

BRISTOL CITY COUNCIL

PUBLIC SAFETY AND PROTECTION COMMITTEE

18 September 2018

Report of: Strategic Director, Neighbourhoods

Title: Hackney Carriage and Private Hire Accessibility Policy Review

Ward: Citywide

Officer Presenting Report: James Roberts, Policy and Projects Officer

Contact Telephone Number: (0117) 3574900

RECOMMENDATION

That the Public Safety and Protection Committee:

- a) Agree to acknowledge and implement measures in relation to the responsibilities placed on the Authority under Section 165-167 of the Equality Act 2010.**
- b) Agree to consult with effect from 1 October 2018 on a draft policy in relation to dealing with exemption requests for carrying wheelchair passengers.**
- c) Agree to consult with effect from 1 October 2018 on a draft policy in relation to dealing with exemption requests for carrying assistance dogs.**
- d) Agree to report back to the Public Safety and Protection Committee with the findings of the consultation**

Summary

1. The Equality Act 2010 legally protects people from discrimination in the workplace and the wider society. If adopted, Section 167 of the Equality Act 2010 places duties on a Local Authority to publish and maintain a list of Private Hire and Hackney Carriage Vehicles considered fit for use by wheelchair users (List of Designated Vehicles). Section 165 of the Equality Act 2010 places duties on Taxi & Private Hire Drivers of 'Designated Vehicles' to carry passengers in a wheelchair, and provide assistance to ensure safety and reasonable comfort. The Government released Guidance to Local

Authorities on 21 February 2017 on setting up a process to deal with the duties imposed on them and the taxi trade under the Act.

It is not compulsory for a Local Authority to produce a list of Designated Vehicles or create a formal process for exemption, however; the duties placed on drivers cannot be implemented or enforced if the Local Authority does not choose to produce a list of Designated Vehicles or a process offering exemption for drivers who cannot comply with the Act.

2. If the Authority chooses to adopt a process and create a designated list of vehicles, appropriate time should be given for Private Hire and Hackney Carriage Drivers to apply for exemptions from carrying passengers who use a wheelchair. A process for dealing with any applications for exemption should be created in order to determine whether an exemption can be granted.
3. The Government have produced template exemptions for display on vehicles where a driver cannot carry passengers. It is the intention of the Authority to utilise this template and issue accordingly for any exemptions granted.

The significant issues in the report are:

- The decision not to acknowledge or implement a process for this piece of legislation may portray a negative image of the Authority in relation to promoting equality, undermining the safety of disabled people, and going against the Authority's ongoing Equality Plan.
- The Authority is under no specific legal obligation to maintain a list under section 167. Without such a list the requirements of section 165 of the Act will not apply, and it will not be possible to prosecute drivers who refuse the carriage of wheelchair users, fail to provide them with assistance, or to charge them extra.
- If members are minded to agree to the recommendations of the report, the Authority will be required to do the following:
 - Publish a list of Wheelchair Accessible Vehicles, known as 'Designated Vehicles'.
 - Develop a process for exemption requests from Hackney Carriage and Private Hire Drivers, from the duties placed on them under the Equality Act 2010.
- The Authority receives queries from Drivers and Licence Holders in relation to exemptions. Currently exemption requests are dealt with on a case by case basis and for transparency policies should be introduced to address this.

Policy

1. The Council has over many years developed policies for the administration of hackney carriage and private hire licensing.

Although the provisions of the Equality Act 2010 came into effect in 2017, the Authority has utilised existing robust policies (particularly in relation to having a 100% wheelchair accessible Hackney Carriage fleet) to deal with offences committed via the Public Safety and Protection Committee, as opposed to pursuing as a criminal matter.

The proposals in this report include consulting on draft policies in relation to dealing with requests made for exemption from carrying wheelchair passengers and requests made for exemption from carrying assistance dogs.

Consultation

2. Internal:

- a. Legal Services
- b. Occupational Health
- c. Home School Transport
- d. Equalities

3. External:

In respect of the exemption policies, we are proposing to consult with the trade via the Taxi Forum and Newsletter. We will also be consulting with groups that represent the needs of people with disabilities. The consultation will take place over an eight week period.

4. Context:

The Authority currently deal with exemption requests from drivers for both carriage of wheelchair passengers and guide dogs, however, if members were minded to adopt the proposals, the Council would need to introduce a formal policy in order to meet recommendations made in the guidance released by the Department for Transport.

Other Options Considered

5. Do nothing

The Authority is under no specific legal obligation to maintain a list under section 167. Without such a list the requirements of section 165 of the Act will

not apply, and it will not be possible to prosecute drivers who refuse the carriage of wheelchair users, fail to provide them with assistance, or to charge them extra.

Risk Assessment

The risks associated with the implementation of the recommendations of the report							
No.	RISK	INHERENT RISK		RISK CONTROL MEASURES	CURRENT RISK		RISK OWNER
		(Before controls)			(After controls)		
		Impact	Probability		Impact	Probability	
1	Any policy decision is open to challenge	Low	Low	Officers will consult with key representatives of the taxi trade and other stakeholders.	Low	Low	

The risks associated with <u>not</u> implementing the recommendations of the report							
No.	RISK	INHERENT RISK		RISK CONTROL MEASURES	CURRENT RISK		RISK OWNER
		(Before controls)			(After controls)		
		Impact	Probability		Impact	Probability	
1	Failure to amend the policy as recommended could lead to legal challenges, costs to the council and adversely affect the council's reputation and relationship with the trade	Medium	Medium	Determine and publish policies	Low	Low	
2	Failure to acknowledge and implement Sections 165-167 of the Act mean the Authority's Enforcement team cannot take appropriate action against licence holders who refuse to carry	High	High	Acknowledge and implement policies to incorporate the relevant Sections, making them enforceable.	Low	Low	

Equalities Impact Assessment

An Equality Impact Assessment has been produced and is attached as **Appendix A**.

Legal and Resource Implications

Legal: There is no statutory duty to consult upon the proposed policy changes

and nor is there a general common law duty to do so. A duty of consultation will however exist in circumstances where there is a legitimate expectation of such consultation, usually arising from an interest which is held to be sufficient to found such an expectation, or from some promise or practice of consultation. In this case the Council has consulted with representatives from the taxi trade in line with previous practice.

Where a consultation process is undertaken, case law guides on what constitutes lawful consultation and from this some key guiding principles have been established, in summary that those being consulted must:

- (i) be provided with material upon which a decision is likely to be made;
- (ii) be given enough time for intelligent consideration of that material and to respond to it;
- (iii) be given the opportunity to make considered representations;
- (iv) have their representations conscientiously considered.

It is therefore important that members are satisfied that that any consultation process allows sufficient time to enable any person or body wishing to make representations to obtain relevant material, to consider it and to put their representations to the Council.

Legal advice given by: Ashley Clark, Solicitor, Legal Services and Lynne Harvey, Solicitor, Legal Services

Financial: This report requests approval to acknowledge and implement measures in relation to the responsibilities placed on the Authority under Section 165-167 of the Equality Act 2010 and to consult on two draft policies relating to dealing with exemption requests for carrying wheelchair passengers and for carrying assistance dogs.

No additional costs, savings or income are expected to arise as a consequence of these approvals.

Finance advice given by:
Jemma Prince – Finance Business Partner (3/9/18)

Land

Not applicable

Personnel

Not applicable

Appendices:

- Appendix A - Equality Impact Assessment
- Appendix B - Draft Exemption from Carrying Wheelchair Passengers Policy
- Appendix C - Draft Exemption from Carrying Assistance Dogs Policy

LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985

Background Papers:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/593350/access-for-wheelchair-users-taxis-and-private-hire-vehicles.pdf