

TRAFFORD COUNCIL

Report to: Public Protection Sub-Committee
Date: 15 August 2019
Report for: Decision
Report of: Head of Regulatory Services

Report Title

Duties to assist passengers in wheelchairs in accordance with S165-167 of the Equality Act 2010

Summary

Licensing Authorities may maintain a list to be provided to the public which details vehicles identified as being wheelchair accessible. Licensed Private Hire & Hackney Carriage Drivers of those vehicles identified on the list have statutory duties to provide mobility assistance to passengers who are wheelchair users.

S166 of the Equality Act provides function to Licensing Authorities to exempt licensed Hackney Carriage and Private Hire drivers from the duties to assist passengers in wheelchairs if it is appropriate to do so. This report proposes policy for Licensing Officers to determine applications for an Exemption Certificate.

Recommendations

- To maintain a list of vehicles under S167 of the Equality Act 2010.
- To introduce the proposed policy to assist Licensing Officers in determining applications for an Exemption Certificate under S166 of the Equality Act 2010.
- To amend the Council's Convictions Policy, Penalty Points System, Private Hire Driver and Vehicle Conditions, Hackney Carriage Driver Byelaws and Vehicle Conditions.

Contact person for access to background papers and further information:

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Background Papers: None

<p>Relationship to Policy Framework/Corporate Priorities</p>	<p>This policy has a relationship to the corporate priorities of Health and Wellbeing, and Successful and thriving places. The policy will take positive action for wheelchair users who are passengers of private hire and hackney carriage vehicles placing duties on licensed drivers and therefore taking a regulatory stance against inequality and promoting a successful and thriving place through transportation measures.</p>
<p>Financial</p>	<p>Cost of administration is expected to be minimal and will be maintained by the current budget. Enforcement Costs may be incurred with reactive investigation into complaints of non-compliance and pro-active test purchase exercises, again this activity will be conducted within the current budget.</p>
<p>Legal Implications:</p>	<p>The Council is not obliged, but strongly encouraged, to maintain a list under S167 of the Equality Act 2010. By maintaining the list, a statutory duty is placed upon drivers identified on this list to offer reasonable assistance to passengers who are wheelchair users. Non-compliance of this regulation will result in a mandatory referral to the public protection sub-committee via the Penalty Point System to assess whether the driver is fit and proper to hold a licence.</p> <p>There is no duty to consult, but this is at the discretion of the Public Protection Sub-Committee. The report is submitted without consultation as it has been considered that all drivers will be written to about the implementation should the sub-committee decide to follow the Equality Act 2010.</p>
<p>Equality/Diversity Implications</p>	<p>The maintenance of a S167 list will have a positive impact on equality for wheelchair users because it imposes duties on Trafford Council licensed drivers to offer reasonable assistance as a statutory duty and, therefore, appropriate sanctions for non-compliant licence holders through the Magistrates Court and/or a Penalty Points hearing to the Public Protection Sub-committee to determine whether the driver is a fit and proper person to be the holder of a Hackney Carriage or Private Hire Driver's Licence.</p> <p>An Equality Impact Assessment has been completed in collaboration with the Principal Community Cohesion & Equalities Officer, the</p>

	assessment concludes a positive impact on the equality target group – disability, with a neutral impact on all other groups.
Sustainability Implications	No sustainability implications have been identified in preparing this report.
Staffing/E-Government/Asset Management Implications	It is expected that implementation of the report recommendations will have minimal impact on current resourcing.
Risk Management Implications	<p>The report details stronger regulation processes which promote the overall strategic priorities for the Council concerning health and wellbeing, and successful and thriving places. At an operational level, the report details a series of administrative tasks which carry minimal risk. Drivers have the option to appeal a refusal to issue an exemption certificate to the magistrate’s court. The direct referral of 150 Penalty Points does not result in an immediate revocation of the licence, this is referred to the public-protection sub-committee for a decision in which the driver can make their representations, and furthermore there is an option to appeal the sub-committees decision to the magistrate’s court.</p> <p>Therefore the proposed recommendations will not carry any additional significant risk to Trafford Council.</p>
Public Health Implications	The report carries a positive impact to the needs of wheelchair users in the Trafford Council Area, improving transport for a target group and stronger regulatory control over non-compliant drivers.
Health and Safety Implications	<p>No Health and Safety Implications have been identified.</p> <p>S165(9) provides a defence for the driver if it would not have been possible for the wheelchair to be carried safely in the vehicle, the list of vehicles have been identified as being capable of carrying a “reference wheelchair” rather than the larger types of wheelchairs.</p> <p>Further, the Guidance to the Equality Act does not provide any direction on training for the statutory duties other than that all licensed drivers should be aware of them and the consequences for not undertaking them. Furthermore, the Council is not an Employer but a Licensing Authority responsible for regulatory services, therefore the Council is not</p>

	<p>required to provide any health and safety training; the statutory duties are clearly defined as reasonable assistance.</p> <p>To be clear, the Council may not be required to provide health and safety training, the Council will provide disability awareness training as part of its induction day for all new drivers.</p> <p>In future, when Trafford Council Officer's conduct test purchase operations to check for compliance, this exercise will be first subject to an operational risk assessment.</p>
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1.0 Background

- 1.1 Section 167 of the Equality Act 2010 permits, but does not require, Licensing Authorities to maintain a designated list of wheelchair accessible Hackney Carriage and Private Hire Vehicles.
- 1.2 Whilst Licensing Authorities are under no specific legal obligation to maintain a list under section 167, without such a list the requirements of section 165 of the Act do not apply, and so licensed drivers may refuse the carriage of wheelchair users, fail to provide them with assistance, or to charge them extra for doing so without repercussion.

2.0 Vehicles that can be designated

- 2.1 We want to ensure that passengers in wheelchairs are better informed about the accessibility of the Hackney Carriage and Private Hire fleet in their area, to be confident of receiving the assistance they need to travel safely, and not to be charged more than a non-wheelchair user for the same journey.
- 2.2 The Act states that a vehicle can be included on a Licensing Authority's list of designated vehicles if it conforms to such accessibility requirements as the Licensing Authority thinks fit.
- 2.3 Vehicles placed on the designated list should be able to carry passengers in their wheelchairs should they prefer. This means that to be placed on the designated list, the identified vehicles should be capable of carrying some – but not necessarily all – types of wheelchairs.
- 2.4 The Government recommends that a vehicle should only be included if it would be possible for the user of a "reference wheelchair" to enter, leave and travel in the passenger compartment in safety and reasonable comfort whilst seated in their wheelchair.
- 2.5 This approach allows for the provisions of section 165 of the Act to apply to a wider range of vehicles than if the Council only included on the list, vehicles capable of taking a larger type of wheelchair.

- 2.6 The “Reference Wheelchair” is defined in Schedule 1 of the Public Service Vehicle Accessibility Regulations 2000. It is an occupied wheelchair having the dimensions shown in diagram below:

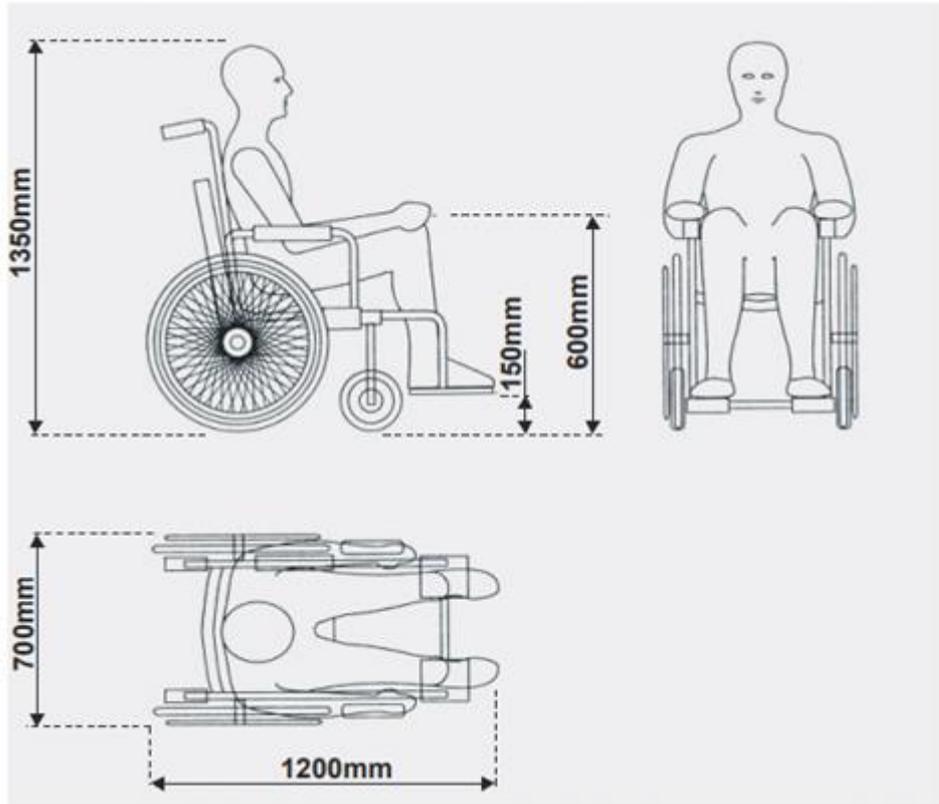


Fig 1. Diagram to show dimensions of a reference wheelchair

- 2.7 All vehicles which are identified on the list must also comply with a requirement to display a sign as set out in Schedule 1 of the Public Service Vehicle Accessibility Regulations 200.
- (1) The requirements of the signs are at cost to the vehicle proprietor and must conform to the following requirements:
- (a) Coloured white on a blue background,
 - (b) of dimensions of not less than 150mm by 150mm when fitted externally or of not less than 60mm by 60mm when fitted internally, and
 - (c) Situated-
 - (i) on the exterior of the vehicle and adjacent to any entrance for a wheelchair user,
 - (ii) on the interior of the vehicle and adjacent to any exit for a wheelchair user, and
 - (iii) adjacent to any wheelchair space,
 - (iv) and in a position clearly visible to a wheelchair user.



Fig 2. An example of an acceptable wheelchair sign

3.0 Statutory duties and enforcement

3.1 Section 165 of the Equality Act 2010 places duties on drivers of designated wheelchair accessible Hackney Carriage and Private Hire Vehicles. Designated vehicles are those listed by the Licensing Authority under Section 167, as described in the background to this report.

The duties for drivers are:

- to carry the passenger while in the wheelchair;
- not to make any additional charge for doing so;
- if the passenger chooses to sit in a passenger seat to carry the wheelchair, to take such steps as are necessary to ensure that the passenger is carried in safety and reasonable comfort; and
- to give the passenger such mobility assistance as is reasonably required.

3.2 Therefore, it is a criminal offence if a driver of a designated wheelchair accessible vehicle fails to comply with the duties specified. Any driver found to be non-compliant is liable for a level 3 fine, which is currently £1,000. It is up to the Licensing Authority to ensure that these duties are enforced. The Secretary of State encourages that sanctions through the courts is used as last resort by Licensing Authorities.

3.3 It is proposed to amend the Council's Penalty Points System to add the offence to a level of 150 points. This would automatically put the driver before the Public Protection Sub-Committee to assess whether the driver is a fit and proper person to

hold either Private Hire or a Hackney Carriage Driver's Licence. This way, members of the Public Protection Sub-Committee can make an assessment of the driver without the need for a prosecution through the courts.

- 3.4 It is proposed to amend the Council's Conviction's Policy to include the Equality Act offences with a recommendation to refuse to grant a new drivers application for a minimum period of 2 years from the date of conviction.
- 3.5 It is proposed to amend the respective Private Hire and Hackney Carriage Vehicle and Driver Conditions booklet to include conditions on complying with the statutory duties of the Equality Act 2010, a condition on displaying an Exemption Notice should the driver be issued with an Exemption Certificate, and a further condition on displaying the appropriate wheelchair signage for vehicles that are identified on the list. The conditions are written below:

Addition to 'Definitions'

1. "Hackney Carriage or Private Hire designated wheelchair accessible vehicle" means a Hackney Carriage or Private Hire vehicle included in the Council's maintained list of wheelchair accessible Hackney Carriage and Private Hire Vehicles, in compliance with its statutory duties under S167 of the Equality Act 2010.

Addition to 'Drivers'

1. Unless otherwise exempt, the licensee of either a Hackney Carriage or Private Hire designated wheelchair accessible vehicle, shall at all times comply with the duties under Section 165 of the Equality Act 2010. Those duties being;
- to carry the passenger while in the wheelchair;
 - not to make any additional charge for doing so;
 - if the passenger chooses to sit in a passenger seat to carry the wheelchair, to take such steps as are necessary to ensure that the passenger is carried in safety and reasonable comfort; and
 - to give the passenger such mobility assistance as is reasonably required.
2. The licensee of either a Hackney Carriage or Private Hire designated wheelchair accessible vehicle shall at all times, clearly display within the vehicle, signage approved by the Council confirming that the vehicle is a wheelchair accessible vehicle;
3. In the event that a licensee is issued with an Exemption Certificate by the Council under S166 of the Equality Act 2010, exempting the licensee from complying with the statutory duties under S165 of the Equality Act 2010, the driver will at all times clearly display within the vehicle the Exemption Notice provided by the Council.

4.0 Exemption from the duties

- 4.1 Some drivers may have a medical condition or a disability which makes it impossible or unreasonably difficult for them to provide the sort of physical assistance which these duties require. That is why the Equality Act allows licensing authorities to grant exemptions from the duties to individual drivers.
- 4.2 Section 166 of the Equality Act allows Trafford Council to exempt drivers from the duties to assist passengers in wheelchairs if they are satisfied that it is appropriate to

do so on medical grounds or because the driver's physical condition makes it impossible or unreasonably difficult for them to comply with the above described duties.

- 4.3 The proposed process is to write to all licensed drivers explaining the statutory duties and how to apply for an exemption certificate.
- 4.4 The proposed policy on granting an exemption certificate is processed under Licensing Officer delegated authority. Exemption Certificates shall only be issued if the application includes a specialist or consultant's report detailing the driver's physical condition or medical grounds which makes it impossible or unreasonably difficult for them to comply with the duties.
- 4.5 It is accepted that the requirement for a submission of an application for an exemption certificate with an accompanying specialist or consultant's report may be at a cost and inconvenience to some drivers. However, it is considered that this is a proportionate process to avoid any abuse of granting exemption certificates.
- 4.6 This report does not set out a fee for processing an exemption certificate, provided the application is accompanied with a specialist or consultant's report as supporting evidence.
- 4.7 If an exemption application is refused, the Licensing Officer shall inform the applicant in writing within a reasonable timescale and detail a clear explanation of the reasons for the decision.
- 4.8 The list of designated vehicles will have a statutory effect should it come into force on 01 October 2019. It will be possible for drivers to appeal against a decision by Trafford Council to not grant an exception, any appeal under S172 of the Equality Act 2010 would be heard at the Magistrates Court. An application for appeal must be made within 28 days beginning with the date of refusal.

Other Options

The only alternative option is to not make the decision. The consequences of this will mean that S167 of the Equality Act 2010 will not be implemented in Trafford and drivers will not be bound by the statutory duties to assist passengers who are wheelchair users. This decision would not promote a successful and thriving place nor would it promote health and wellbeing for the target equality group of disabled persons who are wheelchair users. It is also likely to attract criticism of the Council.

Consultation

The Council is not bound by any duty to consult. However, this is at the discretion of the Public Protection Sub-Committee. The Public Protection Sub-Committee is advised that all drivers will be written to as part of the implementation and that they will have a right of appeal to the Magistrates court, should the council refuse an application for an exemption certificate.

Reasons for Recommendation

The Council is not obliged to maintain a list under S167 of the Equality Act 2010. However, taking this pro-active approach to equality is aligned to the overall strategic aims of the Council's corporate priorities. By maintaining the list, it will enable Council Officers to refer non-compliant drivers to the Public Protection Sub-Committee through the Penalty Points

System. The list will also provide detail for wheelchair users who wish to make bookings or have a greater understanding of the Council's fleet of licensed vehicles.