

Mr Doug Paulley

The person dealing with this matter is:

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Our reference: PSR&D/LIC/JB/FOI/DPaulley/12579

Your reference:

If you need this information in another format or language please contact the sender.

Dear Mr Paulley,

Freedom of Information Act 2000 – Request for Information

Thank you for your request for information under the provisions of the above Act. Please find my response to your questions answered in the order in which they were requested.

1) The Government guidance states: "Whilst LAs are under no specific legal obligation to maintain a list under section 167, the Government recommends strongly that they do so. Without such a list the requirements of section 165 of the Act do not apply, and drivers may continue to refuse the carriage of wheelchair users, fail to provide them with assistance, or to charge them extra."

Please can you indicate whether you have changed your position since April, such that you do now have a list of wheelchair accessible taxis under your powers set out in Section 167 of the Equality Act 2010, and/or a list of wheelchair accessible private hire vehicles?

Wheelchair accessible hackney carriages are identified via an accessible public register with W prefix to licence number. 440 of the City's 780 Hackney Carriages are wheelchair accessible.

There is currently no list maintained under the provisions of section 167 of the Equalities Act 2010. Consideration is being given to creating and maintaining a list for both hackney carriage and private hire vehicles. The City is continuing with a licensing policy review. The Authority intended to make incorporate Equality Act requirements into policy change, however various issues have inadvertently delayed policy review and completion. The Authority will therefore consider section 167 of the Equalities Act in isolation.

2) If you do now have such a list, please provide information in response to the following questions 2a) to 2j):

2a) On what date was it put in place?

Not applicable

2b) The statutory guidance states "The Government therefore recommends that a vehicle should only be included in the authority's (S167) list 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."

Is this the definition you have used for a taxi or PHV to be considered wheelchair accessible for the purposes of the list?

No, Newcastle City Council Licensing Authority does not believe that the definition affords all wheelchair users with the same level of protection as that of a non-wheelchair user. Whilst a vehicle should be able to carry the reference wheelchair, this definition may not cover passenger safety to an appropriate level. All Newcastle City licensed wheelchair accessible vehicles are able to carry a reference wheelchair. The City Council however also rely on conversion certificates from vehicle converters to ensure the wheelchair occupant restraints have been tested to at least the same level as that of non-wheelchair user in the vehicle. Individual Vehicle Approval does not require a "pull test" on the wheelchair user passenger restraints. The City Council Licensing Authority are disappointed the Government did not require European Community Whole Vehicle Type Approval (ECWVTA) as used by manufacturers of large numbers of vehicles in Europe.

2c) The statutory guidance states: "Before drivers can be subject to the duties under section 165 of the Act, the LA must first publish their list of designated vehicles, and clearly mark it as 'designated for the purposes of section 165 of the Act'. LAs should ensure that their designated lists are made easily available to passengers, and that vehicle owners and drivers are made aware. Lists should set out the details of the make and model of the vehicle, together with specifying whether the vehicle is a taxi or private hire vehicle, and stating the name of operator."

Have you published your list? Is it marked "designated for the purposes of Section 165 of the Act"? Is the make and model of each vehicle listed? Is each vehicle identified as a taxi or a private hire vehicle? Is the name of the operator of each vehicle given in the list? Have you made owners and drivers of vehicles on the list aware that their vehicle has been listed?

Not applicable

2d) The guidance states: "it would also be helpful to include information about the size and weight of wheelchair that can be accommodated, and whether wheelchairs that are larger than a "reference wheelchair" can be accommodated."

Does your list include information on each vehicle as to the size and weight of wheelchair that can be accommodated, and whether wheelchairs larger than a "reference wheelchair" can be accommodated?

Not applicable

2e) *The guidance states: "We encourage LAs to provide drivers of taxis and PHVs who are not exempt from the duties with clear guidance on their duties with respect to the carriage of passengers in wheelchairs, either as part of existing driver-facing guidance, or as supplementary communication."*

Have you provided non-exempt taxi/PHV drivers with such guidance?

Private Hire drivers are required to complete a statement of knowledge and understanding interview prior to grant of a licence. Disability awareness issues form part of this interview. It has been a pre-requisite of licence for approximately 20 years for a hackney carriage driver licensed by Newcastle City Council to attend a formal disability issues awareness training session carried out by professional training providers.

2f) *The guidance states: "We recommend that licensing authority rules for drivers are updated to make clear when a meter can and cannot be left running".*

Have you updated such rules to make this clear?

Please see response to question 2e)

2g) *The guidance states: "Section 172 of the Act enables vehicle owners to appeal against the decision of a LA to include their vehicles on the designated list. That appeal should be made to the Magistrate's Court, or in Scotland the sheriff, and must be made within 28 days of the vehicle in question being included on the LA's published list."*

Please tell me how many such applications have been made to the Magistrates Court, and how many have been successful.

Not applicable

2h) *How many drivers has the authority prosecuted for discriminatory behaviour contrary to S. 165 of the Act? How many such prosecutions were successful? What were the sentences?*

None under section 165. However the Licensing Authority has taken formal action against drivers refusing to assist to an adequate standard and especially where showing discriminatory behaviour. The legislation used is the Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976.

As with all complaints the Authority are reliant on obtaining statement from the injured party/aggrieved person in order to present before the Court. The City Council Licensing Authority have recently successfully prosecuted a licensed driver for fare refusal of a wheelchair user under section 53 of the Town Police Clauses Act 1847. The driver was received a total fine and costs of £908. His licence was later revoked under the Local Government (Miscellaneous Provisions) Act 1976 on referral to the Council's Regulatory & Appeals Sub-Committee.

2i) *How many drivers licensed by yourselves have been prosecuted by other people or bodies for failure to comply with S165 of the Act? How many such prosecutions were successful? What were the sentences?*

I am unaware of any Newcastle licensed drivers being prosecuted by other bodies under the Equalities Act 2010.

3) *If you do not have a S167 list or lists now, please indicate if you now intend to produce such a list.*

Please see response to question 1.

4) *If you don't have a S167 list but do intend to produce one, please provide information in response to questions 4a) and 4b) below.*

4a) *Please indicate when you intend to have the list in place.*

It is the intention of the City Council Licensing Authority to undertake completion of the list on annual vehicle licence and MOT inspection imminently. This will form part of the authority's licensing policy review.

4b) *Where you have already made relevant decisions, please indicate whether you intend to comply with the elements of the statutory guidance set out in 2b) to 2f) above.*

Please see response to questions 2b) and 2f)

5) *Irrespective of whether you have created a list or not or indeed whether you intend to create such a list, since 2010 you have been obliged to process applications under Section 166 of the Equality Act for driver medical exemptions from the duty to transport and not discriminate against wheelchair users. The Guidance states; "the Act allows LAs to grant exemptions from the duties to individual drivers. These provisions are contained in section 166, and were commenced on 1st October 2010."*

5a) *How many exemptions have you granted under S166 of the Equality Act 2010?*

There have been no application or grant for exemptions for drivers of either hackney carriage or private hire vehicles.

5b) *The guidance states: "We understand that some licensing authorities have already put in place procedures for accessing and exempting drivers, and as an absolute minimum, we think that the evidence provided should be in the form of a letter or report from a general practitioner."*

Do you accept or require a letter or report from a GP to process applications for driver exemption under S166?

The City Council licensing authority would require medical confirmation of any ailment from the applicant's own doctor or specialist.

5c) *The guidance states: "The Government's view is that decisions on exemptions will be fairer and more objective if medical assessments are undertaken by professionals who have been specifically trained and who are independent of the applicant. We would recommend that independent medical assessors are used where a long-term exemption is to be issued, and that LAs use assessors who hold appropriate professional qualifications and who are not open to bias because of a personal or commercial connection to the applicant"*

Have you appointed independent medical assessors to determine applications for medical exemption under S166?

No. The Authority believe consistently in applying medical standards that general practitioners or specialists dealing with the applicant's ailment are best placed to verify such an ailment.

The Licensing Authority require all private hire and hackney carriage drivers to be fit to Group 2 medical standards as prescribed by the DVLA in the Guide to fitness for medical professional's guidance.

5d) Please provide a copy of your application form for driver exemption under S166.

The Authority would first receive a request for exemption. To date no such request has been made.

5e) The guidance states: "Section 172 of the Act enables drivers to appeal against the decision of a LA not to issue an exemption certificate. That appeal should be made to the Magistrate's Court, or a sheriff in Scotland, and must be made within 28 days beginning with the date of the refusal."

How many appeals against refusal to issue S166 exemptions have been heard?

Not applicable

5f) How many appeals against refusal to issue S166 exemptions were successful?

Not applicable

6) The guidance states: "We would therefore recommend that LAs also publish a list of vehicles that are accessible to passengers in wheelchairs who are able to transfer from their wheelchair into a seat within the vehicle. It should be made clear however that this list of vehicles has not been published for the purposes of section 165 of the Act and drivers of those vehicles are therefore not subject to the legal duties to provide assistance."

Do you currently publish a list of vehicles that are accessible to passengers in wheelchairs who are able to transfer from their wheelchairs into a seat within the vehicle?

If an individual is able to transfer from a wheelchair to a car seat and is in a reference wheelchair, then all vehicles whether converted or otherwise including saloons would be able to take the passenger as the wheelchair could be folded and placed in the boot. The Authority does not believe a specific list to therefore be required.

If you are unhappy with the information supplied you can ask for an internal review of our decision. Please send details of your request for review to the following address:

Corporate Information Governance Officer

Chief Executive's Office

Civic Centre, Barras Bridge

Newcastle upon Tyne

NE99 2BN

Telephone: 0191 211 6644

E-mail: freedomofinformation@newcastle.gov.uk

If you are still unhappy with how the Council has handled your request you can write to the Information Commissioner asking for an assessment to be made. Contact details are as follows:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF
Telephone: 01625 545745
E-mail: mail@ico.gsi.gov.uk

If you have any further queries please do not hesitate to contact me on the above telephone number or e mail address.

Yours sincerely

A handwritten signature in black ink, appearing to be 'J. G. G.', written in a cursive style.

Licensing Manager