



Department
for Transport

From the Secretary of State
The Rt. Hon. Grant Shapps MP

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Mr. James Newman
Her Majesty's Coroner for Lancashire and Blackburn with Darwen
2 Faraday Court
Faraday Drive
Fulwood
Preston
Lancashire PR2 9NB

10 December 2020

Dear Mr Newman,

Response to HM Coroner's Regulation 28 Report to Prevent Future Deaths in Connection with the Inquest into the Death of Mr. Russell Curwen.

I acknowledge your report to prevent future deaths, and the requirement to provide a response. I wish to thank you for raising these important issues and for allowing an extended period to prepare this report.

I would like to acknowledge the excellent voluntary work done by blood bike groups across the country in support of the NHS, and extend my deepest sympathies to the family, friends and colleagues of Russell Curwen for this tragic loss.

I propose to respond to your report by setting out some general observations pertinent to this case and follow on by addressing specific points you have raised. In support of this the specific legislation is explained in more detail in the appendices to this letter.

Emergency response driving may be defined as using blue lights and audible warning systems to facilitate progress through traffic, and making use of qualified exemptions to road traffic provisions such as speed, red traffic lights and keep left / right signs. Such driving carries with it an increased risk for both emergency personnel and other road users over normal driving, because the responding vehicle will be travelling faster than expected, in unexpected positions on the road, and performing unexpected manoeuvres. Therefore, emergency driving must always be proportional to and justified by the risk to individual or public safety. It is essential that the use of blue lights and sirens retain public confidence and their impact on other road users.

The current position of my Department is opposed to extending exemptions to road traffic laws, and the proliferation of sirens and reserved colour warning lights, unless both necessary to and justified by the primary use of any relevant vehicle. It is recognised that emergency response driving is a perishable skill; it sits best with those using that skill on a frequent basis and with sound training, governance and oversight.

Appropriate training, record keeping, command and control systems, supervision and governance are essential elements for any emergency service entitled to rely upon speed and traffic sign exemptions, both to ensure accountability and public safety, and prevent abuse.

On the information provided, this incident would appear to be one where existing laws were contravened, rather than where the existing regulations are inadequate. The fitment and use of blue lights and sirens, and the contravention of the red traffic light, all appear to be unlawful on the information provided, and neither part of providing a response to an emergency at the request of an NHS Ambulance Service nor enabled by other legislation. Established governance and oversight procedures were therefore circumvented or non-existent.

Legislation provides for vehicles being used for specific purposes to have qualified exemptions from the requirement to obey speed limits, and certain traffic signs, including red traffic lights, where to observe them would hinder that purpose. Blood bikes do not have any such exemptions, or the authority to fit and use emergency warning equipment, and there are no plans for that to change. The Nationwide Association of Blood Bikes has in the past suggested that they are entitled to fit blue lights as vehicles "primarily used for the purposes of conveying any human tissue for transplanting or similar purposes". We do not agree with this interpretation but it has not yet been tested in court.

Work is in hand to commence section 19 Road Safety Act 2006 (which will substitute section 87 Road Traffic Regulation Act 1984) to introduce a regulation-making power to mandate a minimum driver training standard before any speed exemption may be claimed. It is intended that associated regulations will also create new narrowly-defined speed limit exemption purposes and further clarify and update existing traffic sign, blue light and siren regulations.

All exemptions to speed limits and traffic signs and lights incorporate a necessity test whereby any person claiming an exemption to a provision must show that observance of the relevant provision would hinder the purpose to which the vehicle was being put at the relevant time. Although such exemptions are not available to blood bikes, even if they were, there appears to have been no justification in their use for a routine courier movement of blood samples for analysis as described. Exemptions to traffic lights and keep left/right signs are qualified; the vehicle must not proceed beyond the sign in such a manner or at such a time as to be likely to endanger any person. In addition, with regards to red traffic lights, the vehicle must not proceed beyond the stop line in such a manner or at such a time as to cause the driver of another vehicle to change its speed or course in order to avoid an accident.

I will write to the Department for Health and Social Care, to ask that NHS Trusts are reminded of the existing legislation. I will also ask the National Police Chief's Council to consider developing a specific enforcement strategy to counter unlawful use of emergency warning equipment.

I will ensure that this regulation 28 report, and findings from the ongoing inquest, will be considered by officials working on the relevant legislation, and where appropriate incorporated into the ongoing development of the High Speed Driver Training Regulations, Speed Limits Exemptions Regulations and Code of Best Practice under the amended Road Traffic Regulation Act 1984.

Moving on to address the specifics of this case, I would advise that the existing law is considered robust but will be further clarified and developed when the amendments made by section 19 Road Safety Act 2006 are commenced. Although this received Royal Assent in 2006, complex technical issues related to its associated secondary legislation, around both exemptions and training requirements, have delayed its commencement. Those issues

are being resolved and I expect the draft regulations will go to final public consultation shortly.

As stated above, "Blood Bikes" such as those provided by North West Blood Bikes cannot benefit from road traffic exemptions or authority to fit sirens. Their claim to the right to fit blue lights has not been tested in court and in the absence of a judgement I consider it an incorrect interpretation of the regulations. Enforcement and / or prosecution is a matter for police and the Crown Prosecution Service.

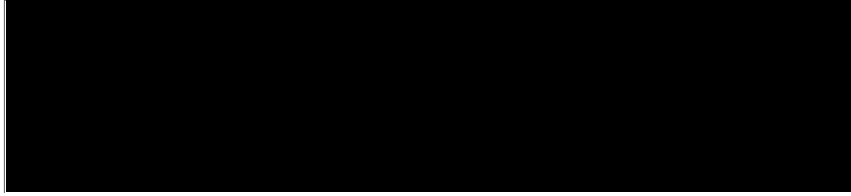
The Nationwide Association of Blood Bikes (NABB) did apply for exemptions under the amendments to be made to section 87 Road Traffic Regulation Act 1984 and relevant regulations by section 19 Road Safety Act 2006. The application was considered inadequate in terms of justification, primary purpose, and proportionality. In addition, their record-keeping and governance was considered inadequate. The primary role of blood bike organisations like North West Blood Bikes is to provide a free courier service to the NHS in lieu of minicabs and commercial courier companies. The responsibility of resupplying a hospital blood bank when supplies of a particular type are running low lies with NHS Blood and Transplant who have confirmed they are satisfied with the current legal position. The majority of Blood Bike groups do not purport to offer any emergency response service. Not all blood bike groups fit blue lights. The NABB application was not supported by NHS Blood and Transplant. There are no plans to grant "Blood Bikes" or medical courier services exemptions to traffic laws similar to the three statutory emergency services or such as are allowed to NHS Blood and Transplant, and no support for such a facility has been offered by the Department for Health and Social Care.

In response to the very specific questions you have asked I offer the following answers:

- 1) If Mr. Curwen had been tasked to an emergency by an NHS Ambulance Service our understanding is that a proper record would have been made. Mr. Curwen does not appear to have been tasked to an emergency. The tasking to routine courier work does not appear to have been made by an NHS Ambulance Trust. The various changes introduced by s50 Deregulation Act 2015 do not therefore appear to be applicable.
- 2) NHS Ambulance Services have the appropriate training, experience, command and control processes, and policies, to determine whether an incident is both an emergency and requiring an urgent response. Should the inquest determine any basis for suggesting that Mr. Curwen was providing a lawful response to an emergency at the request of an NHS Ambulance Service, further consideration will be given to additional guidance and amending regulations.
- 3) If existing laws and procedures had been followed, and had this incident been a genuine emergency, Mr. Curwen would have been subject to a proper degree of supervision and review by an NHS Ambulance Service.
- 4) Section 19 Road Safety Act 2006 once commenced will allow regulations to introduce a national minimum standard for response driver training before any speed limit exemptions may be claimed. The delivery of this secondary legislation has been delayed but a final public consultation is now being prepared before laying the regulations before Parliament. The compulsory minimum standard for response motorcycle riders will be a three-week (120 hour) course of advanced practical riding and emergency response skills, which broadly mirrors current police and ambulance service national requirements. An associated Code of Best Practice will clarify many of the issues raised by HM Coroner and ongoing findings from this inquest will also be considered.

I am grateful for the opportunity to respond to these important issues on behalf of Her Majesty's Government. I have instructed my officials to assist HM Coroner throughout the ongoing proceedings.

Yours sincerely,



Rt. Hon. Grant Shapps MP

SECRETARY OF STATE FOR TRANSPORT