

IN THE MATTER OF :

THE North Yorkshire Hackney Carriage and Private Hire Licensing Policy 2023 and the Adoption of the Local Government (Miscellaneous Provisions) Act 1976 the Public Sector Equality Duty and the duty to Consult

SUBMISSIONS OF IAN LAWSON ON THE PUBLIC SECTOR EQUALITY DUTY AND CONSULTATION

Introduction

1. There are approximately 1.2 million wheelchair users in the UK and approximately 10,000 in North Yorkshire. Ian Lawson a wheelchair user, on whose behalf these submissions are made, is a member of the North Yorkshire Disability Forum, a group which campaigns for equal access on behalf of those wheelchair users and with whom the North Yorkshire authority belatedly consulted in respect of the proposed policy.
2. The proposed North Yorkshire Hackney Carriage and Private Hire Licensing Policy 2023 (referred to hereafter as “the policy”) proposes to combine the policies of 7 authorities into one. There is no proposal that hackney carriages or private hire vehicles be Wheelchair Accessible Vehicles (WAV), despite the fact that 4 out of those 7 authorities have at present policies that all new applications for vehicle licences must be in respect of vehicles that are WAV.
3. It is Mr Lawson’s contention that the equality impact assessment that has been prepared in respect of this policy, and thus the policy itself, is inadequate and thus that if this policy were to be passed in its present form, without being revisited, it would be unlawful. This is because it is in breach of North Yorkshire’s (referred to hereafter as “the authority”) duty under s.149 of the Equality Act 2010 (EqA); and thus it should not be adopted in its present form without significant amendment and/or further information being sought and reported upon. In addition, he contends that the authority has acted in breach of its duties in respect of consultation and that

proceeding to adopt the policy would be in breach of public law duties to carry out an effective consultation.

Some Relevant Context – disability, wheelchair users and taxis

4. On 11 July 2022 the House of Commons Library published a research briefing on disabled people and access to transport. Amongst its findings was that :

- *People with disabilities travel less compared with people without disabilities. Those surveyed travelled less, used public transport less, and were less confident with travelling than non-disabled people. In 2019 disabled people made 73% of the number of journeys made by nondisabled people, regardless of mode.*
- *Disabled people are less likely to use public transport or drive but are more likely to be driven by others and more likely to use taxis and PHVs. This is related to the barriers disabled people face using transport modes other than taxis/PHVs.*

5. The report went on to state (at p.50) that:

The latest figures show that in England 54% of all taxis and 2% of all PHVs were wheelchair accessible in 2021. 282 This was a decline from 2020 when 57% of taxis (and 2% of PHVs) were wheelchair accessible. In Scotland, 50% of all taxis and 4% of PHVs were wheelchair accessible in 2020. 284 There is a significant difference in the availability of accessible vehicles between London and other metropolitan areas on the one hand, and the rest of the country on the other. In England outside of London 40% of all licensed vehicles were wheelchair accessible. However, this varies by area and vehicle type. In 2021, 81% of taxis in metropolitan areas were wheelchair accessible areas. When looking at PHVs, only 1% of licensed vehicles in London were wheelchair accessible, but this increased to 9% in rural areas.

6. Further, it noted (at 51) that *The Disabled Persons Transport Advisory Committee (DPTAC), an expert advisory committee reporting to the DfT, said in a position paper*

in 2020 that the overall decline in the numbers of wheelchair accessible vehicles (WAVs) was concerning, and that this decline was largely because WAVs cost more, “which is why they are generally only widely available where licensing authorities have decided that only WAVs can be licensed as taxis”. 286 The DPTAC accepted that a WAV-only taxi mandate (similar to that in operation in London and Edinburgh) for all licensing authorities would likely be disproportionate, but that each licensing authority should ensure that WAVs should be ‘readily available’ to those who need them at all times of day, 7-days-a-week. They suggested that “‘readily available’ should mean that someone who needs a WAV does not need to wait for more than twice as long as they would for a conventional car.”

7. It is this context that Mr Lawson makes the following submissions in respect of the s.149 duty.

The obligations under s.149

8. Section 149(1) of the EA 2010 provides:

“(1) A public authority must, in the exercise of its functions, have due regard to the need to –

(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;

(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.”

9. The EqA amplifies these provisions by virtue of section 149(3) – (6) as follows:

(3) Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—

- (a) *remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;*
 - (b) *take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;*
 - (c) *encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.*
 - (4) *The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.*
 - (5) *Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—*
 - (a) *tackle prejudice, and*
 - (b) *promote understanding.*
 - (6) *Compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act.*
10. The relevant principles relating to the duty were set out by McCombe LJ in *R (Bracking) v Secretary of State for Work and Pensions* [2013] EWCA Civ 1345 (approved by the Supreme Court in *Hotak v Southwark LBC* [2016] AC 811 at 73) and summarised by the Court of Appeal in *R (Bridges) v Chief Constable of South Wales Police* [2020] EWCA Civ 1058 at 175:
- a. The PSED must be fulfilled before and at the time when a particular policy is being considered.

- b. The duty must be exercised in substance, with rigour, and with an open mind. It is not a question of ticking boxes.
- c. The duty is non-delegable.
- d. The duty is a continuing one.
- e. If the relevant material is not available, there will be a duty to acquire it, and this will frequently mean that some further consultation with appropriate groups is required.
- f. Provided the court is satisfied that there has been a rigorous consideration of the duty, so that there is a proper appreciation of the potential impact of the decision on equality objectives and the desirability of promoting them, then it is for the decision-maker to decide how much weight should be given to the various factors informing the decision.

11. At s176, the Court of Appeal added:

“We accept (as is common ground) that the PSED is a duty of process and not outcome. That does not, however, diminish its importance. Public law is often concerned with the process by which a decision is taken and not with the substance of that decision. This is for at least two reasons. First, good processes are more likely to lead to better informed, and therefore better, decisions. Secondly, whatever the outcome, good processes help to make public authorities accountable to the public. We would add, in the particular context of the PSED, that the duty helps to reassure members of the public, whatever their race or sex, that their interests have been properly taken into account before policies are formulated or brought into effect.”

12. As indicated from the principles distilled above, discharging the PSED will require a public authority to ensure that it has the information necessary to assess the likely impact, both positive and negative, of any proposed decision on protected groups (*R (Kaur) v London Borough of Ealing* [2008] EWHC 2062, at 23, per Moses LJ: *“The jurisprudence relative to the issues reinforces the importance of considering the impact*

of any proposed policy before it is adopted... In considering the impact, the authority must assess the risk and extent of any adverse impact and the ways in which such risk may be eliminated...". This may require inquiries to be undertaken and information to be gathered. Unless public authorities possess, or take steps to gather, relevant information they are unlikely to be able to assess whether a particular decision may have an adverse impact on a protected group. Thus in *R (Rahman) v Birmingham City Council* [2011] EWHAC 944 (Admin) EqLR 705, at 35, per Blake J referred to the need to collate “*relevant information in order to have evidence based decision-making*”, and in *R (Lunt) v Liverpool City Council* [2009] EWHC 2356, at 44 the court held that a “*lawful exercise of discretion could not have been performed unless the Committee properly understood the problem, its degree and extent*”. Similarly, in *R (Brown) v Secretary of State for Work and Pensions* [2008] EWHC 3158; [2009] PTSR 1506, the court explained that in order to discharge the PSED: ‘*the public authority will ... have to have due regard to the need to take steps to gather relevant information in order that it can properly take into account disabled persons’ disabilities in the context of the particular function under consideration*’ (per Aikens LJ, at 85; see too, *R (Hurley) v Secretary of State for Business, Innovation and Skills*, at 89-90, per Elias LJ).

13. The PSED applies not only to the formulation of policies but also to individual decisions taken – or indeed not taken (see *Pieretti v London Borough of Enfield* [2010] EWCA Civ 1104).
14. The authority is doubtless familiar with the duty resting upon public authorities in respect of consultation. In particular, the principles laid down in *R v London Borough of Brent, ex p Gunning* [1985] LGR 168 as to the effectiveness of consultation. The authority is also referred to the High Court's decision in *R (Kohler) v Mayor's Office for Policing and Crime* [2018] EWHC 1881 (Admin) where the High Court quashed the defendant's decision to close the claimant's local police station in Wimbledon. The defendant had failed to consider a material point raised during the consultation exercise which was that the decision should be postponed pending an evaluation of the impact of new technology.

Submissions

15. The Equality Impact Assessment (EqIA) -and thus any decision based upon it – in both the process of its development and its content is inadequate and/or flawed for the following reasons:
- (a) It does not draw attention to each limb of the duty – in particular, the opportunity to use the new policy to promote equality of opportunity for wheelchair users by requiring all new hackney carriages to be WAVs is not explored, nor is the reason for this approach not being adopted, as it is in 4 other authorities, not explained.
 - (b) It is factually incorrect. It states that Selby is the only authority which currently requires new hackney carriages to be WAV. That is inaccurate, as it is four out of the 7 that require such a policy (Selby, Harrogate, Richmondshire and Scarborough).
 - (c) The removal of the requirement for new hackney carriages to be WAVs from 4 out of the 7 authorities has significant implications for the wheelchair users in those areas. The policies are in their infancy. There is no analysis of their impact so far, and in light of the reduced accessibility of WAV as evidenced in the parliamentary briefing this is clearly a retrograde step. No attention has been called to this in the EqIA (nor is it addressed in the policy itself, which is also factually inaccurate, referring as it does only to Selby as having the policy requirement of new WAV); there is no explanation of the reasoning for removing rather than adopting this policy; nor an examination of the impact and/or mitigation of same.
 - (d) Any community engagement – and in respect of disability, this appears to have been carried out at one online meeting with only one disability organisation – will have been based on flawed information as set out above, and so will not have been effective.
 - (e) There is no attempt to consider the numbers of disabled users affected by the new policy and in particular the removal of the requirement from 4 authorities that new applications be with new WAVs. As indicated above by the caselaw, it is

important for the authority to base its decision on relevant information and this should be gathered *as part* of the assessment of impact – not simply as a means of mitigating the adverse effects of a policy which, in this case, is going to result in the removal of a positive policy for wheelchair users without any apparent rationale having been put forward nor the relevant information being before the decision makers.

- (f) It is not only factually incorrect but misleading. The assessment states at p.4 of 10 (p.328) of council papers that “the only way to ensure that a wheelchair accessible vehicle is available at a taxi rank is to mandate that all hackney carriage vehicles must be wheelchair accessible”. It then goes on to quote from DfT’s Taxi and Private Hire Licensing Draft (and it is notable that this is Draft) best practice Guidance as guiding against this (i.e., against all vehicles being WAVs) and stating instead that there is a demand for a mixed fleet. The EqIA makes no mention of the fact that there are such existing policies in local authorities; and that the proposed policy would remove those; nor does it explain why those policies were initially introduced and what it is now that has changed such that they are no longer considered appropriate. There was every opportunity to address this issue, but such opportunity has not been taken.
- (g) The reasoning given for not mandating WAVs is given as reluctance to purchase higher value wheelchair accessible vehicles (which would presumably be offset by the longer period for which they may be licensed, as included in the policy); the lack of requirement on the taxi ranks (when research readily available indicates that disabled people do not have confidence in travelling because of the scarcity of accessible transport) ; and because of the additional time required to load a person in a wheelchair – the latter will only be overcome if all drivers are mandated to have WAV.
- (h) There is no evidence in the EqIA for the statement that “wheelchair accessible vehicles from one area in North Yorkshire will travel to another area of the Council e.g. for school runs, hospital drop offs. It is on these occasions that the driver may choose to go to the nearest hackney carriage rank and pick up further work to

avoid dead mileage back”. There is nothing to suggest that the author has carried out any focus group work, for example, with the owners and/or operators of existing WAV to ascertain whether when in receipt of such work they are likely to be free to go to a rank and/or whether this is work that they would undertake. It is particularly lacking in credibility when Government Data for 2020 shows that 91% of all taxi journeys nationally were less than 10 miles (see Taxi and Private Hire Vehicle Statistics: 2022 at [https://www.gov.uk/government/statistics/taxi-and-private-hire-vehicle-statistics-england-2022#:~:text=In%202020%2C%2091%25%20of%20taxi,be%20longer%20than%2010%20miles\).](https://www.gov.uk/government/statistics/taxi-and-private-hire-vehicle-statistics-england-2022/taxi-and-private-hire-vehicle-statistics-england-2022#:~:text=In%202020%2C%2091%25%20of%20taxi,be%20longer%20than%2010%20miles).)

- (i) The ISP (Inclusive Service Plan) proposed is in essence the information that should have been gathered for the purposes of any equality impact assessment. The bald statement in the EqIA that “prior to consultation there was no data describing demand and demographic characteristics of users” is insufficient to meet the duty: those developing the policy had an obligation to conduct such research as they could and to obtain information from potential consultees as to the relevant demographics in order to carry out a valid consultation.

16. In addition to the potential failure to comply with s.149 of the EqA, it is also contended that the consultation has been flawed given the failure to provide information as to the 4 authorities which have WAV policies and the reasoning and rationale for not adopting those policies. Any decision based on the consultation undertaken would in Mr Lawson’s view be fundamentally flawed as a matter of public law.

17. In all the circumstances the authority is urged not to adopt this policy but to reconsider it as a matter of urgency in light of the representations made.