

REPORT TO	ON
GENERAL LICENSING COMMITTEE	13 JUNE 2017



Jan 2017

TITLE	AUTHOR	Agenda item No.
EQUALITIES LEGISLATION (2) – DRAFT POLICY FOR MEDICAL EXEMPTION FROM REQUIREMENT TO CARRY ASSISTANCE DOGS; AND SUMMARY OF TEST PURCHASING EXERCISE TO ESTABLISH LOCAL COMPLIANCE WITH LEGISLATION	PETER HAYWOOD	

1. PURPOSE OF THE REPORT

- 1.1 This report invites members to adopt formal documentation relating to the enforcement of equalities legislation regarding the transporting of visually-impaired passengers and assistance dogs. It goes on to outline the current licence conditions relating to the transportation of assistance dogs and sets out the findings of a test purchasing exercise held on 5 April 2017.

2. RECOMMENDATIONS

Members are requested to:

Adoption of legislation

- 2.1 agree that a recommendation should be made to full Council for formal adoption of sections 168-173 of the Equalities Act 2010;

Medical Exemptions Policy:

- 2.2 consider the attached draft Medical Exemptions Policy (Appendix 1) and agree to subject it to a formal period of consultation (as set out in section 8 of this report);
 2.3 receive an update of any consultation responses at a future meeting, with a view to referring the draft Medical Exemptions Policy to full Council for adoption;

Other associated documentation:

- 2.4 consider the attached documentation with a view to its formal adoption:
- i) Appendix 3 - application form for medical exemption;
 - ii) Appendix 4 – letter confirming granting of medical exemption by South Ribble Borough Council; and
 - iii) Appendix 5 – certificate to be carried by an exempted driver;

Test Purchasing exercise:

- 2.5 note the findings of the recent test purchasing exercise on the carrying of assistance dogs in local licensed vehicles; and
 2.6 agree that a letter should be sent from the Chair of the Committee to thank the volunteers who participated in the test-purchasing exercise.

3. CORPORATE PRIORITIES

The report relates to the following corporate priorities:

Clean, green and safe	x	Strong and healthy communities	
Strong South Ribble in the heart of prosperous Lancashire		Efficient, effective and exceptional council	

4. BACKGROUND TO THE REPORT

4.1 At their meeting on 21 March 2017, members of the General Licensing Committee confirmed their support for Equalities legislation by agreeing to ask officers to explore activation of sections 165 and 167 of the Equalities Act 2017 (including the drawing up of a list of “designated vehicles” for the carrying of passengers in wheelchairs). This report relates to a similarly significant matter (namely the transporting of visually-impaired passengers in vehicles licensed by this Committee) and seeks to build on the Licensing Section’s approach to the Equalities agenda.

5. LEGISLATIVE FRAMEWORK

5.1 Disabled people (including guide dog owners and other blind or partially sighted people) have important rights under the Equality Act 2010, which consolidates and replaces previous discrimination legislation. The Act places a duty on Hackney Carriage and Private Hire drivers to carry guide dogs and other assistance dogs at no extra cost. The legislation allows for drivers that cannot carry assistance dogs to carry a certificate of exemption confirming they have permission to refuse on medical grounds. (It is not appropriate to decline to transport an assistance dog on grounds of religion).

5.2 Sections 168 to 171 of the Equality Act 2010 deal with the carriage of guide dogs and other assistance dogs and England and Wales. In summary:

a) Hackney Carriage drivers must (unless they have a medical exemption):

- carry the assistance dog and allow it to remain with their owner; and
- not charge extra for carrying an assistance dog.

b) Private Hire vehicle drivers (unless they have a medical exemption):

- must carry the assistance dog and allow it to remain with their owner;
- cannot refuse a booking, or to carry out a booking, due to someone having an assistance dog with them; and
- cannot charge extra for carrying an assistance dog.

5.3 As well as the duty to carry assistance dogs, taxi and minicab drivers must also ensure that they do not discriminate against a person because of their disability including vision loss. They must not treat a disabled person less favourably or fail to make a “reasonable adjustment” to their service. Such reasonable adjustments may include:

- the driver guiding a blind or partially sighted customer to the vehicle, and assisting with entry into the vehicle; and
- at the customer’s destination, assisting the customer to exit from the car and guiding them to a safe location/destination point before departing.

6. EXEMPTION CERTIFICATES

- 6.1 A driver is entitled to obtain an exemption certificate if they have a medical condition that is made worse by contact with dogs, such as severe asthma. Exemption certificates are issued by the licensing authority, and having an exemption certificate means that the driver does not have to carry an assistance dog.
- 6.2 A driver who has been given an exemption must display a yellow 'Notice of Exemption' notice on the windscreen of their vehicle. The front of the notice will have the letters 'ED' (Exemption Dogs) and will show the driver's licence number. The form of the exemption notice must comply with the Disability Discrimination Act 1995 (Private Hire Vehicles) (Carriage of Guide Dogs etc.) (England and Wales) Regulations 2003, although it is anticipated that these regulations will be updated at some stage to reflect the passing of the Equalities Act 2010.
- 6.3 There are no exemptions from the carriage of guide dogs for taxi or minicab operators. An exemption certificate is specific to a named driver of a specified vehicle. The certificate should not be left in a vehicle when the named driver is not using it. It is recommended that operators ensure they have drivers available who are not exempt from carrying assistance dogs.
- 6.4 It is proposed that, on receipt of an application for medical exemption from the obligation to carry assistance dogs, the initial decision as to whether to grant the application should be made by officers, with a driver who so wishes having the right to refer the matter to the General Licensing Committee for a final decision. In the event of a refusal by the Committee, there would then be a right of appeal to the Magistrates Court.

7. CURRENT POSITION IN SOUTH RIBBLE BOROUGH COUNCIL

7.1 The Council has not previously adopted sections 168-173 of the Equalities Act 2010. As a result, members are requested to agree to recommend to full Council that formal adoption of this legislation should take place. However, the current Licensing Policy and conditions contain a number of references which impact upon the transporting of guide / assistance dogs:

i) Hackney Carriage Vehicle conditions

Paragraph 19 - "A blind or otherwise disabled passenger shall be entitled as of right to be accompanied by a guide/ assistance dog in the vehicle unless the driver has been granted an exemption from the Disability Discrimination Act 1995. No additional cost can be levied for the carriage of an assistance / guide dog."

[Please note – it is proposed to update the reference to the Disability Discrimination Act with a reference to the Equalities Act 2010].

ii) Private Hire vehicle conditions

Paragraph 20 – as above

iii) Private Hire operator conditions

Paragraph 15 – "Every proprietor, driver and operator of a licensed private hire vehicle shall ensure that guide dogs are carried within the passenger compartment of the vehicle on request.

Operators are reminded of their responsibilities under the Equalities Act 2010, and are advised that discrimination could seriously and adversely impact upon their operating licence."

- 7.2 However, this Council has not previously had a formal medical exemption policy in place, under which the medical fitness of drivers who claim that they cannot transport an assistance dog (eg due to an allergy) or provide reasonable adjustments (such as help with access to the vehicle) can be assessed.
- 7.3 Accordingly, a draft policy to implement this is attached to this report as Appendix 1. Members of the Committee are requested to consider this draft with a view to its formal adoption, following consultation.. An accompanying Equalities Impact Assessment is attached as Appendix 2.
- 7.4 Also attached for members' consideration are:
- i) Appendix 3 – a draft application form which drivers seeking a medical exemption will be required to submit;
 - ii) Appendix 4 sets out a draft letter which will be sent to those applicants whose medical condition is recognised and who are consequently exempted;
 - iii) Appendix 5 sets out a draft certificate which – if adopted – exempted drivers will be required to carry at all times when acting as a licensed driver.

8. CONSULTATION / COMMUNICATION PLAN

- 8.1 Should members wish to proceed with the proposed Exemptions Policy set out in Appendix 1 above, it will be necessary to undergo a process of formal consultation with the local licensed trade. It is proposed that the following process be adopted:
- a) initial discussion at the Taxi Trade Forum which (subject to a separate agenda elsewhere on this agenda) is likely to be held in late June 2017, when drivers present will be advised of the intention to proceed with the proposed Medical Exemptions Policy;
 - b) all licensed drivers will be written to and advised of a formal 28 day consultation period, along with the ways in which any feedback may be submitted; and
 - c) officers will arrange for a “drop in” session to be held at the Council Offices on a specific date during the consultation period. All affected drivers will be invited to call in during the session, where they can sit down with officers on an individual basis. Their views will then be recorded and collated before being reported back to members at a future meeting.
- 8.2 A further report can then be presented to members updating them of the feedback from the proposed consultation exercise. Should members still wish to proceed at that point, the report can be forwarded for consideration (and potential adoption) by the full Council.

9. TEST PURCHASING EXERCISE

- 9.1 The issue of equalities is an important one for all councils, and officers from this authority have become aware that other local authorities have taken enforcement action against licensed drivers for refusing to carry assistance dogs. In terms of local enforcement, this Council has previously adopted a number of conditions relating to the transportation of assistance dogs. Conditions relating to the Hackney Carriage and Private Hire vehicles (as well as operators) are set out in paragraph 7.1 above. Other conditions relating to drivers are set out below:

Standard conditions attached to a Private Hire Driver's Licence:

Condition 8

The driver shall:

(c) ensure that any...assistance dog...is appropriately and safely stored or accommodated within the vehicle.

Condition 13

a) The driver shall carry a Guide Dog....belonging to a passenger free of charge unless the driver has a medical condition that would preclude him/her from doing so;

Hackney Carriage Vehicle Conditions

Condition 19

“A blind or otherwise disabled passenger shall be entitled as of right to be accompanied by a guide / assistance dog in the vehicle unless the driver has been granted an exemption.....No additional cost can be levied for the carriage of an assistance / guide dog.”

- 9.2 When this authority became aware of potential collaboration with Guide Dogs (a working name of The Guide Dogs for the Blind Association), it was considered appropriate to undertake a joint exercise to test the extent of compliance with licence conditions (as well as best practice). Guide Dogs is a registered charity which campaigns for people with vision impairment and lobbies extensively for the right of guide dog owners to enjoy access to all forms of transport.
- 9.3 On 5 April 2017, Council officers carried out a test purchasing exercise in order to determine the level of local compliance with the Equalities Act. It was intended that – whatever the outcome – this would be undertaken on the basis of it being a fact –finding exercise and it was not contemplated that prosecutions would be brought at this stage.
- 9.4 In terms of methodology, it was agreed that a visually-impaired husband and wife would seek to undertake a number of journeys in the Borough with licensed Hackney Carriage and Private Hire drivers. The couple – named Bill and Gayle, along with their dogs Rollie and Yasmin – are both residents of the Borough and kindly gave up their time to assist Licensing staff in this exercise. The couple were also accompanied by their support worker, Emma.

10. OUTCOME OF TEST PURCHASING EXERCISE

- 10.1 In total, the couple undertook 4 journeys with locally-licensed drivers; it was felt that this was the maximum number of journeys which could be undertaken without causing discomfort to the participants or their assistance dogs. Details of the journeys are set out in Appendix 6.
- 10.2 It is pleasing to record that none of the journeys resulted in a lack of assistance to the couple, or a negative experience in any way. There was no evidence of charging an additional fee for the transporting of the assistance dogs. However, the following summary / learning points were identified in discussion with the participants:
- Drivers should ideally park as close to the curb as possible;
 - Drivers should advise visually-impaired passengers of the precise location of the car, and state which way it is facing / how far it is away from the kerb when assisting passengers into the vehicle;
 - Drivers should not park near to any lamp posts or bollards; and
 - Drivers should try to communicate appropriately at all times with the passengers.
- 10.3 All drivers / operators who were the subject of the test-purchasing exercise have been written to and thanked for the positive experience they provided. For future reference, the learning points set out above were also included in the letters.

10.4 The positive outcome of the test-purchasing exercise has featured on the Council’s intranet and also been the subject of a social media awareness-raising “tweet”.

11. WIDER IMPLICATIONS AND BACKGROUND DOCUMENTATION

11.1 Comments of the Statutory Finance Officer

The cost of the exercise was less than £30 in total on 4 taxi fees and refreshments for the participants.

11.2 Comments of the Monitoring Officer

A consultation exercise is required in respect of the exemptions policy, which will allow stakeholders with the opportunity to comment.

It is important to note that once the designated list is invoked, those drivers that do not have medical exemption certificate, will be committing a criminal offence, if they refuse to carry passengers with assistance dogs.

<p>Other implications:</p> <ul style="list-style-type: none"> • Risk • Equality • HR 	<p>The adoption of the draft policies and procedures would ensure the Council’s compliance with obligations under the Equalities Act 2010.</p> <p>The test purchase exercise is an attempt to establish the current level of compliance with important legislation relating to the accessibility of public transport for visually-impaired persons within the Borough. The positive results of the exercise are encouraging.</p> <p>None</p>
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8. BACKGROUND DOCUMENTS (or there are no background papers to this report)

- Appendix 1 – draft policy for medical exemption (carriers of assistance dogs)
- Appendix 2 – EIA
- Appendix 3 - draft application form
- Appendix 4 – draft letter to be sent to all applicants whose application for exemption is successful
- Appendix 5 – draft notice / certificate
- Appendix 6 – summary of journeys taken during test purchasing exercise