



Unite Local Transport Act 2008 Quality Contracts Schemes Consultation Submission – Oct 09

Introduction

This submission is by Unite the Union. Unite is the UK's largest trade union with 2 million members across the private and public sectors. The union's members work in a range of industries including manufacturing, financial services, print, media, construction, local government, food, agriculture, education, health, not for profit and the transport sector.

Unite represents over 100,000 drivers, engineers, admin staff, inspectors and managers employed in the UK transport industry, with over 96% of organised workers in the bus sector in Unite. Unite are pleased to say that we have worked well with the Government over the past five years leading to the passing into law of the Local Transport Act. There is no question that the framework provided is strongly in the public interest. Further, as a consequence of our dialogue, good progress has been made in defending the interests of bus workers in the industry.

However Unite has 4 areas of concern:-

- 1 - TUPE application,
- 2- Minimum T&C and pension standards for new employees who are not covered by TUPE,
- 3 - The definition of a 'quality' scheme and
- 4 - Trade union consultation where trade unions have members and early involvement in the drawing up of contracts and particularly in discussions around allocation arrangements should take place.

Q1. Do you agree with the proposals contained in the qcs board regulations, and why (or why not)?

Unite believes that the presence of a traffic commissioner on the QCS board is vital. Unite also believes that from the other two people that will be selected from a panel appointed by the Secretary of State, that one of these places should be available for a trade union to represent bus workers where trade unions have members.

Q2. Do you agree with the proposals contained in the registration regulations, and why (or why not)?

Unite supports the proposed extension from 56 days notice in relation to cancellations and certain variations of an existing service registration to 112 days notice.

Q3. [for interested parties in Wales:] should the proposals in part 2 of the registration regulations also apply in Wales?

Unite believes that the proposed extension from 56 days to 112 days should also apply in Wales and that discussions should be sought with the Welsh Assembly Government.

Q4. Do you agree with the proposals contained in the tendering regulations, and why (or why not)?

Unite believes that if there is going to be an option to award “emergency” contracts outside of a tendering process then this must be conducted in a publicly transparent and unbiased way.

Q5. Do you agree with the proposals contained in the application of tupe regulations, and why (or why not)?

TUPE Application

Unite is concerned that the current TUPE protection that has been built in to the LTA for current workers is not undermined by an overly prescriptive percentage stipulation on how it should be applied. The draft guidance states that TUPE will apply when a worker's employment is 'principally connected' with the provision of the affected services. With reference to the case of Hunt vs Storm, this is specified as being at least two-thirds of the employee's working time. Legal advice sought by Unite the Union establishes that:

'Paragraph 108 is misleading and if the guidance, as drafted, is followed there would probably be occasions when the law was not complied with. Hunt v Storm was a case involving one person and provides limited assistance in situations where more than one employee is involved as would be the case in relation to most situations involving a quality contract.'

The case (which did not technically deal with the phrase 'principally connected') was decided on Ms Hunt spending between 50% and 70% of her time working on one particular account. The case did not decide the principle that 'principally connected' means more than 70% or two thirds and that where a person's activities in relation to a service amounted to less than that, TUPE does not apply.

It should be noted that the proportion of time spent is not the only factor to be taken into account in deciding whether an individual employee is assigned to the service in question for these purposes. This was recognised by the tribunal in the Hunt case. Further, although Hunt v Storm was probably correctly decided on its facts, it is only a decision at first instance (by an Employment Tribunal) and is not binding on other employment tribunals.

Unite believe the reference to Hunt v Storm should be removed and further thought given to how best to describe the application of TUPE. The trade unions would be happy to share their extensive experience in dealing with TUPE to contribute to this process.

Trade union consultation where trade unions have members and early involvement in the drawing up of contracts and particularly in discussions around allocation arrangements should take place

Consultation with employee representatives, particularly recognised trade unions, will be an essential element of the development of individual QCS. Engaging trade unions early in the discussions around the development of QCS will help to anticipate potential issues or difficulties and will, therefore, ensure a smooth transition with stability of service.

Unite is pleased that the guidance includes a reference to early consultation with employee representatives prior to the statutory notice and consultation periods. It is important, however, that the guidance and regulations should emphasise the importance of consulting with recognised trade unions in addition to the current language about 'appropriate employee representatives'. Where there is a recognised trade union or unions, they will be the most appropriate representatives and the guidance should make this clear. This approach would mirror the law and practice relating to TUPE transfers, where employers are required to consult with recognised trade unions.

Local consultation and agreement with relevant local trade unions from an early stage in the process will be central to dealing with the diverse local situations that will arise in the transition to QCS's. The guiding principle must be that that the eventual transfer of employees makes sense locally and is agreed by the parties involved.

Q6. Do you agree with the proposals contained in the pension protection regulations, and why (or why not)?

Unite welcomes the pension protection for every transferring worker and the opportunity (for a successful operator who is awarded the Quality Contract will have Admitted Body Status) to apply for access to the Local Government Pension Scheme or equivalent scheme, which has been build in to the LTA.

Minimum T&C and pension standards for new employees who are not covered by TUPE

However, Unite is concerned that the guidance does not appear to offer protection for new employees who are not covered by the TUPE and pension protections built into the LTA in the way current employees are. This could lead to a risk that operators bidding for the contract will drive down costs through reducing terms and conditions for future employees, with resultant risks to future service delivery. Unite strongly urges the Government to look at ways to protect against this risk. QCS could, for example, set minimum terms and conditions based on the best available TUPE and pension conditions in the contract area in order to ensure that conditions are not harmonised downwards.

Unite would once again like to highlight to the DfT the provisions within EU Regulation 1370/2007 on PSO Obligations in Local Passenger Transport, which specifically permit tendering authorities to make such requirements in their contracts. Unite is aware the DfT believes that this may be contrary to competition rules, however Unite believes that this proposal should be tested further before moving on to possible other alternatives.

There are precedents for this type of commitment within codes of practice, exemplified by the Agenda for Change process in the NHS. This agreement, which covers a major change programme for the whole of the Health Service,

includes a commitment to maintain pay and terms and conditions over the lifetime of a contract in order to avoid a two-tier workforce developing.

Unite welcomes the assurance from officials that the Cabinet Office Two-Tier Code was likely to apply to QCS, but would appreciate confirmation and further information, including how the Code will be applied and the practical implications of this for the drawing up of contracts.

Whilst we acknowledge that the complexity of the QCS and the fact that employees will be transferring into QCS from multiple private employers make the application of principles such as the Two-Tier Code more complex, we urge the Government to give serious consideration to our proposals.

Q7. Do you agree that the guidance is helpful, and that it should be issued as statutory guidance to ltas, qcs boards and the senior traffic commissioner?

Unite believes that the guidance is essential and needs to be issued as statutory guidance to LTAs, QCS boards and the senior traffic commissioner.

The definition of a 'quality' scheme

However Unite is concerned that there is insufficient provision in the regulations to make clear the criteria that determine a 'quality' scheme. Whilst we support the public interest criteria set out in paragraph 48 (based on the 2000 Act), we believe that it is important to provide guidance for QCS boards that stipulates in more detail the characteristics of a quality scheme. These should include decent and fair employment standards, safety and training commitments and also include broad criteria around improving fares, frequencies and facilities. Terms and conditions are central to maintaining a stable, professional and experienced workforce in order to maintain service levels and meet the public interest criteria.

However, we would like to reiterate the concerns raised above in relation to other terms and conditions of employment. In order to provide a level playing field for new starters under these schemes, it is important that they should at least have access to the pension schemes provided for those who have been transferred into the QCS.

The wording "Quality Contract" should mean exactly that and the Government needs to make sure that that's what Local Authorities are going to prescribe during a tendering process. The LGPS is an example of how Local Authorities could set the standard of what Quality Contracts should be.

Q8. Do you have any specific comments on the draft guidance? When commenting, please indicate which paragraph numbers your comments relate to.

None other than the ones we have mentioned.

Q9. Bearing in mind the objectives mentioned in paragraph 47 of the consultation document, which tier of the new, unified tribunal system should hear appeals relating to qcscs, and why?

Unite believes that all such appeals should transfer to the Upper Tribunal. Unite believes that this provides an opportunity for two levels of independent scrutiny by a QCS board, chaired by a traffic commissioner and by the Upper Tribunal. This option also provides for a right for appeal but only on a point of law and with the permission of the Court of Appeal, which Unite believes is the fairest and most just way to determine appeals.

Q10. What criteria should be used for the appointment of the panel of prospective qcs board members?

Unite believes that a QCS board should contain trade union representation because the bus industry is highly unionised and trade unions have a lot of experience and knowledge of what its like to deal with bus operators, bus workers and the general public. So clearly Unite believes that experience and knowledge of the bus industry should be a prerequisite.

Q11. Do you have any comments on the impact assessment, including any quantitative evidence regarding likely costs and benefits?

Unite believes that “Quality Contracts” will start to put right the problems that have been caused by deregulating local bus services, as long as there are high quality terms and conditions including pensions which ensure that there will be a stable workforce for the life of any “Quality Contract”.

Reasons Against Deregulation of Buses

- **Passenger numbers continuing to fall** - Bus passenger numbers have been falling since the 1950s and deregulation has done little to halt this – between 2000 and 2005, they fell by 7% in the regions.
- **Bus services are unreliable and of a poor quality** - The vehicles are old and inaccessible and passengers are unsafe and uncomfortable.
- **Competition is failing the public** - Commercial operators concentrate resources on most profitable corridors, leaving non-core routes or off peak routes, especially in rural areas under threat with poor or non-existent service.
- **Bus wars and ‘high prices’** - Bus wars often end in the smaller companies ceasing to operate the route, leading to a monopoly controlled by a large operator who are then free to charge what they want, which is

often not value for money. The Office of Fair Trading has recently referred its investigation into the UK Bus industry to the Competition Commission to look at this.

- **Bad for the environment** – Some profitable routes see several companies running the same services at roughly the same times. An example of this practice is the lucrative 192 bus route in Manchester where two large companies began a "bus war" in March 2006, leading to complaints of increased traffic congestion and concerns over safety of passengers and pedestrians.
- **Lack of "all operator" tickets in many areas** – A particular problem where there are several operators making it unappealing to the public.

Reasons for Re-regulation of Buses

- **Better value** – Local Authorities will have more power to stipulate the quality of service that is expected for the price being charged within the Quality Contract in a way that they couldn't under deregulation, when monopolies were free to set their own price, based on any service delivery, which often did not deliver value for money.
- **More reliable** – Local Authorities will have a role to play in agreeing the routes and the frequency to which they will be serviced, which can provide a more reliable service for the public.
- **Environmental benefits** – By having the correct level of supply determined by the Local Authority and successful operator for busy routes. Re-regulation can put an end to the empty or half full buses that several operators gave us under deregulation when they were all competing on the most profitable routes.
- **Passenger numbers rise** – In London where services are privatised but regulated, passenger numbers have risen by 32% from 2000 to 2005. By offering a better value and more reliable service, passenger numbers could rise in the regions, which would have environmental benefits.

- **Traffic Commissioners** - Improved strengthening of the role of Traffic Commissioners will help monitor adherence to standards determined within Quality Contracts.
- **More bus lanes** – Local Authorities will have more opportunity to put in more bus lanes now that they are more central to the process of bus delivery in their authority. This can have environmental benefits with reduced traffic and a reduction in the amount of emissions.
- **Through ticketing** – With one successful operator or operators under Local Authority direction through ticketing will become easier, which is appealing to the public.

Conclusion

Deregulation has seen bus workers terms and conditions, work/life balance and general health reduced, whilst the public has had to endure decreased services/routes, at higher prices. Therefore Unite sees the Local Transport Act and the QCS it offers as a real opportunity to finally reel back the years of damage that has been done by deregulation.

The Government previous commitments in Local Government are welcome and it seems poignant to reflect upon them in the QCS context:-

“High quality local services depend on a high quality and motivated workforce. That is why the Government announced.....that it would introduce measures to ensure that all contractors selected to provide services to local authorities in England have policies which will secure a high quality workforce throughout the life of a service contract.”

This is exactly the type of commitment that Unite is looking for with QCS and if Unites 4 areas of concern are addressed then there is no reason why this can not be delivered to the benefit of all.

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