



How far must transport providers go to ensure access to wheelchair users on buses?

The Court of Appeal has provided much needed legal and practical clarity on the use of the wheelchair space on buses. The guidance will help both passengers and bus operators to know their rights and obligations.

The broad legal issue was the interaction between:

- the duty on service providers to make reasonable adjustments under the Equality Act 2010;
- the legislation governing the provision of wheelchair spaces on buses. (the Public Service Vehicles Accessibility Regulations 2000 and the Public Service Vehicles (Conduct of Drivers, Inspectors, Conductors and Passengers) Regulations 1990); and
- the behaviour, duties and powers of passengers and bus operators in the manner in which these obligations are put into practice.

The specific legal point decided was whether bus operators are obliged to operate a “*require rather than request*” policy for non-wheelchair users to be compelled to vacate the wheelchair space when a wheelchair user wishes to board a bus. Prior to the Court of Appeal judgment there had been two conflicting judgments on almost identical facts: what is the bus driver to do when a passenger who believes that she/he has a reasonable need for the space refused to move from the wheelchair space to allow a wheelchair user to board a bus? (The other judgment is *Black and Others v Arriva North East Ltd* (1 May 2013).)

Mr Paulley (a wheelchair user bringing this test case) argued that a ‘require’ policy should be implemented irrespective of the reasons why other passengers occupied the wheelchair space. Passengers, including the mother with a buggy, who failed to vacate the wheelchair space should be forced to leave the bus by the driver. The driver should have no discretion on this.

In September 2013, Recorder Isaacs sitting in the Leeds County Court ruled in Mr Paulley’s favour that FirstGroup plc (and any bus operator) was obliged to have a policy ‘requiring’ passengers to vacate a wheelchair space or would be guilty of discrimination under the Equality Act 2010 for failing to make reasonable adjustments

FirstGroup’s case on appeal was that it was not practicable or reasonable to oblige bus operators to operate a ‘require’ policy when there are circumstances in which other passengers

could legitimately occupy the space. In any event neither the Conduct Regulations nor any other law provided any power for the removal of other passengers if they failed to comply with the driver’s demands.

FirstGroup operated a policy (backed by training and clear signs) of requesting in the strongest polite terms for other passengers to vacate the space. The policy had been formulated to comply with legislation, to balance the needs of all its passengers and to operate in a non-confrontational way.

The Court of Appeal Judges unanimously allowed the appeal. Lord Justice Lewison summarised the Appeal Judges’ decision that a ‘require’ policy would be “*a step too far*.”

The judgment is clear that the issue in the appeal was not about whether non-wheelchair users who can move should do so. All three judges – and both parties - were clear that passengers who can move should do so out of both common sense and courtesy. The Judges also recognised the significant challenges that wheelchair users face every day.

The Court hearing explored various real life scenarios in which it may be reasonable for a non-wheelchair user to wish to occupy the wheelchair space, including a mother with an ill, sleeping child in a pram on the way to a medical appointment and a disabled (but non wheelchair-using) mother unable to hold her child during the journey. Lord Justice Underhill referred to these scenarios and said:

“It has to be accepted that our conclusion and reasoning in this case means that wheelchair users will occasionally be prevented by other passengers from using the wheelchair space on the bus. Sometimes there will be a reasonable justification for that happening; but sometimes there will not. I do not, however, believe that the fact that some passengers will – albeit rarely – act selfishly and irresponsibly is a sufficient reason for imposing on bus companies a legal responsibility for a situation which is not of their making and which they are not in a position to prevent. In the present state of the law something must still be left to the good sense and conscience of individuals.”

In the absence of a legal power for bus drivers to compel unwilling passengers to move, the judgment recognises that a ‘require’ policy would force bus drivers to exercise self-help remedies exposing themselves “*to the risk of committing*

a common law battery, not to mention the real risk of confrontation” and that “it would not be reasonable to require a bus company to instruct its drivers to expose themselves to that risk.”

Whilst observing that it was not part of the case, Arden LJ observed that whilst it is not reasonable to force a “require rather than request” policy upon bus operators, a bus company should take all reasonable steps short of compelling passengers to move from the wheelchair space. She expressed provisional comments only on what such reasonable steps might sometimes include. Lewison LJ also endorsed the comments as a matter of common sense rather than of legal obligation.

The Department for Transport is currently consulting on changing the Conduct Regulations. However, the Dft has stated that it is “not proposing any changes to the regulations covering the conduct of drivers... of regulated public service vehicles with respect to wheelchair users...” Therefore, the proposed consultation is not expected to impact on the Regulations considered in this case. This Court of Appeal judgment should therefore be regarded as providing the necessary clarity on obligations in the use of the wheelchair space.

The Court of Appeal refused Mr Paulley’s request for permission to appeal to the Supreme Court. Mr Paulley, funded by the Equality & Human Rights Commission, has indicated that he will now seek permission from the Supreme Court directly.

Burges Salmon acted for FirstGroup on the Appeal.

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