

**Manchester City Council  
Report for Resolution**

**Report to:** Licensing and Appeals Committee – 3 December 2018

**Subject:** Equalities Act 2010 – Implementation of Sections 165 & 167

**Report of:** Head of Planning, Building Control and Licensing

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**Summary**

The report seeks to inform the Committee of the recent implementation of part of the Equalities Act 2010, allowing Councils to designate vehicles as being wheelchair accessible so that new protections under the Act can apply, by publishing a list of such vehicles. The report also outlines a draft Policy and procedures for consideration of exemptions to all relevant parts of the Act.

**Recommendations**

1. That the Committee agrees to the provision and maintenance of a list of designated vehicles under section under 167 of the Equalities Act 2010.
2. That the Committee agrees to the related Policy - with or without amendment (attached at Appendix 1)
3. That the Committee agrees that exemption applications can be determined by a Senior Licensing Officer, with the driver having the option to either:
  - a) Appeal the Officer decision to the next available Licensing and Appeals Sub-Committee (retain right of appeal to Magistrates' Court within 28 days of Sub-Committee decision)
  - b) Appeal directly to the Magistrates' Court (within 28 days of the date of refusal)

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| <b>Manchester Strategy Outcomes</b>   | <b>Summary of contribution to the strategy</b>   |
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| A thriving and sustainable City: supporting a diverse and distinctive economy that creates jobs and opportunities | The Taxi Licensing Service aims to continuously evolve and improve to support Manchester residents who wish to work in these industries, and a key element of the transport network that supports diversity and accessibility. |
| A highly skilled city: world class and home grown talent sustaining the city's economic success                   | Not applicable to the content of this report   |
| A progressive and equitable city: making a positive contribution by   | The current Hackney Carriage Vehicle Policy is one of the most equitable in the country, supporting consistency of full accessibility  |

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| unlocking the potential of our communities                                       | within the entire fleet, ensuring that no users have to make special arrangements. By implementing sections 165 and 167 of the Equalities Act 2010 the City is providing additional assurance to passengers with disabilities. |
| A liveable and low carbon city: a destination of choice to live, visit and work. | By continuing to strive towards the highest standards in equality and accessibility, the Taxi Licensing service supports strategic aims of the City being a destination for all communities and businesses.                    |
| A connected city: world class infrastructure and connectivity to drive growth    | The Taxi Licensing Service aims to ensure its policies use all opportunities to enhance connectivity and infrastructure through progressive and equitable policies.  |

**Full details are in the body of the report, along with any implications for:**

- Equal Opportunities Policy
- Risk Management
- Legal Considerations

**Financial Consequences – Revenue - None**  
**Financial Consequences – Capital - None**

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**Background documents:**

The following documents disclose important facts on which the report is based and have been relied upon in preparing the report. Copies of the background documents are available up to 4 years after the date of the meeting. If you would like a copy please contact one of the contact officers above.

Equality Act 2010

## **1.0 Introduction**

- 1.1 The City Council has a clear vision to be an equitable, inclusive and accessible city. The Licensing Unit aims to support these strategic aims through the elements of the public transport network that it regulates. Manchester's Hackney Carriage vehicle policy is one of the most equitable in the country and the Unit aims to ensure that the fleet we licence continually strives towards the highest standards in equality and accessibility.
- 1.2 The Equality Act 2010 introduces a number of new measures for employers, regulators and transport providers to ensure against discrimination. Sections 160 to 173 relate specifically to hackney carriage and private hire vehicle licences.
- 1.3 On 1 October 2010, some relevant sections of the Act, namely 166 (dealing with medical exemptions) and 168 to 171 (dealing with the carriage of disability and guidance dogs) came into force and were immediately applicable to all local authorities; not specifically requiring local authorities to put any specific arrangements in place.
- 1.4 The Council has made use of sections 168-171 since their commencement, achieving successful prosecutions under section 168 and 170. Applications (under section 169 and 171) for exemptions from carrying assistance dogs have been rare, and have been dealt with by Members on the Licensing and Appeals Sub-Committee on an individual case basis.
- 1.5 On 6 April 2017, the Government fully commenced sections 165 and 167 of the Act. These sections allow (but don't require) Councils to designate particular vehicles as being wheelchair accessible by the publishing of a list of such vehicles; and then imposes duties on hackney carriage and private hire drivers of those designated vehicles to:
  - transport wheelchair users in their wheelchair
  - provide passengers in wheelchairs with appropriate assistance
  - charge wheelchair users the same fares as non-wheelchair users
- 1.6 Specific powers to prosecute drivers for not carrying out their duties under section 165 of the Act, apply only where the licensing authority has decided to, produced and then published a list of designated vehicles under section 167 of the Equality Act 2010, and where the driver is driving a vehicle included on such a list. It should be noted that outside of these specific powers however, the Council investigates and takes appropriate action in relation to any reports relating to a driver's conduct.
- 1.7 The Act provides for a hackney carriage or private hire driver to apply for an exemption certificate in relation to duties to both wheelchair users and assistance dogs. Specifically, in relation to wheelchair users, it allows for an exemption if they have a physical condition or disability which makes it impossible or unreasonably difficult for them to provide the sort of physical assistance which these duties require. Similarly, vehicle proprietors may

appeal the authority's decision for their vehicle to be placed on the designated list.

- 1.8 This report provides detail about the recently commenced sections of the Act, and proposes a formal policy and related procedures to enable full adoption of this part of the legislation.

## **2.0 Equality Act 2010 – Sections 165 and 167**

- 2.1 Section 165 places the following duties on drivers of designated wheelchair accessible hackney carriages and private hire vehicles:

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

- 2.2 Mobility assistance is defined as:

- i. to enable passengers to get into or out of the vehicle;
- ii. if the passenger wishes to remain in the wheelchair, to enable the passenger to get into and out of the vehicle while in the wheelchair;
- iii. to load the passenger's luggage into or out of the vehicle;
- iv. if the passenger does not wish to remain in the wheelchair, to load the wheelchair into the vehicle.

- 2.3 Government guidance is clear that reasonable mobility assistance is subject to other applicable law, including health and safety legislation, but that the general expectation is that drivers will provide assistance such as:

- folding manual wheelchairs and placing them in the luggage compartment
- installing the boarding ramp
- securing a wheelchair within the passenger compartment

or, subject to the weight of the wheelchair and capability of the driver:

- pushing a manual wheelchair or light electric wheelchair up a ramp
- stowing a light electric wheelchair in the luggage compartment

- 2.4 The requirement not to charge the wheelchair user extra includes a clear direction that a meter should not be left running whilst the driver performs duties required by the Act, or the passenger enters, leaves or secures their wheelchair within the passenger compartment.

- 2.5 The Government recommends that a vehicle should only be placed on the authority's list if it would be possible for the user of a "reference wheelchair" (as defined in Schedule 1 of the Public Service Vehicle Accessibility Regulations 2000) to enter and leave and travel in the passenger compartment in the wheelchair, in safety and reasonable comfort.

### **3.0 Enforcement**

- 3.1 A Hackney or Private Hire Driver will be subject to the duties set out in section 165 of the Equality Act 2010, if the vehicle they are driving appears on the designated list published by the local authority and the local authority has not provided them with an exemption certificate, regardless of where the journey starts or ends.
- 3.2 As mentioned in point 1.3 above, drivers (both hackney and private hire) and private hire operators are already subject to relevant sections of the Act in relation to assistance dogs, and are liable to prosecution and a fine of up to £1000.
- 3.3 If drivers now commit an offence under section 165 of the Act relating to wheelchairs, the driver may be prosecuted and if convicted will be liable to a fine of up to £1000.
- 3.4 The Licensing Unit will review the evidence and circumstances of each case on its own merit, but takes such offences seriously and will seek to prepare a case for prosecution wherever possible. Upon successful conviction, a driver will automatically be referred to the Licensing and Appeals Sub-Committee for a review of whether they remain a fit and proper person to hold their licence. The Unit firmly believe such a stringent approach to this type of offence is necessary to uphold the Council's strategic aims for an equitable City, providing as accessible a transport offer as possible. We also know from speaking to disability support groups that this type of incident still goes unreported in most cases, and it is the Unit's view that people will only see a value in reporting unacceptable behaviour in contravention of the duties under this Act, if passengers see a value in doing so; which means taking firm and consistent action that reflects the Council's position that this behaviour will not be tolerated.

### **4.0 Exemptions and Appeals**

- 4.1 In some circumstances a driver of a hackney carriage or private hire vehicle may be unable to fulfil the requirements of the Equality Act 2010 for medical reasons. These can be short or long term. Before finalised lists of designated vehicles can be published, the Council must allow provision for exemption applications to be made first.
- 4.2 Section 166 allows the Council to grant an exemption to 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 duties.

- 4.3 Sections 169 & 171 already permits the Council to grant an exemption to drivers from the duties to transport assistance dogs if they are satisfied that it is appropriate to do so, on medical grounds.
- 4.4 There are no exemptions medical or otherwise, for a hackney carriage or private hire driver in respect of conveying a reasonable quantity of luggage or providing reasonable assistance in the loading and unloading of luggage. If such a circumstance was reported, the Council would have to take a view on the evidence put forward as to whether the driver had a reasonable excuse on the occasion in question, and what subsequent action was therefore appropriate.
- 4.5 As outlined within the draft policy, an application for a medical exemption will require the applicant to download a Medical Exemption Application Form from the Council's website and take the form to their GP. It should be returned along with any relevant documents (i.e. letter from GP or Specialist report as applicable). It is recommended that an independent medical assessor is used where a long term exemption is applied for. The Council will not be responsible for any costs incurred by the applicant in this process. The draft Medical Exemption Application form is attached for the Committee's information at Appendix 2.
- 4.6 Provision is made within the Act (at section 172) for drivers to Appeal against a decision of the Council not to issue an exemption certificate. This is made to the Magistrates' Court with 28 days beginning with the date of refusal.
- 4.7 The same provision also allows vehicle proprietors to appeal against a decision by the Council to include their vehicle on the designated list. This appeal should be made to the Magistrates' Court within 28 days of the vehicle in question being included on a published list.
- 4.8 The provision already exists under the Equality Act to apply for an exemption in relation to assistance dogs and a system for dealing with associated applications has already been used. Two such cases have to date been referred to a panel of the Licensing and Appeals Sub-Committee for consideration and determination (with one being granted and the other refused). A formal procedure has now been developed within the business systems, to enable effective tracking of short term exemptions, along with the application form to deal with this process and any potential increase in exemption applications resulting from a decision by the Committee to authorise the publication of designated lists. In anticipation of an increased number of exemption applications being received in the future, it is proposed that all applications are determined in the first instance by a Senior Licensing Officer, with that decision being appealable to either a Sub-Committee in the first instance or straight to the Magistrates' Court. Government guidance states that local authorities may establish their own appeal process in addition to the statutory process.

4.9 If the exemption notice is not displayed as prescribed by the Council, then the driver could be prosecuted if they do not comply with the required duties under the Act. A proposed notice that will be required to be displayed if issued, will be available at the meeting.

## **5.0 Implementation**

5.1 If the Committee agrees to the publication of the designated vehicle lists, provision has to be made for exemption applications to be determined prior to publication. In preparation, officers have:

- prepared draft lists of designated vehicles
- set out the related policy and procedure for exempting drivers on medical or physical condition grounds
- prepared correspondence ready to inform proprietors that their vehicles will be placed on a list and alert drivers of their upcoming duties
- made provision with the business system and administrative procedures to process exemption applications as received (subject to Committee approval in this report)
- prepared new exemption certificates and notices to be issued where applicable

Once the above steps have been taken, the final lists can then be published.

5.2 In order to ensure that passengers in wheelchairs have the information they need to make informed choices about their travel, users of larger wheelchairs need to have sufficient information about the vehicles on the list and what they can accommodate. The Act recognises that some types of wheelchair, particularly some powered wheelchairs, may be unable to access some of the vehicles included on the Council's designated list. Therefore, the guidance suggests that the lists should include the make and model of the vehicle, as well as specify whether it is a taxi or private hire vehicle, and stating the name of the Operator.

5.3 Not all of this information has been available, or easily extracted, from the business system to enable a list to be produced; a significant amount of work has therefore been undertaken by officers to prepare the designated vehicle lists.

5.4 Whilst the Hackney Carriage fleet list was more straightforward, the Licensing Unit has not previously recorded where a private hire vehicle is 'wheelchair accessible'. Similarly, the Unit has not previously required private hire proprietors to notify the Unit with regards to which operator the vehicle is working for. Logistically, this would require substantial additional administration (and related costs) given the size of our private hire fleet and the frequency with which drivers (and therefore the vehicles they drive) change which Operator they work for. The Unit will work with operators and proprietors to assist in maintaining an accurate list of designated vehicles and

providing as much information as possible to assist the passenger making choices about their travel.

5.5 The Unit has also considered the potential problem arising when a vehicle is designated on the list but has several different drivers, one of whom may have been granted an exemption certificate. This unfortunately cannot be fully avoided and there may be occasions where a passenger is unable to get the assistance. The proposed exemption notice aims to reduce this risk by being displayed as clearly as possible in Hackney Carriages on a rank or hailed on the street; and by working closely with private hire operators and booking providers to ensure they do not assign a job to an exempted driver. Private hire drivers who have been granted an exemption certificate will be encouraged to source a vehicle that is not on the designated list wherever possible.

5.6 The Council is committed, as with existing relevant provisions of this Act, to taking action to enforce non-compliance with these requirements. However, in order to ensure that maximum compliance with these provision of the Act without the need for legal action, guidance and communication will be provided to all drivers, proprietors and operators setting out clearly the expectations on them, including in relation to meters and fares. Training and guidance is also being provided to Compliance Officers to ensure they exercise logical and consistent judgement in investigating complaints.

## **6.0 Conclusion and recommendations**

6.1 The report seeks to inform the Committee of the more recent implementation of part of the Equalities Act 2010, allowing Councils to designate vehicles as being wheelchair accessible so that new protections under the Act can apply, by publishing a list of such vehicles. The report also outlines a draft Policy for consideration of exemptions to all relevant parts of the Act.

6.2 The Council has long established principles with regard to supporting the provision of an inclusive and accessible taxi and private hire fleet, and therefore is well placed to adopt the new sections of the Equality Act. It is recommended that:

- the Committee agrees to the provision and maintenance of a list of designated vehicles under section under 167 of the Equalities Act 2010
- the Committee agrees to the related Policy - with or without amendment (attached at Appendix 1)
- the Committee agrees that exemption applications can be determined by a Senior Licensing Officer, with the driver having the option to either:
  - a) Appeal the Officer decision to the next available Licensing and Appeals Sub-Committee (retain right of appeal to Magistrates' Court within 28 days of Sub-Committee decision)
  - b) Appeal directly to the Magistrates' Court (within 28 days of the date of refusal)