**IN THE MATTER OF REPLACEMENT BUS SERVICES AND THE PUBLIC SERVICE VEHICLE ACCESSIBLITY REGULATIONS**

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**A D V I C E**

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1. I am asked to advise on the status of replacement buses and/or coaches and in particular whether these must accord with the relevant accessibility regulations for the purposes of the equality Act 2010.
2. I am instructed that there are particular difficulties for disabled people when railway companies experience problems with their services and substitute coaches for their train services. It appears that these replacement coach/bus services are frequently inaccessible to wheelchair users, who must instead travel by accessible taxi. This causes inconvenience and isolation for such people.
3. I have been provided latterly with a letter sent in response to a complaint by Mr Paulley, whose inquiry has prompted this advice, from Northern Rail which concerns the issue of replacement buses. It is Northern Rail’s contention that the replacement bus services that they operate do not fall within the scope of the PSVAR because they are neither scheduled nor local bus services as fares were paid by passengers for rail travel and single payments were made by Northern to the operator of the rail replacement bus and thus there was not a “separate” fare – thus there is no carriage of passengers by separate fares for the purpose of the regulations. I have also been provided with some (very thorough) research that Mr Paulley has conducted; as well as an exchange of correspondence between Mr Paulley and another individual regarding replacement buses and the Equality Act 2010.
4. This advice will consider the relevant law and then turn to the question of replacement buses. Though I am unable to advise on a specific case there are general issues relating to replacement buses that are commonly raised and on which advice can be provided, as below.

**The relevant law**

1. The public service vehicle regulations (“the regulations”) are made under provisions set out in the Equality Act 2010 (“the EqA”) at section 174, Part 12.
2. Section 174 sets out the enabling powers of the Secretary of State to produce the regulations. Section 175 of the EqA provides that it is an offence punishable by a fine to inter alia, use a regulated vehicle on a road which does not comply with the regulations.
3. The relevant provisions state as follows:

*174 PSV accessibility regulations*

*(1) The Secretary of State may make regulations (in this Chapter referred to as “PSV accessibility regulations”) for securing that it is possible for disabled persons—*

*(a) to get on to and off regulated public service vehicles in safety and without unreasonable difficulty (and, in the case of disabled persons in wheelchairs, to do so while remaining in their wheelchairs), and*

*(b) to travel in such vehicles in safety and reasonable comfort.*

*(2) The regulations may, in particular, make provision as to the construction, use and maintenance of regulated public service vehicles, including provision as to—*

*(a) the fitting of equipment to vehicles;*

*(b) equipment to be carried by vehicles;*

*(c) the design of equipment to be fitted to, or carried by, vehicles;*

*(d) the fitting and use of restraining devices designed to ensure the stability of wheelchairs while vehicles are moving;*

*(e) the position in which wheelchairs are to be secured while vehicles are moving.*

*(3) In this section “public service vehicle” means a vehicle which is—*

*(a) adapted to carry more than 8 passengers, and*

*(b) a public service vehicle for the purposes of the Public Passenger Vehicles Act 1981;*

*and in this Chapter “regulated public service vehicle” means a public service vehicle to which PSV accessibility regulations are expressed to apply.*

*(4) The regulations may make different provision—*

*(a) as respects different classes or descriptions of vehicle;*

*(b) as respects the same class or description of vehicle in different circumstances.*

*(5) The Secretary of State must not make regulations under this section or section 176 or 177 without consulting—*

*(a) the Disabled Persons Transport Advisory Committee, and*

*(b) such other representative organisations as the Secretary of State thinks fit.*

1. Section 175 of the EqA provides that it is an offence to use a vehicle on a road without it conforming to the regulations, whilst other provisions in that part make provision for the awarding of accessibility certificates to indicate compliance with the regulations.
2. Definitions are, as set out above, contained in the public passenger vehicles Act 1981. This defines a public service vehicle in section 1 as follows:

*1.— Definition of “public service vehicle”.*

*(1) Subject to the provisions of this section, in this Act “public service vehicle” means a motor vehicle (other than a tramcar) which—*

*(a) being a vehicle adapted to carry more than eight passengers, is used for carrying passengers for hire or reward; or*

*(b) being a vehicle not so adapted, is used for carrying passengers for hire or reward at separate fares in the course of a business of carrying passengers.*

*(2) For the purposes of subsection (1) above a vehicle “is used” as mentioned in paragraph (a) or (b) of that subsection if it is being so used or if it has been used as mentioned in that paragraph and that use has not been permanently discontinued.*

*(3) A vehicle carrying passengers at separate fares in the course of a business of carrying passengers, but doing so in circumstances in which the conditions set out in Part I , [...] 1 or III of Schedule 1 to this Act are fulfilled, shall be treated as not being a public service vehicle unless it is adapted to carry more than eight passengers.*

*(4) For the purposes of this section a journey made by a vehicle in the course of which one or more passengers are carried at separate fares shall not be treated as made in the course of a business of carrying passengers if—*

*(a) the fare or aggregate of the fares paid in respect of the journey does not exceed the amount of the running costs of the vehicle for the journey; and*

*(b) the arrangements for the payment of fares by the passenger or passengers so carried were made before the journey began;*

*and for the purposes of paragraph (a) above the running costs of a vehicle for a journey shall be taken to include an appropriate amount in respect of depreciation and general wear.*

*(5) For the purposes of this section, [...] 2 and Schedule 1 to this Act—*

*(a) a vehicle is to be treated as carrying passengers for hire or reward if payment is made for, or for matters which include, the carrying of passengers, irrespective of the person to whom the payment is made and, in the case of a transaction effected by or on behalf of a member of any association of persons (whether incorporated or not) on the one hand and the association or another member thereof on the other hand, notwithstanding any rule of law as to such transactions;*

*(b) a payment made for the carrying of a passenger shall be treated as a fare notwithstanding that it is made in consideration of other matters in addition to the journey and irrespective of the person by or to whom it is made;*

*(c) a payment shall be treated as made for the carrying of a passenger if made in consideration of a person's being given a right to be carried, whether for one or more journeys and whether or not the right is exercised.*

*(6) Where a fare is paid for the carriage of a passenger on a journey by air, no part of that fare shall be treated for the purposes of subsection (5) above as paid in consideration of the carriage of the passenger by road by reason of the fact that, in case of mechanical failure, bad weather or other circumstances outside the operator's control, part of that journey may be made by road.*

1. The Public Service Vehicle Regulations 2001/1970 set out the vehicles to which the regulations apply at Regulation 2 as follows:

*2) A single-deck bus which weighs more than 7.5 tonnes and is in use on or after 31st December 2000 shall require a certificate referred to in paragraph (8) relating to Schedules 1 and 2, except that a single-deck bus which–*

*(a) is first used before that date; or*

*(b) is manufactured before 1st October 2000,*

*shall not require any certificate relating to Schedules 1 and 2 until 1st January 2016.*

*(3) A single-deck bus which weighs 7.5 tonnes or less and is in use on or after 31st December 2000 shall require a certificate referred to in paragraph (8) relating to Schedule 2, except that a single-deck bus which–*

*(a) is first used before that date; or*

*(b) is manufactured before 1st October 2000,*

*shall not require a certificate relating to Schedule 2 until 1st January 2015.*

*(4) Without prejudice to paragraph (3), a single-deck bus which weighs 7.5 tonnes or less and is in use on or after 1st January 2005 shall require a certificate referred to in paragraph (8) relating to Schedule 1, except that a single-deck bus which–*

*(a) is first used before that date; or*

*(b) is manufactured before 1st October 2004,*

*shall not require a certificate relating to Schedule 1 until 1st January 2015.*

*(5) A double-deck bus which is in use on or after 31st December 2000 shall require a certificate referred to in paragraph (8) relating to Schedules 1 and 2, except that a double-deck bus which–*

*(a) is first used before that date; or*

*(b) is manufactured before 1st October 2000,*

*shall not require any certificate relating to Schedules 1 and 2 until 1st January 2017.*

*(6) A single-deck or double-deck coach which is in use on or after 31st December 2000 shall require a certificate referred to in paragraph (8) relating to Schedule 3, except that a single-deck or double-deck coach which–*

*(a) is first used before that date; or*

*(b) is manufactured before 1st October 2000,*

*shall not require a certificate relating to Schedule 3 until 1st January 2020.*

*(7) Without prejudice to paragraph (6), a single-deck or double-deck coach which is in use on or after 1st January 2005 shall require a certificate referred to in paragraph (8) relating to Schedule 1, except that a single-deck or double-deck coach which–*

*(a) is first used before that date; or*

*(b) is manufactured before 1st October 2004,*

*shall not require a certificate relating to Schedule 1 until 1st January 2020.*

*(8) The certificates referred to in paragraphs (2) to (7) are the certificates (and any other associated approval and declaration) issued in accordance with Parts III to VI and which, when so issued, signify the compliance and conformity of the vehicle concerned with the Schedules specified respectively in those paragraphs.*

*(9) In paragraphs (2) to (7)–*

*(a) “first used” is to be construed in accordance with regulation 2(2); and*

*(b) references to a vehicle being “used” or “in use” means the regulated public service vehicle is being used to provide either a local service or a scheduled service.*

1. In essence, then, in order to be a public service vehicle to which the regulations apply (i.e. for the obligation for a replacement bus service to be accessible) the vehicle must:

*(a)be used for carrying passengers for carriage or reward, or have been so used, with their attendant meanings (and reward has in essence the same meaning as fare – see below)*

*(b) meet the physical requirements*

*(c) be “used” or “in use” i.e. be used to provide either a local service or a scheduled service*

1. Regulation 2 provides that a “local service” has the same meaning as in section 2 of the Transport Act 1985;
2. Section 2 of the Transport Act 1985 states as follows:

*2.— Local services.*

*(1) In this Act “local service” means a service, using one or more public service vehicles, for the carriage of passengers by road at separate fares other than one—*

*(a) which is excluded by subsection (4) below; or*

*(b) in relation to which (except in an emergency) one or both of the conditions mentioned in subsection (2) below are met with respect to every passenger using the service.*

*(2) The conditions are that—*

*(a) the place where he is set down is fifteen miles or more, measured in a straight line, from the place where he was taken up;*

*(b) some point on the route between those places is fifteen miles or more, measured in a straight line, from either of those places.*

*(3) Where a service consists of one or more parts with respect to which one or both of the conditions are met, and one or more parts with respect to which neither of them is met, each of those parts shall be treated as a separate service for the purposes of subsection (1) above.*

*(4) A service shall not be regarded for the purposes of this Act as a local service if—*

*(a) the conditions set out in Part III of Schedule 1 to the 1981 Act (trips organised privately by persons acting independently of vehicle operators, etc.) are met in respect of each journey made by the vehicles used in providing the service; or*

*(b) every vehicle used in providing the service is so used under a permit granted under section 19 of this Act.*

*(5) Subsections (5)(b), (c) and (6) of section 1 of the 1981 Act (meaning of “fares”) shall apply for the purposes of this section.*

1. The exemption in s19 relates to educational bodies and others in essence providing a community service, who can apply for exemptions.
2. The reference to private trips includes a provision that the trip must not have been advertised to the public – something that would be unlikely to apply in the context of a rail replacement bus service, and so there would be a low possibility of it applying in my view.
3. The Public Passengers Vehicle Act 1981 (the 1981 Act), section 1 subsections 5(b) (c) and (6), defining fare, state as follows:

(*b) a payment for the carrying of a passenger shall be treated as a fare notwithstanding that it is made in consideration of other matters in addition to the journey and irrespective of the person by or to whom it is made;*

*(c) a payment shall be treated as made for the carrying of a passenger if made in consideration of a person's being given a right to be carried, whether for one or more journeys and whether or not the right is exercised.*

*(6) Where a fare is paid for the carriage of a passenger on a journey by air, no part of that fare shall be treated for the purposes of subsection (5) above as paid in consideration of the carriage of the passenger by road by reason of the fact that, in case of mechanical failure, bad weather or other circumstances outside the operator's control, part of that journey may be made by road.*

1. Though there appears to be no specific definition of “separate fare”, the Road Traffic Act 1988 in its provisions relating to car sharing arrangements, states as follows:

*(4) In subsections (1) and (2) above “fare” and “separate fares” have the same meaning as in section 1(4) of the Public Passenger Vehicles Act 1981*

1. This provision of the Public Passenger Vehicles Act relating to fares has been set out above and refers to the overall amount paid by means of the “fare”.
2. Regulation 2 of the regulations provides that “scheduled service” means a service, using one or more public service vehicles, for the carriage of passengers at separate fares–

(a) along specified routes,

(b) at specified times, and

(c) with passengers being taken up and set down at pre-determined stopping points, but does not include a tour service;

1. I am instructed that in response to Mr Paulley’s FOI request the DfT have said the following about scheduled services:

https://www.whatdotheyknow.com/request/accessibility\_regulations\_and\_ra .

*"it is our view that PSVAR is likely to apply to rail replacement services meeting the above criteria. Again, whilst it is ultimately for the Courts to interpret the legislation, we would consider that a fare has been paid for a journey even if it has been paid to a Train Operating Company rather than the operator of the rail replacement service."*

1. In view of the very broad definition of a fare in the 1981 Act it is my opinion that it could encompass a fare that has been paid to a rail operating company for transport by both rail and, where required as a replacement, the bus. The issue is likely to be what is meant by “separate” fares. Does this mean that it must be paid separately to a fare paid, for example, to the rail operating company for the rail ticket? This appeared to be the approach taken by the person with whom Mr Paulley had a dispute about his interpretation of the legislation that form part of my instructions.
2. In dealing with a proposed amendment relating to school buses of the DDA 2005 (one that was proposed essentially as a probing amendment and was not intended to be adopted), Lady Hollis stated in Hansard ( <https://publications.parliament.uk/pa/ld200405/ldhansrd/vo050228/text/50228-15.htm>) as follows:

*The noble Lord was right about what a public service vehicle is. It is defined in the Public Passenger Vehicles Act 1981 by whether it is carrying passengers in return for payment. The term used in the Act, as the noble Lord identified, is "hire or reward". Accessibility regulations can be made to apply to PSVs—public service vehicles—of a prescribed description and used in prescribed circumstances.*

*The existing public service vehicle accessibility regulations apply to new vehicles used on local or scheduled services on or after 31 December 2000 with a carrying capacity of more than 22 passengers. Local services and scheduled services both include in their definition a requirement that passengers are carried as separate fares. Any such PSV used on a school service, where hire or reward is taking place, is already caught by accessibility regulations. Whether the service is provided by a local authority or a private operator makes no difference. What does make a difference is whether any passengers are carried as separate fares, which includes payment for the right to travel as part of a larger payment.*

*The first question of the noble Lord, Lord Higgins, was about when regulations would be made for smaller vehicles. The first point is that a vehicle comes within the framework of accessibility is if it has more than 22 seats. If the answer to that is no, the accessibility requirements do not apply; if there are over 22 seats, they do. We have no timetable in place, but we have said that we would consult further on any future extension of the regulations before we did so. Although that was done 10 years ago, we do not believe that it has yet been deemed appropriate to proceed with extending the regulations to vehicles with fewer than 22 seats.*

1. There is no indication of what “separate” means in this context and the limited caselaw that in this area appears to be of no assistance. Given the indication from Hansard, above, as to separate fares including being part of a larger payment, it seems likely that it has been taken in this context to relate to individual journeys (as opposed to, for example, tours where transport and accommodation are included) and thus group payments to the company are not precluded nor are those made to any other person collecting fares.
2. There are exceptions contained in the legislation but it is my view that it is unlikely that rail replacement services would fall within those exceptions.

**Summary of approach to replacement buses**

1. It would appear that, as Mr Paulley contends, replacement buses are likely to comply with the majority of the conditions pertinent to both scheduled and local services, for example, the physical – likely to depend on whether the vehicle was manufactured after 2004 – and the stopping condition. Once this has been established, the main issue of contention is likely to be the payment of “fares” and whether these are “separate”.
2. Whilst Northern have focussed in their response, as referred above, on the fare paid by them to the bus company, it is nevertheless arguable that separate fares are payable. This would be on the basis that: individuals have paid for the right to travel , it is arguable that fare should be considered from the perspective of the fare paying passenger, rather than those hiring the vehicle.
3. On this basis it would be arguable that the vehicles used by rail companies would fall within the definition of a public service vehicle which is subject to the provisions of the regulations.
4. The issue for those affected by the provision of inaccessible rail replacement buses, however, is what can be done if a rail company does act in breach of the regulations by using an inaccessible vehicle. It should be noted that it will be the company operating the vehicle which is strictly speaking in breach of the EqA – s.175 – though it may argue that it is operating the vehicle on behalf of the rail company. In any event, can any other action be brought, given the apparent “ouster” provision contained in s. 113(7) which states that proceedings relating to a penalty under Part 12 (disabled persons: transport) cannot be brought in the county court ?
5. There is in my opinion a possibility of bringing a claim under the Equality Act 2010 anti-discrimination provisions – a reasonable adjustments claim (breach of section 20/21) on the basis that there is a pcp of using buses that do not conform to the accessibility standards/are manufactured before 1 October 2004 (whichever is more appropriate) to replace rail services, putting those with mobility impairments at a substantial disadvantage. This is likely to be met with a response that (a) any changes would not be reasonable and/or the duty does not arise as this is an attempt to avoid the physical feature exemption from the transport provisions of the EqA and (b) that adjustments are already being made in the form of the provision of accessible taxis and so ultimately there is no detriment i.e. unlawful act for the purposes of any claim. The latter would be a difficult objection to meet unless there were a case with a considerable waiting time for a taxi, difficulties obtaining one etc. Unfortunately the EqA is not a piece of legislation which requires absolute inclusion, even with the possibility of arguing that the court should consider the UNCRPD, which courts have a chequered history so far of taking into account.
6. It is also important to note that when a customer purchases a train ticket they enter into a contract with the train operating company. There are standard terms and conditions set out by network rail which certain train operating companies have signed up to (see http://www.nationalrail.co.uk/National%20Rail%20Conditions%20of%20Travel.pdf). These include provisions for rail replacement services at 27.1 and specific provision for disabled passengers (at 1.2) – though there is no reference to additional provision for accessibility alternatives in respect of rail replacement. There may be contractual claims regarding replacement bus services which can be pursued as breaches in the county court.
7. There may be more scope for enforcement of the legislative obligations in pressing the Office of the Road and Rail Regulator to take action than there is in using the Equality Act 2010 in a private law action. The ORRR is likely to be exercising public functions and thus subject itself to the public sector equality duty under section 149 of the Equality Act 2010 and must take this into account in determining any issues
8. The above in any event represent my provisional views on this matter. If there is anything else with which I can assist, those instructing should not hesitate to contact me.

**CATHERINE CASSERLEY**

**15/01/19**

**Cloisters**

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