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Nusrat Ghani MP
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16 April 2018

Dear *Nusrat*,

Further to my letter to Jesse Norman MP of 13 February about your consultation on proposed changes to the community transport permit regime, I promised to write to you again when I had the opportunity to more fully assess the potential impact on transport services in relation to Wales.

As you have acknowledged in your consultation document, transport operators providing services under the community transport permit regime to many of our rural and more isolated communities are vitally important to the lives of thousands of passengers across Britain. I agree that since the introduction of the community transport permit regime in 1985, the sector has evolved. In many cases, this evolution has been necessary to fill the void created by the contraction of public service vehicle operators who are either unable, or in some cases unwilling to maintain services in more rural and isolated areas.

Whilst it is important to provide clarity to the community transport sector about what services can be provided under the permit regime, care must be taken not to jeopardise these important services. This was a key theme emerging from the debate in the National Assembly for Wales on 21 March, in which members across all political parties represented in the National Assembly for Wales noted with concern the current consultation on community transport permits and the potential impact that these proposed changes could have on services in Wales.

Latest estimates published by the CTA in Wales in 2014 suggested that community transport organisations provided about two million passenger journeys covering approximately six million miles. At that time, there were about 114 community transport organisations registered as members of the Community Transport Association in Wales. About 34% of these organisations offer services solely in rural areas, 9% offer services solely in urban areas and 55% offer their services in both rural and urban areas. About a third of these organisations provide services in Powys, whilst approximately 14% of organisations offer services in Carmarthenshire, Ceredigion, Gwynedd and Pembrokeshire. About 93% of community transport organisations stated that their service users include older people, whilst 84% offered services to disabled people and 76% to people with mobility problems.

Not all of these services are dependant on community transport permits for their operation, but the proposed changes could have a significant impact for some of the most vulnerable passengers in the most rural parts of Wales. As such, any changes proposed to the permit regime must be subject to a detailed equality impact assessment prior to any changes taking place.

An initial assessment of the proposed changes in relation to Powys paints a stark picture. The Powys Association of Voluntary Organisations has discussed the impact of the proposed licensing changes in detail with these schemes in order to ascertain the effect on each service. Feedback from the services affected has indicated that five providers would be forced to close altogether, two might continue to operate under the new requirements, but would be forced to only operate within the commercial market, and as such believe they might still close, whilst two providers currently use vehicles carrying fewer than nine passengers and would therefore not be affected by the changes.

This means a potential reduction in services for people living in Powys annually could mean:

3,150 people losing their current Community Transport service, of whom 2963 are aged 60+ (a 40% reduction to Powys' Community Transport Service users)

75,000 passenger journeys would be lost (a 69% reduction in Powys' Community Transport journey capacity), including 12,000 day centre journeys, 10,000 hospital/health trips and 25,000 social/shopping journeys

Many of Powys' key population centres and their satellite communities could potentially lose their largest (and in most case only) community transport service providers. People in communities such as Brecon, would be left without any service, whilst in places such as Builth Wells, Newtown and Rhayader, there would remain community car schemes only. This picture is reflected in many other rural communities across Wales.

Non commercial activity

It is in this context and as I indicated in my letter of 13 February, that I remain concerned about the proposed definition of commercial activity set out on page 13 of the consultation document and provided under article 1(4)(b) of EU Regulation 1071/2009. This states that undertakings engaged in road passenger transport services exclusively for non-commercial purposes or which have a main occupation other than that of road passenger transport operator may be subject to the exemption. It is proposed that CT operators may rely on the non-commercial exemption if all of the services which they operate fall within **one or more** of the following categories.

The service is free of charge

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

Whilst this derogation can further support organisations whose main business is not that of providing passenger transport, it will not support CT operators providing community transport services as no such service can be provided entirely free of charge. Few community transport providers in Wales provide transport as an ancillary service.

Any charge for service is substantially less than cost

Any charge imposed on passengers or any third party (such as a local authority) is substantially less than the cost of providing the service because the cost is heavily subsidised (for example, by voluntary donations of money or time, unconditional grants or income from non-transport activities). As a broad rule-of-thumb, "substantially less than cost" means more than 10% less than cost. Again, few community transport providers in Wales provide transport as an ancillary service and reliance on voluntary donations to maintain services inhibits the sector's ability to maintain services. Should voluntary donations decline in one or more years, community transport providers do not hold the reserves necessary to maintain services until such time as donations can be restored, especially in more disadvantaged communities. Providing a service at less than cost is not sustainable.

It is on this basis therefore, that the Welsh Government's position is that community transport providers operating services under the community transport regime should be able to continue to provide services under contract or grant from a local authority and continue to operate on a full cost recovery basis.

Any charge for service equals (or exceeds) cost

It is proposed that if a charge is imposed on passengers or local authorities, which equals (or exceeds) cost, services may be provided if there is no competition for any of those services from the holders of PSV licences ('commercial operators'). If a CT operator is relying on the absence of competition from commercial operators, you are proposing that the CT operator must be able to provide appropriate evidence. The example provided includes confirmation being obtained from the relevant local authority, to the effect that local commercial operators have shown no interest in competing for contracts; or confirmation from local commercial operators, to the effect that they have no intention of bidding for contracts or operating competing services.

Whilst this derogation appears to make provision for ongoing public contracting of local transport services by community transport providers, it does so only if public service vehicle operators decline to bid for public service contracts. In effect, public service vehicle operators are provided a veto to prevent community transport operators bidding for public service contracts with a local authority. In many rural areas, there may be only one or two PSV operators operating in the locality and if only one is prepared to bid for a contract, then they are able to effectively dictate prices to the contracting local authority having removed the only source of local competition.

Most local operators in rural areas not only provide scheduled local bus services under contract, but also provide other transport services such as long distance excursions, foreign holidays and learner travel under contract and as such, have the opportunity to cross subsidise local bus services. Removing the local competition offered by community transport in these areas will not only restrict competition in the public sector procurement, but will likely increase costs to local authorities further reducing the funding available to support local transport services.

Subject to the outcome of a competition and markets assessment undertaken by the contracting authority, community transport providers should be allowed to compete against PSV operators in any bidding exercise conducted by the contracting authority.

Minor Impact derogation

I welcome the decision of the UK Government to further explore the derogation provided for under Article (1)(5)(b) of the EU Regulation, which permits member states to exempt from the application of all or some of the provisions of the Regulation for road transport operators engaged exclusively in national transport operations having only a minor impact on the transport market because of the short distances involved. I recognise that this derogation has not previously been applied in Britain and that the Government is prepared to consider a radius of between 15 to 20 miles.

In some parts of the south Wales valleys, application of a derogation using this radius would be sufficient to enable local operators to continue to provide services in local areas. For example, a service based in Tonyrefail in the south Wales valleys would be able to provide services to Merthyr to the north, Swansea to the west and Newport and Cardiff to the south.

A service based in Brecon however, would no longer be able to provide services beyond Builth Wells to the north. Services to Newtown and to Hereford for example could not be met. Similarly, community transport services based in Newtown would not be able to reach Shrewsbury where a number of local health services are provided to people living in Powys. In the case of Powys, a radius of up to 30 miles would be more appropriate.

Given the important contribution that the community transport sector has made and continues to make to maintaining local transport services in Wales, I have asked my officials to maintain a dialogue with your officials following the completion of this consultation exercise, in anticipation that the potentially damaging impacts to the CT sector in Wales can be avoided. The community transport permit system is designed to provide a less onerous regime to that imposed on public service vehicle operators. Many operators using the permit regime do so safely, providing vital services in areas that would otherwise become disconnected from the public transport network. Imposing restrictions on permit holders to legitimately bid for public sector contracts will harm the interests of passengers, communities and leave many communities without the vital services on which many people depend.

I am copying this letter to the Secretary of State for Wales, members of the National Assembly for Wales and Welsh Members of Parliament.

Yours sincerely

With best wishes,
Ken

Ken Skates AC/AM

Ysgrifennydd y Cabinet dros yr Economi a Thrafnidiaeth
Cabinet Secretary for Economy and Transport