



**Equality and
Human Rights
Commission**

Bus Services Bill

House of Lords

Briefing for Report Stage

Briefing in support of Amendments 98 and 99

Monday 24 October 2016

For more information, please contact:

Parliamentary lead:

Shelley Hopkinson

Shelley.hopkinson@equalityhumanrights.com

Tel: 020 7832 7845

Legal lead:

Mark Stone

Mark.Stone@equalityhumanrights.com

Tel: 020 7832 7852

Introduction

This briefing supports amendments which seek to improve the accessibility of public transport for disabled people. Disabled people's ability to participate in hugely important aspects of life that most of us take for granted, such as work, education and social life, can be dependent on their ability to use public transport. These issues are, therefore, of the utmost importance.

The UN Convention on the Rights of Persons with Disabilities (CRPD) sets out what human rights mean specifically for disabled people. By ratifying CRPD in 2009, the UK took on binding obligations under international law to ensure that disabled people enjoy those rights in practice. 'Accessibility' is a General Principle in the Convention, and Article 9 requires the Government to take appropriate measures to ensure that disabled people have access to transport on an equal basis with others.

A recent court case¹ has highlighted a lack of clarity in the rules regulating the use of spaces on public buses which are provided for wheelchair users. The Bus Services Bill presents an opportunity to clarify that a wheelchair user has priority use of the designated space.

The extent to which buses are accessible to disabled people will depend to a large extent on bus drivers' awareness of disabled people's rights and how to fulfil them. Article 9 CRPD states that appropriate measures should be taken to 'provide training for stakeholders on accessibility issues facing persons with disabilities'.

1. Disability training

Commission's recommendation

Support Amendment 98.

Explanation

This Amendment would require all drivers and staff at bus terminals to complete compulsory, approved disability equality and awareness training by 1 April 2019. The Amendment importantly provides that this training must cover mental and hidden disabilities. After 1 April 2019 all new drivers and terminal staff would have to complete the training within one month of starting work and all such staff would have to complete refresher training at least once every three years.

Our analysis

In March 2018 Article 16 of EU Regulation 181/2011 will come into force, requiring all bus drivers to undergo disability awareness training. We understand that the Government intention, which will be reflected in the Great Repeal Bill, is that the body of existing EU law will be converted into UK law when we leave the EU.

¹ FirstGroup Plc (Respondent) v Paulley (Appellant) UKSC 2015/0025

However, this amendment would strengthen the provisions introduced by EU Regulation 181/2011 by requiring new drivers and terminal staff to complete training within one month of starting work and undertake refresher training.

2. Wheelchair space priority

Commission's recommendation

Support Amendment 99.

Explanation

Under the Public Service Vehicles Accessibility Regulations 2000, a bus capable of carrying 22 passengers is required to be fitted with a space that can be used by a person in a wheelchair. The Public Service Vehicles (Conduct of Drivers, Inspectors, Conductors and Passengers) Regulations 1990 (the Conduct Regulations) set out certain rights and duties for bus drivers, inspectors, conductors and passengers on buses. While these regulations provide that drivers can enlist the help of the police in removing someone from a bus who refuses to stop smoking or behaving in an antisocial manner, they do not contain similarly strong powers in relation to protecting the rights of disabled people. The Conduct Regulations do not require a bus driver to ask a passenger who is, or whose effects are, occupying the space designated for a wheelchair to vacate that space upon request from a wheelchair user. Nor do they state that a bus driver must require a passenger to vacate the space. On the face of the Regulations, it is for the bus companies to decide what policies should be put in place to ensure that wheelchair spaces do not become occupied by other passengers to the detriment of wheelchair users.

Regulation 12(2)(b) indicates that a wheelchair user may only board the bus if its capacity would not be exceeded. This means if a bus is almost full and the wheelchair space is not prioritised for a disabled person, they may not be able to board. In some areas, for example in the City of London, buses can often be at full capacity. Wheelchair users cannot use any part of the bus except the wheelchair space, and without priority access they may stand little chance of boarding without the good will of other passengers.

The Conduct Regulations provide that a driver must allow a wheelchair user to board only if the wheelchair space on the vehicle is unoccupied. They say that a wheelchair space is occupied if passengers or their effects are in that space and they or their effects cannot "readily and reasonably vacate" it by moving to another part of the vehicle. The lack of clarity about "readily or reasonably vacate" has caused much uncertainty as to the circumstances under which, for example, a driver should require someone with a child's buggy or pram to fold it and/or remove it from the wheelchair space². The Conduct Regulations Guidance adds further ambiguity:

If there is space available and the seating and standing capacity will not be exceeded when the wheelchair space is occupied then any passengers in the

² House of Commons Library (2016) Briefing Paper Number SN00601, Access to transport for disabled people

wheelchair space should be asked to move. This may not be practical if, for example, the vehicle is nearing its capacity or passengers with baggage or a baby buggy are using the space.

This Amendment would require changes to regulations to require and empower bus drivers to direct passengers to vacate a wheelchair space to allow a wheelchair user to make use of it. The qualifying word “unreasonably” means that the Amendment would not create absolute priority for wheelchair users. Circumstances could arise in which it is reasonable for a passenger to prevent a wheelchair user from using a wheelchair space, such as where a disabled passenger has a child in a buggy in the wheelchair space but would not be able have the child sit on their knee.

Our analysis

Public bus services play a vital role in enabling disabled people to live independent lives. Buses are used by many people to get to work, go out, and get to local facilities. It is of great importance, and a matter of human rights, that wheelchair users should be able to use the designated spaces on buses. Disabled people and bus drivers should be empowered to demand compliance with this rule.

A recent case has highlighted a lack of clarity in the laws regulating this issue. In February 2012, Mr Doug Paulley, a wheelchair user, tried to board a FirstGroup bus from Wetherby to Leeds where he planned to catch a train to Stalybridge to have lunch with his parents. The wheelchair space was being used by a passenger with a pushchair and a sleeping child. FirstGroup have not disputed that there was plenty of space elsewhere on the bus for the passenger to move to with her child and for the pushchair to be folded safely and stored. However, the passenger refused the driver's request to move or fold the pushchair and so the driver told Mr Paulley he could not board the bus. As a result, Mr Paulley had to wait for the next bus to Leeds, which meant that he missed his train to Stalybridge.

Mr Paulley successfully sued First Group in the County Court for unlawful discrimination. The County Court found that FirstGroup's policy discriminated against Mr Paulley and put him at a substantial disadvantage by failing to comply with the duty to make reasonable adjustments. The County Court thought it could be reasonable to require a non-wheelchair user in a wheelchair space to move from it if a wheelchair user needed it, and FirstGroup was asked to change its policy accordingly. This decision was overturned by the Court of Appeal. Mr Paulley, supported by the Commission, has taken his case to the Supreme Court. The Court heard submissions in June and its judgment is expected before the end of the year.

The Commission believes that the Conduct Regulations should be amended so as to align with service providers' obligations to make reasonable adjustments under the Equality Act 2010. Bus companies should adjust their policies so that it is clear that drivers must require people to move out of the wheelchair space, not simply ask them to do so. Increased legal certainty as to what is required would avoid circumstance such as those encountered by Mr Paulley. Drivers should be backed up by a clear formal policy which states that wheelchair users have priority in using the space when they ask passengers to move from wheelchair spaces.

When this point was raised in the House of Lords during Second Reading of the Bill, the Minister (Lord Ahmad of Wimbledon) told Peers that the Government will consider the arguments for amending the existing legislation once it has had an opportunity to consider the Supreme Court's judgment. However, we consider that this issue is of such importance to disabled people's ability to live independent lives that Parliament should take this opportunity to address the issue, regardless of the outcome of that particular case. The Commission believes that the Government should commit to amending the Conduct Regulations no later than six months after the Bus Services Bill receives Royal Assent. The Government should consult passenger groups, disability stakeholder groups and relevant authorities when considering how to clarify Conduct Regulations and accompanying Guidance.

About the Equality and Human Rights Commission

The Equality and Human Rights Commission is a statutory body established under the Equality Act 2006. It operates independently to encourage equality and diversity, eliminate unlawful discrimination, and protect and promote human rights. It contributes to making and keeping Britain a fair society in which everyone, regardless of background, has an equal opportunity to fulfil their potential. The Commission enforces equality legislation on age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. It encourages compliance with the Human Rights Act 1998 and is accredited by the UN as an 'A status' National Human Rights Institution. Find out more about the Commission's work at: www.equalityhumanrights.com