

Annex B

Consideration of the legal advice by the Monitoring Officer

Dear Councillor Crawshaw

Thank you for your e-mail in relation to this, and for your patience as I considered the advice.

The advice from Counsel in relation to the Executive decision focussed on the Public Sector Equality Duty (“PSED”), rather than Human Rights considerations; however, it seems to me that was enough information and consideration in the report to Executive of 18 November 2021, and the associated Equalities Impact Assessment (“EqIA”), to show that due regard was had to interference with human rights. Although in the *Tchenguiz v WCC* case the court referred to WCC’s failure to undertake “a Convention-compliant proportionality exercise”, I am not aware of any specific legal requirements in this regard and my view is that, as for the PSED, the duty to have regard to certain matters has to be complied with in substance.

The EqIA appended to the report specifically considered the human rights of blue badge holders with regard to the proposals. It identified the adverse effect of the proposals on human rights and considered whether the interference would be proportionate to the intended objective. Please see also (by way of example) paragraphs 146 and 147 of the report:

“146. The Council have undertaken considerable engagement work with blue badge holders and disabled advocacy groups to:

- Fully understand the impact of not allowing blue badge holders to access and park on the footstreets they previously had a specific exemption to access. The scrutiny process has been useful in validating that.
- To look at the alternatives to driving down footstreets to enable blue badge holders to access the footstreets.

147. In considering this decision, officers have considered the impact on blue badge holders and recognise the impact that some blue badge holders will be excluded from the footstreets by the recommendations. The open brief considered in November 2020 at Executive has been updated and is included at Annex AA. But having considered that impact it has not been possible to find a way to deliver the safety benefits of the counter terrorism measures without causing the impact to parts of the disabled

community. The benefits to wider public interest, including the right to life and the duty to protect life mean that officers, on balance (acting proportionately and having given significant weight to the impacts) recommend the area protected by Hostile Vehicle Mitigation Measures are extended and the blue badge exemption is removed except for Castlegate where the rationale is different and further consideration is to be given to the removal of access exemptions in this street.”

It appears to me that the Executive’s decision differs from the *Tchenguiz v WCC* case. WCC failed on proportionality because it did not consider the issues in that case from the perspective of the human rights of the claimant and his family, and whether less intrusive measures could be taken. The court considered that the prevention of danger connected with terrorism was a legitimate interference with the claimant’s Article 8 rights. On the issue of proportionality, the others affected by the counter terrorism proposals were subject to less intrusive and more favourable measures than the claimant and his family, without any convincing justification for such inconsistent treatment. It is also important to note that the *Tchenguiz v WCC* case involved the installation of HVM barriers immediately adjacent to the claimant’s residential property and would have prevented vehicular access to that property for 12 hours per day.

In our case, on different facts, my view is that the report and EqIA did understand the human rights issues from the perspective of Blue Badge holders; the report considered whether there was any other way to deliver the safety benefits of the proposed counter terrorism measures and whether the measures would result in a disproportionate interference with their rights. I do not, therefore consider that the legal position considered by the Executive has changed.

I hope this is of assistance. In order to assist in the dissemination of the above, I have sent it to all Members of the Council, for their information.

With kindest regards

Bryn