

Officers' responses to Mr Lawson's submissions 02/02/2023

According to the submission, the EIA is flawed for the following reasons (a to i):

- (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.**

In accordance with s149 of the Equality Act 2010, NYC must, in the exercise of its functions have due regard to the need to:

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The PSED has been engaged and considered throughout the process of developing a draft policy for the new North Yorkshire Council. It informs the draft policy in the proposals for the relaxation of age limits pertaining to WAVs, the driver's duties to carry disabled persons, prohibitions on overcharging, likely disciplinary action in the event of a breach and the requirement to undertake disability awareness training in order to promote compliance and understanding. This reflects best practice as set out by the Department of Transport ("DfT"), Taxi and Private Hire Vehicle Licensing, Best Practice Guidance for Licensing Authorities in England (2022 – consultation version) ("the DfT Best Practice Guidance for Licensing Authorities 2022").

The Courts have recognised that the mere recitation of the statutory formula is no substitute for the required assessment of the PSED; the duty is one of substance, not form, the real issue is whether a public authority has, in substance, had regard to the relevant matters, having regard to the substance of the matter (see *Hotak v Southwark* [2015] UKSC 30). The substance of the matter in present circumstances is the need to adopt a new taxi & private hire licensing policy for the new North Yorkshire Council. This policy includes the relaxation of age limits pertaining to WAVs, the driver's duties to carry disabled persons, prohibitions on overcharging, likely disciplinary action in the event of a breach and the requirement to undertake disability awareness training in order to promote compliance and understanding.

An EIA facilitates compliance with the PSED, but the EIA sits within a wider evidence base. There have been two EIAs the first (dated 15.08.22) submitted with the Report of the 18th October 2022 which attached the draft policy for consultation and a subsequent EIA (dated 20.01.23) which is attached to the Report for the 7th February 2023.

The latest EIA recognises the concerns of the North Yorkshire Disability Forum. The latest EIA is informed by the consultation responses and consideration thereof. The NYC recognises that the PSED is an ongoing duty therefore as part of its decision on the draft policy the Executive is being asked to approve a recommendation that an Inclusive Service Plan is created to look thoroughly into this area within 18 months. As part of this work the Council will seek that a survey is carried out by an external Transport Consultancy to provide the Council with a true picture of the provision and requirement for wheelchair accessible transport across the whole of the North Yorkshire Council area. Work can then be looked at how to improve the fleet accordingly.

An ISP is commended as good practice by the DfT Best Practice Guidance for Licensing Authorities 2022” (paras 4.17 – 4.21).

It is clear from the consultation responses that further information is required. The acquisition of further information and evidence, the review of existing policies and further consultation is part of the ongoing PSED and also good practice (see DfT Best Practice Guidance for Licensing Authorities 2022, para 8.64)

In the current circumstances to have no single policy for the NYC or to retain multiple taxi zones is contrary to good practice (see DfT Best Practice Guidance for Licensing Authorities 2022, para 12.2).

(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).

The EIA (20.01.23) states: “Selby District Council is the only authority of the Seven that requires all new and replacement hackney carriage vehicles to be wheelchair accessible.”

Admittedly, the EIA does not explain the position in Harrogate, Richmondshire and Scarborough but their policies do differ from that of Selby. This is explained in further detail in the officer comments (Appendix 5) as follows: “*Selby District Council is the only authority of the seven that requires all new and replacement hackney carriage vehicles to be wheelchair accessible. Harrogate, Scarborough and Richmondshire each have a policy requiring new hackney carriage vehicles to be wheelchair accessible but this requirement does not apply to the replacement of non-WAVs. Accordingly, there has been no noteworthy increase in the number of WAVs in any of these areas*”

(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.

The impact of the existing policies has been considered in the officer comments (Appendix 5) as follows: “*Recent history in Harrogate, Scarborough and Richmondshire indicates that imposing mandatory wheelchair accessible requirements on new vehicles would be unlikely to lead to a noteworthy increase in the number of WAVs. Instead, it would be likely to place a premium on plates attached to vehicles licensed prior to 1st April 2023 and limit the number of new entrants to the market due to the additional financial outlay required. On that basis, any negligible benefits to wheelchair users are likely to be outweighed by negative impacts. Imposing a limit on non-WAVs would primarily only serve to benefit existing licence holders and not the public*”.

Reasonable conclusions have been drawn not only in relation to the impact of the policies in Harrogate, Scarborough and Richmondshire since implementation but also in relation to the likely impact of such a policy in future. A premium has been placed on plates attached to existing non-wheelchair accessible vehicles and the number of WAVs has not increased. This would suggest that

new entrants to the trade are not encouraged to license WAVs and, instead, opt to purchase plates from existing proprietors. This is consistent with the experiences of many authorities with similar policies throughout England and Wales and therefore it is entirely reasonable to expect the current trends to continue.

In order to adopt a single policy throughout North Yorkshire, the new authority is required to balance the cost of every licensing requirement against the benefit to the public. In this case, there is no evidence to support any suggestion that the policies in Harrogate, Scarborough and Richmondshire are having, or will have, a positive impact on the number of WAVs.

Officers in this instance have considered the need to increase the number of WAVs and reasonably concluded that the way to achieve results in this regard is not by implementing the provisions of the existing policies with little expectation of an improvement. The authority has, however, committed to formulating an Inclusive Service Plan to consider its options in this regard.

(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.

An extensive consultation exercise was carried out with a wide range of stakeholders (including disability groups) with links to the policy and survey. The survey specifically invited comments on the proposal not to require all licensed vehicles to be wheelchair accessible.

The consultation was open for 12 weeks and included the reasons for the policy proposals. A meeting was held on request by the North Yorkshire Disability Group. The concerns of the NYDG have been incorporated into the EIA (20.01.23) which will also inform the proposed ISP.

The consultation responses match the concerns highlighted at paragraph 4.6 of the DfT Best Practice Guidance for Licensing Authorities 2022 which yet further supports the commendation for an ISP.

The consultation responses are included for members to read in full, officers have provided comments to the responses and associated analysis.

(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.

The policy does not represent a removal of existing requirements but, rather, the introduction of a new set of requirements for an entirely new authority. The multiplicity of zones is contrary to good practice (see DfT Best Practice Guidance for Licensing Authorities 2022, para 12.2), see also the attached Risk Assessment on multiple zoning.

If no unified policy is implemented, proprietors would be entitled to make a new application to the new authority and, where a conflict exists between current district policies, only the least restrictive requirement could be enforced. This could lead to an absurdity whereby an application could be

made to one office and the new authority would be under an obligation to determine it contrary to existing policies in other areas.

The alternative approach would be to retain hackney carriage zones with inconsistent vehicle specifications, pre-application requirements, fares and fees in each zone. This was considered to be a significant risk to the new authority, the licensed trade and the general public. In any case, as hackney carriage zones cannot apply to private hire drivers, vehicles and operators, any conflict in these areas could not be addressed by zoning arrangements.

Once the decision was made to consult on a unified policy, all proposals were subject to the Public Sector Equality Duty. The conclusions drawn in relation to the effectiveness of a WAV policy (like the ones in Harrogate, Richmondshire and Scarborough) are reasonable, based on past experiences in North Yorkshire and beyond. Any such policy would be highly unlikely to increase the number of WAVs and therefore the impact would not be dependent on the number of wheelchair users in the area. If there is a shortage of WAVs in North Yorkshire, it will not be exacerbated by the new policy. However, the authority is committed to taking appropriate measures to increase the number of WAVs. Any information relating to the number of wheelchair users in the area will be extremely relevant when the authority considers its options with a view to increasing the number of WAVs by other, more effective means. It is hoped that the outcome of the proposed Inclusive Service Plan will inform the authority in this regard.

- (f) It is not only factually incorrect but misleading. The assessment stages 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.**

The EIA does not explain the position in Harrogate, Richmondshire and Scarborough. However, it is explained in the officer comments (Appendix 5). The authority can demonstrate that the relevant, factual information has been considered.

It is worth noting that the new authority did not adopt any of the existing policies – either to mandate the use of WAVs (as in Selby), to cap the number of non-WAVs (as in Harrogate, Richmondshire and Scarborough) or to impose no mandatory WAV restrictions (as in Craven, Hambleton and Ryedale). Decisions in this regard have been made by the predecessor authorities.

- (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.**

There is a reluctance to purchase higher value WAVs and the reasons given have been confirmed in some of the consultation responses. It is immaterial if those reasons are justified because the reluctance remains regardless of any contrary argument.

Among the measures that the new authority could take to increase the supply of WAVs will be to explain the benefits and to reduce the reluctance to purchase WAVs. This is in keeping with good practice (see DfT Best Practice Guidance for Licensing Authorities 2022, paras 4.8, 4.13 and 8.65).

- (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 milage 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)).**

This element of the EIA focuses on the ability of drivers to operate across existing borders, which is not currently permitted. It is entirely reasonable to conclude that the trade and the public may benefit from such an approach. No conclusions have been drawn in relation to the frequency of such a benefit. The intention is to remove barriers that currently exist which is to be further explored within the ISP.

- (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.**

The authority has had regard to the need to eliminate discrimination, advance opportunity and foster good relations. In considering these matters, it has committed to formulating an Inclusive Service Plan. The authority will once again have regard to those matters when it considers the outcome of the ISP. The equality duty applies at every stage and the promise of further consideration of wheelchair accessible services adequately demonstrates that the authority has had regard to its duties to this point.