service, but we would have to be satisfied not only about the price but about the quality.

Sue Davey: I agree with those comments.

Peter Shelley: The Hampshire experience is that we have had open tenders since 2009. We have not had a successful compliant bid from a commercial operator, even though they are all on the same electronic tendering system. The contestability comes in that we encourage our community transport operators to provide some of our school transport contracts, again on open tender. I think that is what came to your Committee before. We encourage them to do that, to make better use of the vehicles and to provide additional funding that does not solely rely on subsidy from us. That is the area where there is an overlap with the commercial providers who are happy to do home-to-school contracts but less interested in risk-assessing passengers and, as Leon said, doing the door-to-door bit.

We have had no complaints from commercial operators. Our CT sector in Hampshire provides about £700,000-worth of school contracts out of a total spend of £31 million. They are out there, but nobody has complained. We have had no complaints on any of our tenders.

Dominic Davidson: Our experience depends on what we are tendering. Where we have tendered demand-responsive services, there has been a very low response rate and, in some cases, single bids from community transport organisations. I echo Peter's comments about contestability in the home-to-school market, which I think is where a lot of the bone of contention is. With special educational needs and home to school, particularly where you need a tail-lift, wheelchair accessible vehicle, yes, there are all the bidders in the market, but those are the things that we find it more difficult to find operators to cover. That is something the community transport organisations are very good at.

Q103 **Daniel Zeichner:** Going back to Peter's point about encouraging community transport operators to go into the home-to-school market, is there not a danger that it drags them into the commercial sector and hence this problem arises?

Peter Shelley: The background—the first 10 years or so—is that there were fears about state aid. We have ensured—and it is a requirement of our contract conditions—that they bid on an open book basis. Where Hampshire is coming from, we recognise that in the future there is likely to be less budget available. The dial-a-ride services do not start until half past nine, so if they can do a school contract before then, when the vehicle would be standing idle, it helps their funding stream. As long as they compete fairly—we have had no complaints otherwise—they provide a useful adjunct. As Dominic said, in some parts of Hampshire we do not have commercial operators with wheelchair accessible vehicles, and they fill that gap for us very well.



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Q104 **Chair:** One of the issues around the use of the permits has been a suggestion, let's say, that somehow the drivers of these minibuses are less safe than those who hold an operator's licence. From what you have said about quality, it seems to me that you do not have those concerns, but I would be grateful if you would confirm your view on that matter.

Leon Daniels: Our situation on our existing dial-a-ride services provided by the community transport sector is that we have zero killed and seriously injured across our network. The safety record is excellent. If one takes the view that increased regulation is necessary in order to cure some concern about the quality and the safety of delivery in the community transport sector, because the performance is so good we do not believe that any extra regulation or reinterpretation of the existing regulations is at all necessary. It is disproportionate to the problem.

Q105 **Chair:** Is that view shared by other panel members?

Peter Shelley: In Hampshire, we get one vehicle from each of the CT fleets into our own garages every year. It is chosen by us at random. We have regular supplier engagement meetings with the sector. All their drivers have enhanced DBS checks. They have the MiDAS minibus training. I would argue that those drivers are probably better equipped for the job than some of those from the commercial providers.

Dominic Davidson: There is absolutely no evidence to suggest that either vehicles or drivers are less safe. Personally, when I audit systems, I see very high standards of operation. If I had concerns about vehicles and drivers, my concerns would be in the taxi sector.

Q106 **Steve Double:** This is a question for all of you. The consultation proposed by the DFT is intended to consider necessary changes to the guidance and legislation. Should it be broadened to examine possible unintended consequences of local authority commissioning practices?

Sue Davey: From the feedback through ACTO, we would certainly put forward that there needs to be a revised look at how we can meet the needs of non-emergency patient transport and work with local communities on meeting demand in deep rural areas. How we work on those commissioning practices needs some review, yes.

Peter Shelley: My concern is that the letter that came out on 3 November talks about CT operators making urgent progress towards transitioning to a new arrangement. That seems to pre-empt any options that the consultation has as to what we are trying to get to. I have not seen the legal background as to why the guidance of many years has changed. I fear that what we will do is drive out a sector for which we have no alternative, and we will have a smaller level of demand using commercial providers. There are people who are now travelling for whom we will not be able to provide journeys. I certainly hope that the consultation looks at something appropriate for the sector, which is not a one-size-fits-all driver CPC, and so on.



Dominic Davidson: I do not think it has necessarily been pushed at a local level in terms of unintended consequences and tendering. The Department's guidance of 2013 specifically says that a CTO is able to bid on a full cost recovery basis. That was the guidance given then. In our procurement, any transport operator—providing that they are compliant with our procurement criteria—can register on our framework and bid for items. We are not specifically encouraging anyone from any particular sector, but those CTs are following nationally accepted guidance in bidding for our work that then offsets overheads and helps them to further their charitable objectives.

Leon Daniels: In London, we have a very sophisticated—some would say over-sophisticated—transparent EU-wide procurement process. In fact, what we use for dial-a-ride is not dissimilar to what we use for the commercial bus network across London. We do not believe, in our particular case in London, that there is any case for a further review of that particular procurement process, but we draw the Committee's attention to the fact that, as part of our procurement for dial-a-ride services, we take proper provision for our obligations under the social value Act, which I think is very important. That is the case for local authorities, as well as for London.

Q107 **Paul Girvan:** In relation to a comment that has been made, I take comfort from some of the points that have come across. If over-regulation were to be brought in, it could potentially drive community transport out of business. I am not saying it is in business, because most of them are social economy projects, but it could effectively regulate them out of operation. That would leave it open only for the likes of taxi providers.

Leon Daniels: I think it might be worse than that. Were the sector to be driven out of business, it just would not be possible to provide the same level or quality of service going forward. The consequences are that for people who are, for example, housebound and unable to get out using the sort of dial-a-ride services that we provide for their shopping, medical care and so on, the costs would fall back on the community. Some of those people would have to have their meals and medical care delivered. Even if we ignore those costs—to health, social services and so on—there is no price we can put on the value of the social enrichment that people have in being able to get out.

Some of my dial-a-ride passengers only see other human beings outside their houses when they go on their dial-a-ride trip. They book trips to Tesco to have a cup of coffee and buy a couple of items. The social interaction on the journey and at their destination is of great importance to them. Therefore, if the sector were to be driven out of business, both the dial-a-ride services that we provide and the services that they provide using the money they have gained from the contracts, consistent with their charitable objectives in their communities for getting people



about, would not happen, and that would be a great pity for society generally.

Q108 Paul Girvan: It was in relation to the comment about being driven down the route of having to use a public hire or private hire taxi to do the service. Can you give me an indication of how the continuity would affect those customers—I am using the word “customers”—who currently use the community transport process?

Leon Daniels: We already use taxi and private hire vehicles as part of the mix for providing door-to-door services for our users—our members. It would be fair to say as a generality that that sector provides kerb-to-kerb services, not door to door. The vehicle arrives in your street and it will take you to where you want to go. It would be fair to say that the complaint level from passengers about services provided in that sector is greater than it is from the provision of dial-a-ride services in general, whether that be our own in-house services or contracted out.

Q109 Chair: Leon, you were describing what might be the potential impact of a change in regulations or legislation. How important is it, given Sue’s answer previously, that the DFT gets on with the consultation as soon as possible, if local authorities are actually holding off tendering or commissioning services?

Leon Daniels: It is critical. If I may paraphrase the letter, it draws attention to a particular decision on a particular case in a particular court, and then issues some guidance—if you like—that suggests that previous guidance might have been incorrect. It tells operators that they should satisfy themselves whether they are operating legally or not. That is perfectly proper.

A consequence of the letter, not helped by the subsequent one on 5 October, is that a number of authorities are in panic, because they do not wish to be running a procurement exercise and encouraging people to operate illegally. Not surprisingly, they have backed away from issuing any further contracts. Unless meaningful consultation can be started urgently, it is entirely possible that starvation will occur before the patient has had any chance of treatment.

Q110 Chair: If the consultation or the response to the consultation is delayed, will services suffer?

Peter Shelley: Hampshire’s advice is that we will continue with our existing contracts and like for like through to 2019, so it will survive that process. I think the concern, and the concern even from the follow-up letter, is that the DFT does not get it. It is sensible that MOT standards should be identical for a community transport vehicle and a PSV operator, but two thirds of the journeys in Hampshire are on section 19, where we put what we call group I minibuses out into the community, so that every last scout group and women’s institute does not have to buy their own vehicle. Those are driven by volunteers who do only two or three trips a



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year. Those people are hard enough to come by now; they are not going to go through some new test.

Likewise, even if the operator has a PSV operation for one bit and a section 19, those vehicles will be under different licensing. They will not be able to move backwards and forwards, whereas now we share the fleet. In our submission, we were moving to a new operating model to further integrate with the adult services fleet, so that we do not have duplication there. All of this pushes that in the wrong direction.

Sue Davey: We are already experiencing a reduced level of supply in the market through this situation.

Q111 **Chair:** There is already some detriment to the services.

Sue Davey: Yes.

Q112 **Chair:** Would you agree, Dominic?

Dominic Davidson: I would. The letter that was sent on 31 July was a letter to issuing bodies for section 19 permits. I am responsible for issuing permits at Staffordshire. That letter is effectively an instruction to issuing bodies not to issue any permits to CTOs who are running any kind of contracted services. In light of that letter, I have had to refuse permits to CTOs, which of course means that that then constrains their capacity; if a permit expires or they want to run another vehicle, they cannot. If it goes on longer, if everybody is following the instruction in that letter, there will be a moratorium on issuing permits, and that will have an effect as well. I agree with Sue that there is an impact; in Staffordshire, we are not currently awarding any new contracts, but we are supporting our CTs to transition to new licensing arrangements.

Sue Davey: Of course, we and the majority of local authorities are continuing with the contracts that were awarded prior to 31 July, because they were issued in good faith under the guidance available at the time.

Q113 **Laura Smith:** My questions are for you, Peter. You have touched on them already, but I would like to delve a bit deeper. You say that in Hampshire the commercial sector delivers the vast majority of home-to-school contracts, with CTOs generally only picking up that kind of work in places where there is insufficient commercial capacity. To what extent is that because Hampshire has made significant grant funding available for the core CT services?

Peter Shelley: We do not do grants any more. About 15 years ago, we moved from grants to service level agreements, and our friends in procurement look after us well, so from 2009 it has all been by competitive tender. There are no grants.

Q114 **Laura Smith:** What other factors have helped you to achieve the harmony you touched on earlier between the commercial and CT sectors?



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Peter Shelley: I think it is because we are very open, even with the home-to-school transport contracts that the CT operators run. They are in areas where there are commercial providers. They are open to everybody. We are not looking to replace the commercial operators; we could not run without them. What we are trying to do is come up with a composite operation for the CT operators, so that they are fully occupied and have a more cost-effective operation, which reduces the need for our subsidy. They will never be more than a minor player in the home-to-school market. We are permanently going out and engaging with the commercial sector, looking for further supply from them.

Q115 **Laura Smith:** Finally, drawing on your own experience but also opening it up to the panel, why do you think that other places have been unable to achieve what you have in Hampshire?

Peter Shelley: From what I read in the professional press and looking to others, I think in some places people have seen the CT operator as a different sole supplier, as an alternative to the commercial market. There are seen to be, in other parts of the country, some very big community transport providers. We do not have that in Hampshire. They all have about 10 or 15 vehicles each. I can see that, if authority A gives all its contracts to a CT scheme and you just want one vehicle's worth for your vehicle, you will feel hard done by. We have not sought to do that in Hampshire. We want a varied supply market, but we recognise that the CT operators do something that nobody else can do.

Q116 **Chair:** Do other members of the panel want to add to what Peter said about why it is so contentious in some areas but not in others?

Dominic Davidson: Some of it is based on perception. When you listen to some of the comments that come out of the commercial sector, they see it as not having to run to the same safety standards, or as having lower overheads. In my experience, that is not the case. In some instances, it might just be about correcting some of those perceptions.

In Staffordshire, section 19 providers have 2% by value of special educational needs contracts and 5% by value of mainstream, so it is not very big at all. Our experience is that CTOs are very often not the cheapest bidder and they do not win the work. Their ethos is different. They are very conscientious about employment practices, for instance. In a taxi company that drivers own, drivers are not subject to the minimum wage. Some companies have a lot of staff on their books who are self-employed, who perhaps should not be, whereas a CTO has everyone on PAYE. There are those sorts of differences. It is a much more level playing field than perhaps is given credit for in some quarters.

Q117 **Huw Merriman:** This may be flogging the same dead horse. Putting the commercial operators' perspective, as we should, one of them told the Committee that, since community transport operators were established in its area, it had lost the majority of its home-to-school contracts and about half its revenue. Working on that basis, do you believe it is fair that



a public service vehicle operator should lose out on that scale to a CTO that enjoys a less stringent licensing regime? I have rather set myself up for failure. It may well not be in Hampshire, for example, but you will be aware of other parts where they are competing a little more on the same territory. If it is indeed the case that there is a less stringent regime, and there is that competition, can you see the point that commercial operators have put to the Committee?

Dominic Davidson: I can see that in some areas, where there is overlap with some of the largest CT organisations, but again going back to our experience, CTs can only run up to 16-seat vehicles. Very few have a section 19 large vehicle permit, so they are not in the running for anything above 16 seats. Some of the competition for contestable contracts is with the taxi sector, which arguably enjoys lower overheads. I do not think the impact, for the most part, is anywhere near the level that has been made out.

Q118 **Huw Merriman:** Do you think there is a danger that the contention I have just put to you has gone all the way to the top, has been accepted as an issue and has, therefore, driven the entire situation to where we are right now? There has been some pretty ferocious lobbying and a complete misunderstanding of what the situation really is and that is why we are where we are right now.

Dominic Davidson: To my mind, some of the better quality PSV operators have not been concerned by section 19 providers, because they are very good at what they do and they are good at winning work. They have a lot of other business. The section 19 permit says who they can carry. They can only carry limited sections of the population; it is not open to the general public. It could be argued that on paper there are lower levels of regulation, but in practice I see exactly the same standards of vehicle maintenance, regular safety inspections, good MOT records, good levels of driver training and excellent compliance records. The contractors we deal with in the CT sector have consistently good compliance records.

It is much more variable in the PSV sector. There are some unlevel playing fields in the PSV sector. For instance, restricted operator licences for 16-seat vehicles are greatly abused. That is probably doing more damage to some of the more compliant PSV operators.

Q119 **Iain Stewart:** We have heard some concerns that there can be close relationships between local authority transport commissioning officers and community transport groups—for example, where council officers can be trustees of community transport groups. Do you think such relationships create unfairness in the procurement process? If so, should there be greater separation between the two?

Peter Shelley: With my Hampshire hat on, we would not have officers on any of the CT operators, to avoid the risk of any conflict of interest. We have not done that for any of the time I have been there. The bottom



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line is that we have an electronic tendering system. Once they are compliant and go into the system, it is a price-driven outcome. We do not know who is going to win it until we open the tender. There is no potential for any influence even if there were the wrong connections, which there are not.

Leon Daniels: The London situation is the same. We run a quite separate procurement function. None of the bidders is even identified by their own name; simply by codes. Frankly, until the decision is made, the people responsible for the delivery of the services internally, through the management structure up to and including me, do not know who the successful bidders are.

Sue Davey: That would be the case throughout. Yes.

Dominic Davidson: There is absolutely no crossover in Staffordshire either in the way you mentioned. We operate an e-tendering system. Everybody in the transport unit has to complete a declaration of any conflict of interests, which is monitored by a procurements officer. For our part, there are no crossovers that have even had to be considered.

Q120 **Iain Stewart:** We have heard some concerns. Potentially it is a very localised example. Do you think it is something that the Department for Transport consultation should probe a little?

Sue Davey: I can give examples of commercial operators sitting on community transport operators' boards. I have not had any examples of bad practice brought to ATCO that I can highlight.

Dominic Davidson: Any standard procurement process should be monitoring that. It should be dealt with through that when it arises.

Peter Shelley: I certainly agree, and I see no reason these days why people cannot go on to electronic tendering; there are very modestly priced packages. That would avoid any potential conflict of interest or doubts about how awards are made.

Chair: It seems that we have been looking for a problem that does not exist, from what you say.

Q121 **Ronnie Cowan:** Sue, you described the DFT's letter of 31 July as "sudden and unexpected."

Sue Davey: We were aware for quite some time of issues that were arising. The statement published on 15 August on the ATCO website, and shared with the CTA, was really to reassure members and those with an interest that we were looking to have further discussion with the DFT to secure more clarification.

Q122 **Ronnie Cowan:** Was it sudden? Was it unexpected?



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Sue Davey: It came at some speed and, as has previously been said, with vagueness about timescales, leading to local authorities moving towards ceasing future issue of contracts.

Q123 **Ronnie Cowan:** I was wondering if it was a symptom of a bad working relationship between the DFT and ATCO.

Sue Davey: No. ATCO has always strived to work with the DFT, the DVSA and the traffic commissioner for good practice.

Q124 **Ronnie Cowan:** Would you not have expected some preliminary discussions beforehand, before they came out with a letter like that?

Sue Davey: We understand that there were underlying situations that led to a speedy issue of the letter.

Q125 **Ronnie Cowan:** Is there nothing you want to share with us?

Sue Davey: No. The clarification had to come later, but we continue to work with the DFT on how solutions can be found.

Q126 **Ronnie Cowan:** I am now slightly confused. If it was not that sudden or unexpected, would you not have been working on some sort of contingency already?

Sue Davey: Perhaps on reflection it was unfortunate wording. The main message in that line was that we needed to have a meeting with the DFT to seek further clarification.

Q127 **Ronnie Cowan:** But you are happy that your working relationship with the DFT is good and that they value the service provided—in the terms Mr Daniels used—both financially and socially?

Sue Davey: There is still as much conversation around how we can move this forward, obviously.

Leon Daniels: If I might put the London perspective, we entirely accept the Department's letter. Our view, and what I have said to the Committee this afternoon, has tried to be on behalf of the people who want to travel—housebound people for whom ordinary public transport is not normally an option. I have great sympathy for the Department, which is trying to work with some legal strictures in order to make sure that the guidance it gives is correct. That is why we welcome the consultation, and that is why at Transport for London we continue to hold our existing position. We do not believe anything has changed. We are satisfied, and we welcome the consultation, because very clearly, as a result of at least some case law, some further clarification is necessary. We think that the consultation is very important. We work with the Department on a whole range of issues, as you might imagine, and we are very pleased to be working with them on this.

Q128 **Chair:** Do you think the Department have been too slow, having issued the letter on 31 July, to launch either the consultation or indeed the clarification that was issued at the start of November?



Leon Daniels: All I can say, Chair, is that there are quite a lot of issues bubbling at the moment, both nationally and internationally, and in this particular area the Department has realised the strength of feeling that exists in all the areas that are affected, and therefore I hope the consultation will take place as soon as possible.

Chair: It almost sounds as if you are suggesting that they did not have their eye on the ball.

Q129 **Luke Pollard:** The DFT says it approached ATCO and other community transport providers to assess the potential implications for the CT sector about its letter on 31 July. Could you let the Committee know when they approached you and what assessment you gave them, in terms of helping us understand what information flowed between you and the DFT?

Sue Davey: Yes. The chairman, Chris Pettifer, and I met Stephen Fidler on 12 September. We agreed to carry out a survey, to gather data from ATCO members. That was then issued to DFT in October and has been shared with all members. We are happy to share it with you today.

Q130 **Luke Pollard:** Do you think there is a lack of data in general in this sector?

Sue Davey: I feel that ATCO gathered some very good data. We have the number of contracts, contract amounts and feedback from 24 local authorities on their view of the impact of potential changes. I think you will find that very helpful.

Q131 **Chair:** Thank you. That concludes our questions for the first panel of witnesses.

Examination of witnesses

Witnesses: Jesse Norman MP, Stephen Fidler, Peter Hearn and Kevin Rooney.

Q132 **Chair:** Welcome, and thank you for coming along this afternoon. For the record, could you introduce yourselves with your name and the organisation or body you represent?

Kevin Rooney: I am Kevin Rooney, the traffic commissioner for the west of England.

Jesse Norman: I am Jesse Norman, the roads Minister.

Stephen Fidler: I am Stephen Fidler. I am a deputy director at the Department for Transport.

Peter Hearn: I am Peter Hearn, operations director, north, for DVSA.

Q133 **Chair:** Thank you very much. I will start with a question to you, Peter. The DFT says that the DVSA came to its "conclusion" about Erewash Community Transport and "had no choice but to apply its understanding of the law." What guidance or advice did you follow in coming to what is clearly a new, and some have argued narrow, interpretation of the words



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“non-commercial” in this context?

Peter Hearn: We are obviously obligated as the enforcement authority to work through this. We had worked with the Department in terms of the guidance that they offer. This case in particular is an ongoing investigation, so I would not want to comment particularly about it at all. Obviously, it is still ongoing and still a matter of consideration in other factors.

This is a complex area at times. We have worked closely with operators as we have gone through it. We are very keen to make sure that people comply, and we will work with them actively to try to help them through that, and to minimise any impact that might have on their operation.

Q134 **Chair:** You have touched on the very issue we are grappling with. The DFT said that the DVSA came to a conclusion, but you have yourself just alluded to the fact that the case is still live. How could you have come to a conclusion when this matter, in relation to a particular operator, had not been concluded?

Peter Hearn: We obviously investigated in various ways and looked at the evidence available. Then we considered that against the guidance that we worked on. As I said before, I do not want to deal with that particular case. It would not be appropriate. We would work actively with the operator to understand what the issues were and try to help them through that, if any changes were required or there was anything they needed to do to become compliant.

Q135 **Chair:** Given that it is an ongoing case, what was the impetus suddenly to draw a wider conclusion?

Peter Hearn: Could you explain that?

Q136 **Chair:** There was a case in relation to Erewash Community Transport, but clearly the DFT drew a wider inference from that particular case, even though it was still at an early stage.

Peter Hearn: You would have to ask some of my colleagues about that particular case. We investigate a relatively low number of cases like this in a year. It is a relatively small amount, so we are not dealing with high numbers on this particular issue.

Q137 **Chair:** We will come to the other members of the panel in a moment. The DFT says that the DVSA will be obliged to “consider similar enforcement action” against other community transport operators operating in “analogous circumstances,” but that it will adopt a “proportionate approach.” Can you tell us what that means in practice? Will you actively investigate other community transport operators?

Peter Hearn: We are obviously obliged to investigate any issues. If anybody writes to us with some intelligence to suggest there is a practice going on that is not appropriate, we are obliged to do that as the enforcement authority. What we will do is actively work with that



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particular individual or business to try to understand what the issues are and help them through that. Our ultimate aim is to make them compliant in whatever respect, so that any formal action is secondary. Initially, we try to work very closely with the individuals or the company to make sure they are compliant, with whatever means we have. We are here to educate and help people. It is not all about a big stick.

Q138 Chair: Correct me if I am wrong, but that sounds like quite a reactive approach. You are waiting for people to raise concerns and then you investigate, rather than looking across the CT sector for organisations that require investigation. Am I right?

Peter Hearn: That is right; yes.

Q139 Huw Merriman: I want to ask Mr Rooney about the approach of the traffic commissioners. I have a letter from Battle Area Community Transport, which is in my constituency. They said they had been refused a replacement of one of their existing section 19 permits by the office of the traffic commissioner: "At the end of the week the existing section 20 permit for this vehicle will also expire, leaving us with a bus that we cannot use for any operations. The permit issuing office in Leeds is itself confused by the change in interpretation of the law by DFT and have taken the option of withholding any future permit issue pending advice from their policy section." Is that the approach your area took with regard to the letter of 31 July as well? If so, have you changed your view thereafter?

Kevin Rooney: The letter on 31 July was revised guidance, to which we had to have regard. We considered that it was in line with decisions that we had made, or that personally I had made, with operators in terms of the interpretation of commercial. At that point, we put things on hold for a few short weeks while we reflected on it. We asked applicants some more questions, so that we could see whether or not they met the derogations. That necessarily introduced some delay.

My understanding now, having checked just this morning, is that those are now under way again. The applications are being granted. I think that application has been granted, so far as I was told this morning. There was just a period when we had to reflect on the new guidance—it was different from what was published—to see whether we agreed with it. Broadly speaking, we agree with it. It is in line with decisions we had made previously at public inquiries. There was just that little hiatus, and we have now moved on.

Q140 Huw Merriman: Did the traffic commissioner's office actually receive guidance as to what the letter of 31 July meant, or did you have to interpret it in the same way as other organisations, and then come up with your own view that it means, as in this example, that no permit should be issued?

Kevin Rooney: We received the guidance. We are independent regulators so we do not take direction from the Department for



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Transport. We do not issue guidance to the sector; we look at it and consider it. That is what we did, and, as I say, we put things on hold for a while. We reflected upon it. We asked for more information and then we made our own decisions. We are getting on with applying the legislation, which is what we work to, rather than the guidance. We are getting on with applying that as best we can. We have had no further external advice; it is our own position.

Q141 Huw Merriman: Did you just get the four-page letter as well? Did you read through it and think, "Oh, this seems to change everything," and therefore you interpreted it yourselves, which led to what I have just read out from my community transport operator?

Kevin Rooney: Yes. We got the letter. We looked at it. We had regard to it, and we are getting on with the job that we are paid to do as independent regulators.

Q142 Huw Merriman: Is that the way things normally work? I personally found the four pages quite hard to penetrate. I just wondered whether you would normally expect some form of conversation or guidance as to what it actually means—"Do you mean this?"

Kevin Rooney: We have to be careful to safeguard our independence. I would not want to go to the Department and say, "What do you want us to do with this?" We act the same as any other issuing body. We got the guidance, we reflected upon it and we have now put it in place in our way.

Q143 Huw Merriman: I understand that you need to make your own judgment, but it is something that quite clearly caught many on the hop. Things seemed to have changed one way, and now, potentially, another; it is just a consultation. I am surprised that there is not an easier mechanism for you to seek clarification of what the other body is intending from its communication. Something has quite clearly changed. You interpreted it this way, and, all of a sudden, it is different.

Kevin Rooney: There is clearly ongoing dialogue between traffic commissioners generally and the Department about a range of issues. I certainly was not aware of the letter coming out until it came out. We dealt with it. It was not something I was aware of any dialogue on.

Q144 Chair: What is the mechanism for ensuring that there is consistency between the traffic commissioners? The letter was widely regarded as not entirely straightforward, so how did you ensure that you all settled on the same definition of non-commercial purposes?

Kevin Rooney: The position we have adopted up to now is that since the letter came out one traffic commissioner has dealt with all the applications, so they have all been dealt with consistently. By doing that, we will establish some guidance for a group of us to work to. One traffic commissioner has made all the decisions so far.



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Q145 **Steve Double:** My question is for the Minister and Mr Fidler. Do you share the view of the CTA that the ECTL case needs to be settled before the Department launches its proposed consultation?

Stephen Fidler: Our view on this is that the law, as we understand it, applies now. DVSA took their decision, and our view, as we set out in the letter, is that that was a decision that DVSA took. It was an enforcement decision. They were deciding to take action in this case and the operator needed to comply. That is an important moment and a different moment that had not occurred before, which is why we wrote.

That legal position applies in UK courts now. Our view was that operators could face action at any moment, potentially. As DVSA said, they are under an obligation to respond to complaints. The reason why we put our letter out in the first place was to seek to clarify the position. We think the consultation will help to clarify the position further, providing a degree more detail.

Our view is that it will be sensible to progress with the consultation. Of course, if we end up in a different place and if it turns out that the process leads to a different outcome, we will not be under an obligation to conclude and move forward with that. That can be taken into account alongside the consultation response, but in our view it would seem sensible to progress.

Jesse Norman: You will appreciate, Chair, that I come to this as a former Chair of a Select Committee so I have a great deal of respect for the work that you are doing. I would just ask you to put yourself in the position of myself and officials at the time. As Mr Freeman has said, the record of these things not becoming public knowledge one way or another is not unspilt or unblemished. The important thing from the point of view of the Department was to create a common understanding of what the situation was, according to the change that Mr Fidler has already referred to. We did not want rumours getting out, alarming people and worrying them. We thought it was important to give a comprehensive treatment. They could, if they wished, respond to the Department. It says at the bottom that we cannot take specific legal inquiries, but of course we are there to assist with general questions they may have about the new regime, as indeed they have.

Q146 **Chair:** But we have seen the letter to Erewash Community Transport. It makes it clear that it is not a decision. It is preliminary findings and they were being invited to respond to it. By issuing the letter on the same day, what was the point of them responding to it if it felt as if the decision had already been made? I think that is to you Mr Fidler, as it was your letter.

Stephen Fidler: While the letter has the preliminary findings title, the actual detail in there says quite clearly that DVSA have completed the investigation and that they expect ECTL to bring their operations into line. It does not suggest that there is going to be another final decision. It is preliminary in the sense that it invites, as any enforcement letter of



a decision would, the opportunity to say, "We fundamentally got this wrong." It was not a draft finding saying that the DVSA were going to come back and change that position. It was the moment at which, if there was another case that came across DVSA's door, they would be obliged to follow the precedent they had set for themselves. The decision that "You couldn't do nothing" had been taken. That is why we had the conversation in the Department about the right thing to do for the sector.

There has been a bit of conversation in the Committee as to what extent we were motivated by the sector and trying to support them. Our judgment at the time was that it was the right thing to do for the sector. Whether that has been proved right or not is another matter perhaps, but that was entirely the motivation behind it. Our intention was to allow any other operators who might be in a similar situation to have time to comply; to have time, if DVSA came to their door, to say, "We have seen the letter and we are thinking about how we are going to comply with it." That would put them in a much better situation than would otherwise have been the case. That was the thinking, and that is why we thought it was the right moment to do it.

Q147 Steve Double: You have started to touch on my next question. I appreciate that hindsight is always a wonderful thing, but reflecting now on the potential implications of that letter for the community transport sector, would you have handled anything differently, looking back at how things transpired?

Stephen Fidler: What is really clear is that this is a hugely important transport sector. The last thing we wanted to do was to create additional uncertainty that would not otherwise have been created. There was going to be a vacuum following the decision, if we did not put something out. The choice was whether we, as the Department, put something into that vacuum to seek to provide some information, or whether we allowed it solely to be the domain of the people taking the legal action against DVSA and their approach to it, which would no doubt be put to every relevant local authority directly. I think we would have ended up in a very similar or possibly even worse situation than we are in now.

There are many things in my career that I would do differently with the benefit of hindsight. This is probably one of them. The letter was a really specific letter dealing with a specific set of circumstances, but it was interpreted as being much wider than it actually was. That is the key point for me. As soon as we became aware that there were impacts on contracts, we issued some clarifications. Those clarifications were entirely consistent with the original letter. They are dealing with a different and wider issue, but in retrospect we might have made some of that clearer at the time, if I had my time all over again with 20:20 hindsight. But that is a wonderful thing.

Q148 Chair: Further clarifications were issued following the 31 July letter, one of which was the note at the start of November. Minister, do you think that was done in a sufficiently timely fashion to local authorities? It



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seems to me that it was clear quite soon after the issue of the 31 July letter that anxiety was being caused by the content of the letter. Why did it take until the beginning of November to issue the clarifications that have now come forward?

Jesse Norman: I must say that I do not share your view. If you think about it, we had the initial letter that went out. I then wrote to colleagues at the beginning of October. That was a widely circulated document that gave further guidance to parliamentarians and through them to their constituents. Then we became aware that some local authorities were potentially not interpreting the guidance as we had originally thought and perhaps not appreciating the focus of it. Therefore, we tightened up on the process through further guidance to local authorities to prevent that from escalating.

I think that was a proper and an appropriate approach. One has to remember the constant balance between trying to get the right information out to the organisations involved in an unbelievably diverse, interesting and socially valuable sector and yet at the same time not trying to stampede or worry people, the vast majority of whom will not in fact be affected. That is the balance that we were trying to strike, and I think we have taken a proportionate response. We will try to continue to do that in the way we handle the consultation and the follow-up.

Q149 **Chair:** It seems surprising to me that you did not realise the level of anxiety in the sector until perhaps October. The note at the beginning of November to local authorities includes a template letter for local authorities to send to community transport operators, including those with whom the authority had already begun steps to withdraw existing contracts. We had it confirmed in our first panel of witnesses that some local authorities were not issuing new contracts. For clarity, when did you realise that councils were actually terminating contracts or withholding new contracts as a result of the 31 July letter?

Jesse Norman: The answer to that is not a long way before. Stephen will have a more accurate understanding than me. Even when it happened, there was more worry than actual termination—that I could see at least.

Q150 **Chair:** But you issued a template letter for local authorities to issue to community transport operators, so you must have believed at that point that there were local authorities in that position.

Jesse Norman: That is certainly true, but of course you cannot just issue partial advice. Advice goes to all local authorities, even if you think it concerns a very small number.

Q151 **Chair:** When did you have that worry? Was it in September, October or even the start of November?

Stephen Fidler: It was mid-October when we became clear about some real examples of that. Then it took us some time to do the detailed work



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with lawyers and others, confirming what we thought was the appropriate wording to put. Sue mentioned earlier that it was at about that time that we got information back from ATCO. They provided us with some of their work. It was also at that time, perhaps through parliamentarians as well, that we began to get some feedback about what was actually happening on the ground in two or three other locations. That gave us evidence of something that needed responding to, perhaps for the first time; before that, we had heard about disquiet. We were actually getting some real tangible examples of something practical happening rather than people having a concern that it might happen. That was the first moment we got it.

Q152 Chair: This is a slightly different issue, and the question is really for Peter and Kevin. What discussions have you had with the Department regarding the capacity implications for your respective organisations of potentially many more applications for PSV operator licences, D and D1 driving licences and driver CPCs?

Kevin Rooney: In relation to operator licensing, we have not yet started discussions with the Department in any meaningful detail. It does not cause us too much concern, given the size of the market we are talking about compared with the 70,000 licensed operators we already have. It is not de minimis but it is relatively small, and we will set up a dedicated team to deal with it. I do not see that as us being on a critical path in terms of granting licence applications. We have only recently—12 months ago—put our licence application process online, which makes it easier and more accessible for people to use. Where we would put our priority is working with the community sector to help them get the application right first time.

Peter Hearn: In a similar vein, we know the capacity internally to deliver a driving test, for example, in terms of our waiting times and availability. We have not had active conversations yet around what the demand might look like. That is one of the issues we need to understand better, but we have started to look at it in terms of what that would feel like internally and how we would go about it. Obviously we deliver driving tests as well as vehicle tests, so a whole range of services sits within the agency.

Q153 Chair: Do you think it would be helpful if those issues were considered in the scope of the forthcoming consultation?

Peter Hearn: The scale is an issue that, hopefully, the consultation will bring to the fore, in terms of how many people we are talking about in the sector. It does not all go through a traffic commissioner. There are other bodies that grant some of the permits in this case. It is a factor that needs to be understood more clearly.

Kevin Rooney: It would be very helpful for us to understand the size. We have an idea how many community transport operators are out there, but what we do not know is how many of them will need to convert to an operator's licence.



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Q154 **Laura Smith:** My questions are for Mr Norman and Mr Hearn. Mobility Matters claims "the fact is the community transport sector's safety record is good." Do you agree with that?

Jesse Norman: Yes.

Peter Hearn: Yes.

Q155 **Laura Smith:** That was a simple one. It is not currently possible to break down the minibus, coach and bus road safety data by type of operator. Is there a case for doing so in the future?

Peter Hearn: It would be a wise move to be able to disaggregate that further down. Obviously, if we clarify some of the movement in this sector, maybe that is something we need to take away and do.

Jesse Norman: I am very happy with that, yes.

Q156 **Laura Smith:** Those are nice simple answers. My next question is to Peter. What is the DVSA's view on the minibus driver awareness programme that was developed by the CTA?

Peter Hearn: There are some good schemes out there. Obviously we run the driver CPC scheme. Depending on where the consultation goes, some of those things may be of benefit and may be used within that scheme if that is the appropriate way to move forward.

Q157 **Laura Smith:** Do you have a view on whether CT driver instruction needs to be tightened up?

Peter Hearn: Nothing in particular. I think it is a safe sector. Clearly, there is a difference between operator licensing and community transport. There is obviously work that each of them does. Both sectors can probably learn from each other and we can come to a good conclusion in bringing some of those things together.

Q158 **Laura Smith:** You have already said that it could be something that is considered in the consultation.

Peter Hearn: It could. That would be for my colleagues.

Q159 **Chair:** Minister, looking back on the letter that you sent out at the beginning of October, do you think it actually implied that community transport was less safe than commercial operations? Certainly that was an interpretation I put on it when I read the letter.

Jesse Norman: No, I do not think that is fair. What is a proper point is that the safety standards are not as high in the community transport sector as they are in the commercial sector. What the letter did was to draw attention to that anomaly. It did not imply that the safety record was any less good. There will be other reasons why the safety record is, and remains, extremely good, as we generally know it is, and which we could find out if we had more data of the kind that Laura Smith mentioned.



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Q160 **Chair:** What are the costs associated with breaking down the statistics and data by type of operator? How quickly could that work be done?

Peter Hearn: I do not know, to be honest. We would have to take that away, but, like any good management information, there would no doubt be some IT involvement, and people would need to work through that as a process and understand how you can disaggregate some of it into a better way of understanding it. It would be very difficult to put a price on it at this moment.

Chair: Off the top of your head.

Jesse Norman: In many cases, it is a police matter, if they attend a breakdown or a traffic incident of some kind. Therefore, it would involve costing the additional effort, time and categorisation for them. Obviously that is potentially quite an expensive matter.

Q161 **Luke Pollard:** Minister, some witnesses have raised concerns with us about the permits issued by designated bodies, in particular schools. Have you heard any concerns within the Department around schools issuing permits?

Jesse Norman: Not specifically, no.

Q162 **Luke Pollard:** Some of the evidence we have heard is about the amount and thoroughness of the safety checks that schools can issue. There is the amount of information held on teachers, for instance; how frequent the checks are in relation to whether teachers have accumulated additional points on their licence, and whether there are any safety concerns between licence checks. Do you think this is an area you could include in the Department's consultation, reflecting some of the concerns that the Committee has heard?

Jesse Norman: We can certainly consider that point. Obviously evidence is very hard to come by. I do not know whether you have been presented with actual evidence or whether what one has is an assemblage of anecdote. In part, what we are trying to do through the consultation is precisely to gather a deeper and wider understanding of the scale of the issue and the way it affects different operators. Over and above the formal process of consultation, they are absolutely welcome to write to us with further points of information or evidence that they feel may not have been properly appreciated by us or may need to be considered as part of a final report.

Q163 **Luke Pollard:** Mr Hearn, could you explain the DVSA's role in monitoring and enforcing driver and vehicle safety standards in relation to CT permits used for school minibuses, in particular those driven by school staff?

Peter Hearn: We organise roadside checks on some of those vehicles. We may target a school if there is a large number of vehicles passing through. We do that kind of activity. We do not have the authority to do



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unannounced checks in this sector. We do not have the legislation or the authority to do that. We would also act on any intelligence that anybody wrote to us about, suggesting that something was not right. We would be as active as possible in that area and obviously make sure that things were okay.

Q164 Luke Pollard: Are you aware of any concerns in relation to schools issuing permits in this respect?

Peter Hearn: Operating any vehicle is a complex thing, and throughout our work, even with the best operators, issues can happen from time to time, but there is nothing significant in this sector that my colleagues tell me is jumping out at the moment from an enforcement perspective.

Q165 Luke Pollard: From your point of view there is no need for any further stringent safety measures.

Peter Hearn: Safety-wise we do not have any issues at the moment.

Q166 Luke Pollard: Turning to a slightly different issue, Mr Fidler, when Mr Allen of the BCA gave evidence he claimed that the DFT effectively ignored his complaints for about six years. He described the Department's handling of the issues as "shambolic." Do you think the Department should have taken his concerns more seriously earlier?

Stephen Fidler: I was responsible for the team on buses and taxis from about summer 2015 or so. During that time period, we tried to have a good and constructive relationship with the BCA, but you will appreciate that, in a situation where there is legal action and threats of legal action hanging around, that is quite a difficult conversation to have.

I have spoken to some of my predecessors about the history behind that. My observation would be that the Department was very focused on trying to do the right thing by community transport operators. I suspect there may have been opportunities to have done things a little bit differently, but I do not think it would necessarily have led us to a fundamentally different place, given the fundamental difference in what the BCA were seeking as an outcome and what the community transport sector were looking for. Even if there had been some sort of improvement in the process of dialogue with them along the way, we could still have ended up in a very similar situation to the one we have.

Q167 Luke Pollard: I guess it would, given where we are now in relation to today. But do you think earlier engagement could have avoided escalation to the European Commission?

Stephen Fidler: My suspicion is that it probably would not have done, but I was not around at the time so I cannot really give you a definitive view on that, I am afraid.

Jesse Norman: It is hard to imagine that it would have avoided it, because the commercial imperative from their perspective was not going



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to change either way. Many in their position might have pursued whatever route was necessary to achieve that objective.

From the Department's standpoint, I do not need to tell you that organisations that are effectively operating as commercial bus services are potentially at risk from this change. It is important to recognise that that is the case. We think that there are many community transport operators who are a million miles away from that. It is an incredibly diverse sector. It is a sector that, in many ways, is mis-described. One should think of it as a social care sector, of which transport is a part, rather than a transport business.

If you are running a service that involves vehicles with eight or fewer seats, or if you are running an activity whose purpose is not primarily passenger transport, you will not be affected by this. It is only a smaller category of, essentially, commercial bus services that may fall into this category.

Q168 Huw Merriman: We have heard evidence that there has been a bit of a campaign from the commercial side to try to clamp down on the use of community transport operators. In terms of the impact of the letter of 31 July, that would seem to have been the result at that point. We also heard earlier today that local authorities say that it is completely separate really, and they just do not cross over.

I want to ask about the ethical nature of some of the lobbying that might have been going on over the years that has got us to this particular point. While it might have become successful in the eyes of commercial operators, it seems to have caused real problems for very worthy organisations on which many vulnerable people rely. I have some sympathy for the legal position that Mr Fidler outlines, but what do you think of that?

Stephen Fidler: My take on it would be that we are where we are fundamentally because of the legal action rather than any lobbying per se. The decision to issue the 31 July letter was very much based on what we thought was the right thing for the CT sector rather than what we thought was necessarily right more widely. That is not to dismiss for a second the perspective of commercial operators. In many cases we are dealing with small family businesses or local businesses that might be operating on low margins and are dependent on these issues. It is a really tricky issue sometimes. It feels a bit like being between a rock and a hard place in some of these challenges.

I do not think that the lobbying was a fundamental factor in any of the decisions that were taken. To pick up something about the contracts and those issues, what we have attempted to do is to try to be as positive as we can, particularly in things like the 9 November note, in circumstances where we think things could be not classified as commercial. In the earlier hearing about contracts and the situation in Hampshire and London, for example, I was sitting at the back listening to that and



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thinking, "Actually, if nobody who is a commercial operator is pre-qualifying for this contract that fits—for me at least; it is the sort of thing you would need to check with a lawyer—very much within the context we are looking at as being non-commercial. If your only competitors for a contract in the kind of situations that Leon and others were talking about are one community transport operator against another, that is exactly the kind of scenario where we think it could be classed as non-commercial, and we are doing the right thing, in our view, by the community transport operators and by their passengers, but at the same time having no impact on a commercial operator who would not have pre-qualified for that work anyway.

Jesse Norman: Can I expand on that very valuable point? There are two things. First, when I came into the Department in July, I obviously did not have any enormous understanding of the way in which the legal process was working its way through the sector, and the issues that faced officials in this area. I would say this, wouldn't I, but I have been continuously impressed by the professionalism and the care with which they have approached this very difficult and complex issue?

The second thing is that, of course in some cases the local authority may be marketing what is a social care service, but it thinks of it in transport terms. That may be part of the explanation why commercial transport operators just do not bid for it. They do not have the equipment. They certainly do not have the expertise or the team. That is an important aspect.

The other thing I would say is that we are quite vigorously—I certainly am—encouraging officials, within the proper bounds of ministerial responsibility, to look at how the exemptions actually play out for different people in the sector. It is very important to be aware of that. Obviously we have talked about areas where there is no competition for the contract, or no pre-qualification. In general, it ought to be true—certainly in the guidance I have been given so far—that, in cases where community operators can get letters of derogation to say that there is no competition with a local commercial bus service from those bus companies, *prima facie* that ought to be good evidence for the non-commerciality of the services they are offering. There are many parts of the country, in rural areas and CT operators I have visited, where that ought to be enough to make quite a strong demonstration for legal purposes, although we cannot comment on the law.

There is another potential aspect of this that is worth exploring and putting in the record for you, Madam Chair, if I may. It is the language of "short distances." One exemption that is made out in the regulation is for short distances. It is important for us to understand how long a distance has to be to count as a short distance from a base of operations for a community transport operator. It might potentially be a 10, 15 or 20 mile radius. That may itself be a mechanism for exempting a certain number of community transport operators who fall inside the scope of that



provision. We are very actively looking at that, and those will be aspects on which we wish to consult further.

Q169 Huw Merriman: The way you distinguished the two would make perfect sense. Is it your understanding that those who may have been lobbying or advancing cases on the legal side from the commercial perspective are willing to accept that it is possible to distinguish and therefore, rather than resorting to the courts, there will be a common-sense approach that will mean that the voluntary sector can carry on and flourish?

Jesse Norman: I want Stephen to comment, of course, but I think there will be many services that are very plainly not ones that local commercial bus operators would want to regard as competitive. Again, in rural areas, ones that are not trunk routes are obvious cases in which that might apply.

In general, I do not think the Department or the Government should be in the business of taking moral judgments on different people. We have people perfectly properly pursuing their commercial interests. We want them to do that, up to a point. What we need to do is to make sure that that is handled properly, and that the rest of this unbelievably diverse and socially valuable and important sector is allowed to continue to flourish.

Q170 Daniel Zeichner: This is not a new problem, is it, Mr Fidler? In the evidence that the Department gave the Committee, which was a very thorough account of where we have got to, on the regulation the Minister has just been talking about you say: "However, the Transport Act 1985 has never been updated to reflect this position, meaning that there is inconsistency between EU and domestic legislation. Nor has the guidance on gov.uk about section 19 and 22 permits been clarified to reflect the EU Regulation." Why?

Stephen Fidler: The main reason is that, when the regulation was first brought in, the Department's understanding was essentially that non-commercial and not for profit—the wording used in sections 19 and 22—were ostensibly the same thing. Over a matter of time since then, that understanding has changed for a variety of reasons, some to do potentially with some possibly relevant EU case law, not that we entirely accept it, and some of it to do with the way in which the sections 19 and 22 operation has changed; the situation against which that guidance was written is different.

Until DVSA took their decision on 31 July, there was not a moment at which this came to a head and we said, "Okay, here is the time we need to change this guidance." Our intention was that it would flow through in a more orderly way through the forthcoming consultation, and that would have been the point at which it would have happened. Unfortunately, the legal position DVSA were in brought that forward. The intention had been to change it and update it, but to do it in a more effective, consultative and involving way than we have been able to do so far.



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Q171 **Daniel Zeichner:** It has effectively left the position unclear for almost a decade and has arguably created the space for these kinds of misunderstandings to continue. Do you not take some responsibility for that?

Stephen Fidler: What was going on at the time was a real challenge of the complexity of the issue. The fact that we are sitting here today discussing it brings that complexity home. The Department had been seeking to get to a position where it was interpreting things as sensibly and as widely as possible, and felt that we could get a set of guidance and regulations that would be workable in practice and not have an adverse impact on the community transport sector. I take your point, but the reality was that we had not quite got to the stage at any point before July where we were in a position to update the guidance in quite the same way.

Q172 **Daniel Zeichner:** Presumably the Department sought legal advice during that period. Did you?

Stephen Fidler: Yes, absolutely. Some of my predecessors sought legal advice and I inherited some of that. I am not sure that my lawyers will thank me for saying this, but I always like to challenge some of the legal advice just to make sure that it is as open and flexible as possible in some of these contexts. Until we got to the DVSA decision, I do not think there was anything that I regarded as a completely definitive position. That would be my view.

Q173 **Daniel Zeichner:** Would you be able to give us any sense of how much it cost when you were getting that advice?

Stephen Fidler: Not off the top of my head, I am afraid, given that I was not involved in commissioning the vast majority of it.

Q174 **Daniel Zeichner:** There is a view that this was something that was just too difficult for the Department to handle over that time. Is that an unfair characterisation?

Stephen Fidler: It is certainly fair to characterise it as difficult. I think we would all agree on that one. I would say that too difficult is slightly unfair, in the sense that finding a way to move this forward that worked for all the interested parties—going back to the earlier question about the approach of the BCA—has always been challenging. It was a journey we were going on. We might have got to an earlier place in that journey if there had not been other things on the way—elections we did not expect—and various other things in the process may have put us a few months further ahead. I would not say it was too difficult, but it has been immensely challenging.

Q175 **Daniel Zeichner:** If I was being very unfair, I could say that actually it was convenient for the Department to allow the ambiguity to continue, because it allowed the situation to continue until you were finally challenged.



Stephen Fidler: I do not think there was a deliberate strategy of having ambiguity for the sake of ambiguity, or certainly not one that I promoted or encouraged when I was responsible for the team, or indeed that I have seen Ministers in my tenure promote or encourage. I would turn it round slightly and say that, rather than necessarily encouraging ambiguity, there was certainly a reticence in the Department to do something that could have adverse consequences, on whatever scale, on the community transport sector until we were sure it was what we needed to do. I would put it the other way round.

Jesse Norman: I think that 20:20 hindsight might encourage the line of thought you were describing, Mr Zeichner, but if you think about it, until you actually have a legal challenge, there is a very positive moral incentive and onus on you not to act in advance of the problem being real. You can be rationally certain that there will be ramifying effects across a very complex sector, and there may be every reason not to do that if the legal process turns out not to be a valid or successful one. In this case, as Mr Fidler said, there was EU case law on the matter, but it was also perfectly clear that many other European Union countries did not have anything like the size or diversity of the sector that we have in this country.

Q176 **Daniel Zeichner:** But it had been known for some years that this problem was coming and that it was going to come to a head at some point. Rather than managing it, you just waited until it happened.

Jesse Norman: It would be fairer to say that it had been known that there was a concern. The question was how serious the concern was.

Q177 **Chair:** It feels to me, Mr Fidler, as if you appreciated the difficulty that this would create and therefore it was not dealt with. I think that was done for the right reasons, but didn't it inevitably create a space where, when there was a legal challenge, the implications happened in an uncontrolled way rather than in the more controlled way that might have been the case if the Department had been a bit more proactive in trying to deal with it?

Stephen Fidler: As I said a few minutes ago, our preference would have been for it to have been taken forward through the consultation route. That was always the intention, but for a variety of reasons events overtook us.

The other challenge we have not touched on—again for all the right reasons—is evidence. There were stages in this process when we were developing potential options and realised that we did not have the depth of evidence on the sector, for good reasons to do with the burdens placed on voluntary groups, that we might have liked in order to put an effective piece of evidence together with the impacts. There are still gaps in our evidence, as we said in our written material.



There was a period a year or so ago when we spent about six months commissioning the CTA to do some further research into the sector to assist our understanding and to try to get under the skin of this and get the detail. It was attempting to do the right thing by understanding the sector properly. It was a series of events like that, concluding the detail and things such as elections occurring, which meant we were behind the curve compared with the timescale of the DVSA action.

Q178 Chair: Was that work completed, and does the Department now have the evidence and a proper overview of what the sector comprises?

Stephen Fidler: We have a better understanding than we had. That work was completed, but it also brought home for us the challenges of getting evidence. It was a fairly small sample size because we did not want to make it too big, but the amount of effort we had to put in—as did the CTA—chasing operators and local authorities to respond was quite significant. I think we still ended up with a response rate that was well under 50%, which left us with a challenging sample size to draw conclusions from. Our evidence and material is better than it was. We can say with a degree more certainty what we think the impacts are. Is it as good as I would still like it to be to progress things forward, without having to have to progress things forward? In an ideal world, no, it is not, I am afraid.

Q179 Paul Girvan: You alluded to the fact that the evidence that was presented might not necessarily have been the full picture. If we used the consultation process as an opportunity to get full information, there might be a totally different outcome or attitude from a legal perspective. I understand that your lawyers were giving you one set of guidance, or dragging you to one area, and others were directing the others accordingly. We always say that, if you get two lawyers together, you will get not just one opinion but maybe four or five. I wanted to know whether, if you had had all of the data, we might not necessarily be in the position associated with the European directive that came forward about infraction.

Stephen Fidler: The fuller picture that we very much want the consultation to give us—that is absolutely one of its purposes—will help us to really understand further the scope for exemptions. I do not think it can alter the core position as we understand it, which may or may not get altered through any challenges through the traffic commissioner or other process on the DVSA decision. I would be surprised if it does, if I am honest, given how much we have challenged some of the legal opinions that we have had along the way. I hope the consultation will give us much richer data and information, and maybe some further ideas and suggestions around some of the interpretations of non-commercial, and some of the ways in which we can minimise the impacts; and potentially some solutions—how we can support the sector even more effectively than we hope we will be able to already, to make the adjustment where it is needed. I do not think it will make it go away, but I think it will really help us in minimising the impacts.



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Q180 Paul Girvan: I have had conversations with the industry. Primarily, I have talked with the community transport side. In connection with that, they feel that the process they are currently going through—I want your comments on this—is a sledgehammer to crack a nut approach in relation to the way it is being dealt with.

Stephen Fidler: I do not think that is a description I recognise of how we have tried to handle it. It might be a description of the perception that is out there.

Q181 Paul Girvan: Using Northern Ireland as an example, it is not necessarily minibus type vehicles that are being used; it is private cars by volunteers for no recompense. They are total volunteers; the only expenses covered are in relation to fuel. Those gentlemen are going to be put down the route of having to sit a test. I am just saying that that is something that we cannot, and could not, fund, should it be put through to our community transport process.

Stephen Fidler: That is a classic example, if I may say so, of where what we have actually said in our letters and the message that has been heard by people differs. If you are in a vehicle with fewer than eight passenger seats, you are not covered by this. A car would not be covered. If it is an entirely voluntary trip—taking people out on trips on an ad hoc basis with volunteer drivers—it would be another example of non-commercial.

I would like to think that the kinds of examples you are talking about are exactly the kinds of vital services that are absolutely outside the scope of things addressed by our July letter. It was quite a specific letter, but unfortunately the kind of reaction to it and the correspondence around it suggested it was a bigger thing than it was. It was dealing very specifically with larger vehicles, which use section 19 permits and which had won commercial contracts in competition with commercial operators. That is a hugely different scenario from the one you describe.

Jesse Norman: We want to land that point very squarely, if we may, today. If you have fewer than eight seats, or if running transport is ancillary to your activity, and all the other points that Mr Fidler raised, you are highly unlikely to be covered by this, if not outright exempt. We don't give legal advice but you get the point. It is terribly important that people realise that. The vast majority of the kind of small organisations that you are describing will be exempted as a result. Personally, I do not anticipate an enormous change.

There is one other point that I want to make clear to the Committee. It is important and I have not had a chance to say it. We recognise that some organisations may fall the wrong side of the divide. That is inevitable, because there is evidence that that is the way the sector has developed. It is not necessarily a large number, but some. We are today announcing a fund of £250,000 in this financial year to assist operators who need to



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make the transition to getting an O licence in order to be properly registered as PSV operators.

Chair: I am sure that will be very welcome information. There is clearly a need for much greater clarification. It has become clear since 31 July that there was a need for greater clarification. We probably know now that, in the example given, they would not be affected, whereas perhaps earlier in the year that was not so clear.

Q182 **Huw Merriman:** If it is the case that these changes have largely been driven by legal developments, isn't the consultation going to be somewhat constrained on the same basis? The consultation has been announced and we can write in and give our views, but if you have to change to adapt to the judgment, isn't it direction from the courts that is needed rather than a consultation with the public at large?

Stephen Fidler: My view is that it is both. If you look at the absolutely core question of an example such as Erewash—if you saw it as a set of concentric circles, that is right at the heart of it—DVSA feels, and certainly our understanding of the law is, that it is a case that looks as if it is firmly caught within this problematic issue. If you then look further out, there are lots of choices about how more marginal cases are dealt with, and how we define commercial in a more marginal context.

We set out in the 9 November note some material that would perhaps otherwise have been in the consultation document, around what we think it is. Other people might think we can go further than that in some areas. There might be some pressure to row back, but I hope not. There is a lot of scope for the consultation to clarify how we interpret this in UK law and how we are going to make the boundaries of what is commercial and what is not commercial really clear. In the meantime, there is also the question of confirming or otherwise whether, if you have that case at the centre, we are absolutely right in our interpretation or not.

Q183 **Huw Merriman:** Are there plans to go to the court and ask for directions? Normally, you would take two interested parties with you and they would argue the merits. Then you would have a whole series of questions where you get clarity from the court, which effectively is as good as a judgment.

Stephen Fidler: This might be more for Peter or Kevin to comment on, but the reality of this situation is that it would probably be referred to a traffic commissioner in the first instance and then be appealed to a tribunal. That would be the route for resolving it. Personally, I would be fractionally nervous about going for a judgment from a court in that way, because it creates a kind of cliff-edge moment. If we are relatively sure, as we are, that this is the situation that will apply, it would cause some problems if we had gone for that really quickly and immediately. We were trying to find a way through the situation that, as I said before, gave operators as much time as possible to adjust, if that is what they needed



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to do, and to understand the implications. We will get there, I think, but potentially by a slightly different route.

Q184 **Huw Merriman:** The beauty of getting directions is that, first, you should not get judicially reviewed because you are in the court anyway. Secondly, it is actually quite a consensual way of bringing two parties together, rather than having to wait for it to go all the way through. You can be more proactive and get exactly what you need. I will leave that with you.

Stephen Fidler: Yes, it is a useful thought. Thank you.

Chair: We have a few more questions about the nature of the consultation.

Q185 **Iain Stewart:** Can you tell me when you expect to publish it, Minister?

Jesse Norman: We expect the consultation to be launched before Christmas. We expect it to take 12 weeks. There is Christmas in the middle, and it is important to give the consultation the fullest possible period of time. That would take us to the middle of March potentially, and then there will be a process of consideration of the responses we receive and a response from Government thereafter.

Q186 **Iain Stewart:** We have covered a wide range of the complexities of this issue. Do you think you should look at expanding the scope of the consultation to consider some of them? As an example, as well as having a differentiation in the size of vehicles, to exclude people using private cars or very small vehicles, should you look perhaps at a two-tier option? There is a world of difference between a very small community transport operator with a handful of vehicles and a very big operator with a whole fleet and a turnover running into millions of pounds. Do you think the consultation should consider those options as well?

Jesse Norman: Stephen can comment on the detail but, of course, our hands are somewhat tied by the legal situation, and the scope for exemptions given within the regulation. The way we think of the consultation is that it is a very good way to gather information about the sector. There are things we believe we know but would like more data on and more evidence. It is also a very good way to gather ideas. There are specific areas—I have touched on some of them—that we really do want to discuss and spread wider understanding of the potential exemptions for. We also want to get feedback on those. That might include the issue of short distance or the scope for people to understand the nature of what is competitive and what is not competitive. There is what the scope of letters of derogation might be. There are various issues. Obviously, people will be at liberty to respond to our questions, and, of course, if they wish to add things, they can do that as well.

Q187 **Iain Stewart:** Mr Fidler, do you have anything to add?

Stephen Fidler: To add to what the Minister has said, we are working under quite a few constraints with regard to EU law, both in this



regulation and more widely, in terms of what we can do domestically. If we roll forward 18 months or so, there may be some opportunities to look at a system that does not exist right now. The focus at the moment is really on getting the consultation out as quickly as we can for all the reasons the Committee have talked about before. While we can consider some choices and options around it, the plan at the moment is very much to focus on the really key urgent issues for the sector and then potentially to return to some of the longer term questions—there are quite a few of them—at a later point when we are a bit clearer on the future landscape.

Q188 Chair: While we would agree about the urgency of getting the consultation out, given that it has now been some months, do you think there will be time to consider this Committee's recommendations if they come forward promptly before the consultation is issued?

Jesse Norman: Madam Chair, when are you planning to have your Committee's conclusions out?

Q189 Chair: Hopefully, within the next few weeks.

Jesse Norman: Certainly my view has been that it was important for the process of consultation that we launch it after we had had a chance to review and consider all the evidence that had been given to your Committee. We might end up in a different place, but at least we would have had the benefit of that. I am afraid I have taken the view that we should hold off a little bit, in order to get the full benefits of the oral testimony and the other evidence that is being handled, because I think that is a very important part of the intellectual backdrop to the work we are doing.

Chair: We were hoping to be helpful in that regard in our inquiry. Thank you very much for giving evidence today. That concludes our session.