

# Pushchairs can occupy wheelchair spaces on buses

The Court of Appeal has recently issued its judgment in *Paulley v First Group PLC* [2014] where a bus company was ordered to pay compensation to a wheelchair user who was unable to board a bus because the wheelchair space was occupied by a mother and her baby who was sleeping in a pushchair. As the child was asleep the mother refused to move when asked by the driver and the wheelchair user had to wait for the next bus causing him to miss a train and arrive over an hour late for a family lunch. The bus company in this case operated a first come first serve policy for the use of the space and would only request that a non-wheelchair user move. The policy did not allow for the bus driver to insist that the woman move and close her pushchair. The bus company appealed the decision to award compensation to the wheelchair user.

## Regulations concerning wheelchair spaces on buses

Buses are public service vehicles and must comply with Schedule 1 to the Public Service Vehicles Accessibility Regulations (2000). These require a bus to be fitted with not less than one wheelchair space on the lower deck of the bus. While the space can have a tip-up seat in the wheelchair space there must be a sign that states 'Please give up this seat for a wheelchair user' and a further sign that shows a representation of a person in a wheelchair. The Court of Appeal pointed out that while the regulations provided for signage that asks the seat to be given up they did not require the space to be given up for a wheelchair user.

## Regulations governing conduct on buses

The Public Service Vehicles (Conduct of Drivers, Inspectors, Conductors and Passengers) Regulations (1990) (as

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amended) requires a driver, inspector and conductor to take all reasonable steps to ensure that the regulations relating to the conduct of passengers are complied with (regulation 5(2)).

When the Conduct Regulations were amended in 2002, the Government issued guidance on their application (Department for Transport, 2002). The guidance restated the Government's commitment to comprehensive and enforceable civil rights for disabled people and its aim of achieving a fully accessible public transport system.

In relation to the wheelchair space the guidance said that a wheelchair user must only be carried if a wheelchair space available and the seating and standing capacity of the vehicle will not be exceeded. If there is no unoccupied wheelchair space a person in a wheelchair cannot travel.

However, the guidance goes on to say that the opportunity for a wheelchair user to travel may depend on other passengers and how full the vehicle is. If there is space available then any passengers in the wheelchair space should be asked to move but the Government Guidance acknowledges that this may not be practical if:

- The vehicle is nearing its capacity
- Passengers with baggage or a baby buggy are using the space.

The Court of Appeal in *Paulley v First Group PLC* [2014] held that the Conduct Regulations Guidance in relation to wheelchair users accepted that the limit to a bus company's duty is to ask a non-wheelchair user to move rather than insisting they move even if this means the wheelchair user cannot then travel because of a lack of space (Department for Transport, 2002).

## Equality Act 2010

The Equality Act 2010 now governs cases of alleged discrimination on the ground of a protected characteristic. Disability is a protected characteristic.

The Equality Act 2010 requires a public service provider such as a bus company to

make reasonable adjustments where a provision, criterion or practice (often called a PCP) of the company places a disabled person at a substantial disadvantage when compared with persons who are not disabled. The reasonable adjustments require such steps as are reasonable to avoid the disadvantage (section 29 (7)).

The Court of Appeal in *Paulley v First Group PLC* [2014] held that the substantial disadvantage suffered by the disabled person must arise out of the bus company's PCP. They disagreed with the County Court's view that the inconvenience to mothers with buggies is a consequence of the protection that Parliament has chosen to give to disabled wheelchair users and not to non-disabled mothers with buggies.

The Court of Appeal's view was that Parliament limited a disabled person's protection to a right to reasonable adjustments. That reasonable adjustment depends on the impact of the adjustment on others as well as the disabled person. It did not require everything possible to be done to meet the needs of the disabled person. If a bus has no space then every passenger, disabled and non-disabled is disadvantaged.

In relation to the bus company's policy on wheelchair spaces, the Court of Appeal held that the reasonable adjustment should be limited to requesting rather than insisting on a mother with a pushchair moving if the space is required by a wheelchair user.

To change the policy and require a mother with pushchair to leave the bus following a refusal to vacate the wheelchair space would be the same as ejecting a passenger for smoking, making a nuisance or other anti-social behaviour under the Conduct Regulations. The Court of Appeal pointed out that smoking, nuisance and anti-social behaviour is specifically outlawed by regulation 6 of the Conduct Regulations and a passenger would be breaking the law. The driver is entitled to remove that passenger and call the police if necessary.

The Court of Appeal held that to treat a

mother with a pushchair in the same way would not be reasonable. They can therefore occupy a wheelchair space with their buggy on a first-come-first-served basis and while they can be asked to give way to a wheelchair user they are not obliged to move. Similarly, a mother with a pushchair cannot ask a bus driver to insist that another passenger vacate the space for her to occupy with a pushchair.

The Department for Transport issued a consultation on amending the public service transport Conduct Regulations in November 2014 (Department for transport, 2014). In the consultation, the Department for transport were not proposing any changes to the regulations covering the conduct of bus drivers with respect to wheelchair users and other disabled persons. The consultation does ask if respondents agree with this approach, and so does give respondents the opportunity to urge the Department for Transport to reconsider their stance in light of the Court of Appeal's decision in *Paulley*. That is unlikely, however, as the consultation is part of a red tape challenge to remove regulation and the department has made it clear they are not



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open to requests to increase regulation in relation to conduct on buses. The decision of the Court of Appeal will therefore stand until a further appeal by the UK Supreme Court is heard.

BJM

Department for Transport (2002) *The Public Service Vehicles (Conduct of Drivers, Inspectors, Conductors and Passengers) (Amendment) Regulations 2002* Guidance. DT, London

Department for Transport (2014) *Reviewing the Public Service Vehicles (Conduct of Drivers, Inspectors, Conductors and Passengers) Regulations 1990* Public Consultation Document. DT, London

*Paulley v First Group PLC* [2014] EWCA Civ 1573 *Public Service Vehicles (Conduct of Drivers, Inspectors, Conductors and Passengers) Regulations 1990 (SI 1990/1020)*

*Public Service Vehicles Accessibility Regulations 2000 (2000/1970)*