

Human Rights Report on Blue Badge Exclusion in York, October 2021

York Human Rights City Network

Background

In June 2020, the footstreet area in central York was extended (temporarily) in terms of surface covered to create space for social distancing and for café licences and in terms of time by increasing the hours of operation to 8:00 pm. The City of York Council (CYC) made a temporary Traffic Regulation Order (TRO), removing the Blue Badge exemption from Blake Street, Lendal, Goodramgate, Church Street and Castlegate and making changes to Fossgate. In February 2021, CYC released a statement detailing plans to make these changes permanent.

Several arguments have been put forward for restricting access to the city centre. In addition to the pandemic, these now include supporting the local economy, the need for enhanced counter-terrorism measures, and environmental benefits. Blue Badge holders have argued that any measures should not further restrict their city centre access in a discriminatory manner. Despite various consultations from April to June 2021, fundamental differences of opinion and perceptions that evidence from the consultations has on occasion been used selectively or inaccurately have caused controversy. The issue of access has become highly polarised, with a resulting breakdown in trust between the CYC and disabled groups. The Council have delayed their final decision until November 2021 to conduct further consultation.

The Human Rights and Equalities Board (HBEB), a CYC-led body, has asked the York Human Rights City Network (YHRCN), a civil society coalition, to provide guidance on how the Council can best respect the human rights of all when taking these complex decisions. In a July 2021 statement the YHRCN observed that a human rights approach had not been adopted in developing the current plans, and that the disproportionate impact of the plans on some of York's disabled citizens had not been adequately considered.

Relevant human rights and equalities provisions in international and UK law

Looking at this issue through a human rights lens adds value in three ways.

First, **human rights law makes clear that majority preferences cannot simply override those of minority groups**, thereby resulting in systemic discrimination against individuals with protected characteristics, such as disability.

At the international level, this core understanding is encapsulated by the UN Convention on the Rights of Persons with Disabilities (UNCRPD), a human rights treaty, which the UK agreed to abide by in 2009. As a result, the treaty binds national and local authorities, including city councils. Three of the eight general principles of the UNCRPD are particularly relevant to the situation in York:

- **Non-discrimination**, whereby “disabled people must never be treated less favourably than others, excluded from or denied access to services, education, work or social life on the basis of their disability.”
- **Accessibility**, which requires that “disabled people can access buildings, housing, services, information, leisure ... on an equal basis to non-disabled people.”
- **Participation and inclusion**, requiring that “disabled people’s full and effective participation and inclusion in society must be supported.”

Integrating these principles at the domestic level, the Equality Act 2010 and the Human Rights Act 1998 provide protection to disabled persons’ rights in the UK.

Second, **human rights can be used to frame a debate such as this where there are genuine concerns on each side of the argument.** On the one hand there is the right to non-discriminatory access to the city centre of all individuals, including disabled persons; on the other, the right to security (pursued through anti-terrorism measures), to a healthy environment, and the desire to support economic recovery (the right to a decent standard of living). Any weighing of these human rights claims and public interests must take into account the central place of non-discrimination in finding a solution.

The centrality of equality and non-discrimination is supported by domestic law provisions. Article 8 of the **Human Rights Act 1998**, read in conjunction with Article 14, guarantees the right of disabled persons, *inter alia*, to respect for their private life in a non-discriminatory manner – this includes the right to participate in essential economic, social, cultural and leisure activities, to physical and mental health and autonomy. Whilst the right can be subject to limitations, these must not be disproportionate to the goals pursued.

Importantly, the **Equality Act 2010** places a duty on public authorities to make reasonable adjustments in order for disabled persons to be able to exercise their rights. Wherever “a provision, criterion or practice ... puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled”, authorities must “take such steps as it is reasonable to have to take to avoid the disadvantage.” Such steps are subject to means, or available resources.

Finally, the Public Sector Equality Duty (PSED) entailed in the Equality Act 2010 requires authorities “to have due regard to the need ... to eliminate discrimination, harassment, victimisation and ... to advance equality of opportunity between persons who share a relevant protected characteristic and those who do not share it”. Case law clarifies that public authorities must, for example, have “due regard” to the impact on elderly or disabled people when imposing parking restrictions.

Whilst the duty to have “due regard” is not an obligation of results, the court noted that the level of regard required will be very high where a decision may affect large numbers of individuals sharing a protected characteristic. Depending on the nature and extent of the impact, effects on even a small number of persons may also require a high level of consideration to be given by local authorities.

For the CYC to comply with the PSED, it should be able to demonstrate that “adequate and accurate equality evidence” has been collated, properly understood, and analysed (5.17). Courts have held that without evidence of “a structured attempt to focus on the details of equality issues”, a public authority is likely to be in difficulty, should the decision face judicial review (para. 61; see also EHRC, 5.37).

The Equalities Impact Assessments (EIAs) of 9 June 2020 and of 11 November 2020, respectively, fail to identify in the Human Rights section the impact on 4.16 Right to respect for private and family life, home and correspondence and 4.18 Right not to be subject to discrimination. This omission is in contradiction with the previous section of the respective EIAs on Equalities, which do identify a negative or a mixed impact in respect to 4.2 Disability and 4.10. Carers. What this means is that the data has not been adequately understood and analysed. One cannot divorce the assessment of the impact under the Equality Act 2010 from the impact under the Human Rights Act 1998 - rights are interdependent and so are impacts on rights.

In the 10 June 2021 EIA a similar approach is taken: "No human rights have been identified as impacted". Again, this is contradictory to the impacts identified on disabled persons under the Equalities section, specifically on Blue Badge holders. Clearly, their right to a private life taken alone and in conjunction with their right to non-discrimination is impacted. Section 6.1, detailing recommendations and conclusions of the assessment, fails to engage with the following instruction: "**Important:** If there are any adverse impacts you cannot mitigate, please provide a compelling reason in the justification column."

In short, while the CYC has conducted EIAs in relation to city centre access, and Blue Badge access specifically, the data gathered has not been properly understood and analysed.

Third, **human rights engender participation of affected individuals and groups in decision-making processes and encourages co-production of solutions** for situations such as the one in York.

Technical guidance clarifies that public authorities' compliance with the PSED cannot be achieved in the absence of having a full understanding of the potential equality impacts of their intended actions (5.15-5.20). This is particularly relevant at a local level, where proximity can either result in facilitating understanding of each other's needs and the building of jointly satisfactory solutions, or on the contrary, entrenching stereotypes and fuelling hate incidents in the city. The co-production of reasonable adjustments for accessing York city centre between CYC and disabled persons could provide an opportunity for deep listening and represent a learning exercise for the wider York community. This may in turn build shared understandings, engender participatory processes, and foster good relations between persons who share a relevant protected characteristic and persons who do not share it – the latter, indeed, represents the third limb of the PSED.

Experience from other cities

Chester

Chester was the first British city to win the coveted European Access City Award in 2017 for its commitment to ensuring that the historic city continues to become more accessible for all. Blue Badge holders have access to the centre through the use of Automatic Number Plate Recognition (ANPR) at barriers. This technology reads a car's number plate and compares it to a list without the need for human intervention. Visiting Blue Badge holders apply in advance to be added to the list.

In addition, wheelchair users have several access points to the city walls and the 13th Century elevated walkways. There are seven Changing Places toilets and the Council has committed to creating more with any new renovation in the city. All of the city's public buses are fully accessible. Council policy requires all of its licensed taxis to be suitable for wheelchairs. They must also include additional features, such as induction loops and colour-contrasted grab handles.

Dial West Cheshire (DWC) is a Chester-based disabled people's organisation. It runs a disability rights centre, a Shopmobility service and an access group. DWC felt the city winning the European access Award showed other councils "the importance of involving disabled people in plans and planning" and then listening to what they say.

The council employs a Senior Access Officer and followed DWC advice to set up a corporate disability access forum made up of 16 disability organisations to examine strategic issues, challenge architects and developers about access plans and ensure access is central to the conversation. This has given disabled people "the opportunity to be heard" and provides a working model of co-production.

Finally, with the accessible overnight tourism market worth £3bn in England as a whole (and day visits bringing that figure up to £12.1bn, according to Visit England), it is clear that there is a strong economic argument for investing in accessibility. The "purple pound" generally is worth £212bn a year.

Bath

From November 2020 to January 2021 Bath and North East Somerset Council held a public consultation on making Bath more secure by creating permanent access restrictions to the city centre. The proposed scheme removed disabled parking in the city centre and access for delivery services including food, parcels and other goods to properties within the "strengthened zone".

Local groups including The Abbey Residents Association (TARA) spoke out against the proposals and called for a rethink so taxis would be able to operate freely in the secure zone, Blue Badge holders would continue to be able to park or be dropped off, and there would be an easy way to get parcels or groceries delivered without a complex bureaucratic process.

In recognition of the impact on Blue Badges holders and the need for reasonable adjustments, the Council commissioned an independent report from Atkins (a design, engineering and project management consultancy company) to identify a package of measures to that could address the

concerns raised by the disabled community and those with mobility issues. Atkins conducted stakeholder interviews to inform their report.

The Accessibility Study advised that when considering the risks associated with terrorism, there was a need to weigh these concerns with the public interest in equitable access. It states:

“the accumulative result of barriers and hurdles preventing people from gaining feasible access to destinations enjoyed by others can significantly affect people’s wellbeing ... if quantified, the accumulative effect of ‘slow disasters’ affecting multiple individuals who are not within public attention, could outweigh the detrimental effect of ‘rapid disasters’ ... It is key that [security] staff know their duty is to literally and metaphorically ‘remove barriers’ to enable those coming to the city for legitimate reasons to gain access as much as it is to ‘place barriers’ and hinder those seeking access for illegitimate reasons.”

In July 2021 council leader Kevin Guy reassured residents that the Council had taken their feedback into account. The new proposed measures allowed Blue Badge holders, their carers and taxis transporting them to park on previously excluded streets. Improvements to public toilets, the launch of a free electric shuttle bus for Blue Badge holders and older people, street seating, dropped curbs, extra Blue Badge parking outside the centre, improvements to Shopmobility, and dedicated cycle paths for bikes and e-scooters are also being considered. The new Traffic Regulation Orders are currently undergoing public consultation.

Conclusions and recommendations for York

Drawing on this review of relevant law and practice, the York Human Rights City Network sets out below recommendations for the short term and longer term. It is important that the CYC considers the implications of the ‘slow disaster’ of further discriminating against an already disadvantaged group, and the implications for trust and public relations in the city, alongside the implications of ‘rapid disasters’, such as the threat of terrorist attacks. In the short term:

1. The CYC should seek to co-produce an accessibility plan to the city centre with Blue Badge holders. Current restrictions on Blue Badge access should be lifted and any decisions on city centre access placed on hold to allow the process of co-production to take place. This needs to go beyond conventional consultation, to include listening to the views of disability groups in the context of developing jointly agreed solutions to the current challenges, as well as devising procedures to prevent such a situation occurring again in the future.

In the longer term:

2. The CYC should appoint an Access Officer to advise it on access issues and ensuring inclusivity in decision-making. The Access Officer should also be a liaison person for local disabled citizens and groups. This position would be ideal for a qualified Access Auditor with lived experience of disability.
3. The CYC should consider establishing a Disability Access Forum, comprising disability organisations. Its role would be to provide strategic advice on access issues, and assess the access implications of plans for the city. Both the Access Officer and the Disability Access Forum would embed a co-production approach to accessibility for the future.
4. The failure to properly understand and analyse the data in the Equality Impact Assessments illustrates the need for training within the CYC on equalities and human rights. Training for the CYC, members of the Disability Access Forum and others could provide an opportunity to “foster good relations between persons who share a relevant protected characteristic and persons who do not share it”. The development of a new Human Rights and Equalities Impact Assessment tool within the CYC provides a good opportunity to provide such training, and integrate analysis of equalities and human rights.