

Minibuses used by employers to transport their workers

8 March 2005

Submission by the Association of Labour Providers to the Department for Transport

Introduction

Labour providers frequently have to provide the transport to enable their workers to get to and from their places of work. They are generally not able to absorb the costs involved in doing so, which means that they have to make a charge, which in turn means that they are deemed to be operating public service vehicles. This considerably adds to the costs that labour providers face with no corresponding benefits. The Association is seeking secondary legislation which would have the effect of putting all "works buses" on the same footing with respect to PSV licences regardless of whether a charge is deemed to be made.

The business of labour providers

This brief description of the business of labour providers is sketchy as the sector is not well researched or documented.

Basically, labour providers (sometimes known more pejoratively as gangmasters) provide an outsourced labour service to other businesses. Most commonly this service is very flexible, providing varying numbers of workers on a day-by-day basis so as to meet fluctuations in demand. However, some labour providers in effect provide permanent staff for some companies. Labour providers are particularly strong in the agriculture and fresh produce trade, where the demand for labour can fluctuate particularly rapidly. As supermarkets operate on a 24-hour basis and hold minimal stocks they expect their suppliers to be able to increase or decrease supplies by significant amounts with very little notice. In turn, their suppliers need to be able to adjust their labour supply as they cannot afford to staff up permanently to meet peak levels of demand.

Generally, the workers supplied by labour providers, particularly to the agriculture and fresh produce trade, are doing low paid work, typically at the minimum wage or just above. Few British people are prepared to work on this basis and accordingly the labour providers mainly employ labour from outside the United Kingdom, particularly from the Accession States in Eastern Europe. They may well recruit in the Accession States and may contribute to the cost of their workers travelling to Britain. They help their workers find housing, open bank accounts and do everything else necessary to settle in Britain, as well as find work for them. It goes without saying that the workers generally cannot afford their own transport.

The labour users who take workers from the labour providers are generally based outside the main towns, either in farms or in packhouses. There is no public transport and accordingly the labour providers have to provide the transport to enable their workers to get to and from their places of work. This is usually done by minibuses although also by private cars where smaller numbers of workers are involved.

The problem that labour providers face

It can be argued that labour providers to the agriculture and fresh produce trade are in no different position from many other businesses that need to transport their workers to and from their places of work, that is they should provide this transport free of charge. In this way, provided the minibuses do not have more than 16 passenger seats, the labour provider does not need a PSV licence and drivers do not need PCV licences. Naturally, this involves a cost and therefore it must have some effect on the wages that the employer is able to pay; in other words,

where transport is provided then, other things being equal, wages are slightly lower. To the worker, providing transport is an attractive fringe benefit, particularly as in practice it is generally paid for out of pre-tax income.

Generally, labour providers to the agriculture and fresh produce trade simply cannot afford to provide such transport for nothing. Their main customers are the packhouses which serve the supermarkets. The supermarkets drive down the prices they are willing to pay to the packhouses who, in turn, seek to pay the minimum possible amount to their labour suppliers, who operate on very tight margins. They cannot afford to absorb additional costs. Some evidence to support this is given in the initial Regulatory Impact Assessment for the Gangmasters (Licensing) Bill, which was introduced into Parliament in 2005. Annex 8 to the RIA is an illustration of the typical minimum costs incurred by a labour provider in supplying labour in accordance with employment law and other legal requirements. Additional transport costs were estimated to add 7.8% to the wage bill. This is typically more than the margin which labour providers are able to obtain.

For this reason, most labour providers seek to make a charge for transport, basically to make a contribution to their costs, not to make a profit. This charge may well be wrapped into an overall administration charge to help cover other costs. Where they are making such a charge then they are deemed to be operating public service vehicles and the drivers will need the appropriate PCV licences.

Again, there might seem an obvious solution to this, which is to pay for the necessary licences. However, this imposes another significant cost burden on businesses already operating with tiny margins. The major cost is not that of the PSV licences but rather the additional cost of insurance as insuring vehicles deemed to be PSV vehicles is more expensive than insuring works buses even if the two are used identically. There is also a problem with the drivers having the necessary licences. The drivers are also workers, driving for perhaps half an hour or an hour a day. If a driver with the necessary licence is unwell then the labour provider may be in a position of having to make special arrangements at the last moment to get his workers to and from work, again adding to expense.

Why labour providers are different from other businesses

The ALP is not seeking a solution that would be specific to labour providers to the agriculture and fresh produce trade and it is a legitimate question to ask as to why they consider themselves different from other businesses. The points have already been made. In summary –

- Labour providers have no choice but to provide transport for their workers because no public transport is available.
- Labour providers do not have the option of absorbing the costs of transport provision because they operate on tiny margins.

The public policy issues

In considering the appropriate legislative response it is helpful to ask what is the purpose of legislation governing public service vehicles. One assumes it is to protect the public who choose to buy a service from a business where that service includes the provision of transport. The main concern must be public safety.

One assumes it is not the intention of the legislation to catch works buses generally because otherwise the legislation would have provided for this. In fact there are more onerous requirements for any minibus with 17 or more seats, which seems appropriate.

The effect of the current situation is that where workers are transported in minibuses provided by an employer but no explicit or implicit charge is made, then the vehicles are not deemed to be

PSV vehicles and drivers do not require PCV licences. However, when any charge is made to workers, however small, then it is deemed to include transport and PSV and PCV licences are required. It is difficult to see what public policy purpose is served by this distinction. The responsibilities of the employer to the employee are the same in either case. If this is the intended consequence of the legislation then the implication would be that the government does not really care about the safety of workers transported in minibuses unless the workers are deemed to be making a payment.

There is a further issue, that is the uncertainty as to the effect of the legislation. The Department's Policy Adviser on the subject has suggested that a PSV licence is required even if no charge is made to workers on the grounds that the payment paid by the labour user to the labour provider for providing the labour is sufficient to meet the hire and reward test. This is not the view of the Association and is not the generally accepted position. The Adviser has further advised that the law is very complex and labour providers should seek independent legal advice as to whether they require PSV licences. This does not seem a satisfactory stance for a business- friendly government committed to reducing red tape and making Britain a centre of enterprise in which small businesses are encouraged.

Enforcement

The issue has become significant in the past year or so only because the attitude of VOSA towards enforcement has changed. In the past, labour providers reported that their vehicles were frequently stopped by the police and VOSA officials and checked for safety, tax discs and occasionally whether the workers were in Britain legally. The question was almost never asked as to whether the vehicle had a PSV licence. Presumably the police and VOSA worked on the assumption that if there was an offence, it was technical and they had more important issues to pursue. Faced with the blind eye approach and the costs resulting from registering as a PSV vehicle, some labour providers naturally took the easy choice of not registering.

VOSA now has a different attitude to enforcement. Since the enactment of the Police Reform Act 2002, chief constables can accredit VOSA staff with the power to stop goods and passenger vehicles and many have already done so. It is understood that VOSA's internal targets have also changed. Previously, one "point" was achieved for every vehicle stopped. Now it is understood (and this is only hearsay) that a prosecution for a vehicle for not having a PSV licence is worth 100 points. It is hardly surprising in those circumstances that VOSA is going after what is a fairly easy target.

However, this change of policy has not been communicated to labour providers or to anyone else.

Proposed solution

The Association is not seeking a return to the "blind eye" approach which operated until recently, even if the results of that were broadly satisfactory. Rather it is seeking the appropriate legislative change to remove what seems to be an anomaly.

The Association does not have the resources to examine the legislation in detail and suggest how this could be done. It is recognised that if this requires primary legislation then nothing can be expected.

The Association's preferred solution is that mini-buses used by employers to convey their workers to and from their places of work should not be considered to be public service vehicles.