

Transport for London
Public Carriage Office



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Dear John

Conditions of Fitness for London taxis and the *Lunt* judgment

I am writing to inform you how Transport for London (TfL) intends to proceed in the above matter.

Background

In 2003, the TfL conducted a review of the Conditions of Fitness (CoF) for London taxis which culminated in a decision on 4 June of that year. Allied Vehicles Limited (Allied), a company which manufactures taxis using Peugeot base vehicles, issued judicial review proceedings challenging three aspects of this decision, namely the retention of the turning circle requirement, the requirement for sliding doors, if fitted, to be power operated or power assisted and the requirement for a one piece whole width rear window. The grounds of challenge were extensive. They included the allegation that the turning circle requirement was contrary to Article 28 of the EC Treaty.

On 29 September 2003, TfL announced its decision to reconsider these three aspects of the CoF. The review included an extensive consideration of the evidence for and against the turning circle requirement. It also involved consultation with a wide range of affected parties (including allied) and other interested groups (including in particular groups representing the interests of disabled people). The results of that review were announced in a comprehensive report on 15 December 2005. TfL decided to retain the turning circle requirement and the requirement for a one-piece rear window, though not the requirement for power assisted sliding doors. That decision was not challenged by Allied or anyone else at the time and has not been challenged since.

MAYOR OF LONDON



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The current version of the CoF was published in January 2007. It contained the following statement:

"This document sets out the Conditions of Fitness (CoF) for London taxis in force at 1 January 2007 following the reviews of the CoF carried out in 2003-5. The PCO now intends, as far as possible, to maintain a stable platform for vehicle manufacturers and will not, therefore, expect to review fully the CoF for about 10 years. However, the PCO reserves the right to amend the Conditions should there be situations which require it, such as amendments to national or international law with respect to road vehicles. These may include, for example, changes arising from the Disability Discrimination Act or the implementation of European emissions regulations."

The *Lunt* judgment

In a judgment given orally on 31 July 2009, Mr Justice Blake quashed a decision by Liverpool City Council (Liverpool) not to license the Peugeot E7, manufactured by Allied, for use as a taxi in Liverpool. The question whether to license the E7 was remitted to Liverpool for reconsideration. The approved version of the judgment was not available until the start of October 2009: *R (Lunt) v Liverpool City Council* [2009] EWHC 2356 (Admin).

The implications of the *Lunt* judgment on the CoF for London taxis

TfL has carefully considered the *Lunt* judgment.

The reason why the claimants in *Lunt* succeeded is that Liverpool's decision was taken in the erroneous belief that the vehicles which meet the existing London CoF were fully accessible to all wheelchair users. In fact, although these vehicles are fully accessible to most wheelchair users, they are inaccessible to some wheelchair users whose chairs, when in use, are larger than the standard or "reference" wheelchair. Liverpool did not know that when it made its decision. Because of that, its decision was vitiated by a material mistake of fact and was also contrary to s. 49A of the Disability Discrimination Act 1995 (DDA), which requires public authorities in carrying out their functions to have "due regard" to a list of specified matters, including:

- (a) the need to eliminate discrimination that is unlawful under this Act;
- (b) the need to eliminate harassment of disabled persons that is related to their disabilities;
- (c) the need to promote equality of opportunity between disabled persons and other persons;
- (d) the need to take steps to take account of disabled persons' disabilities, even where that involves treating disabled persons more favorably than other persons;

- (e) the need to promote positive attitudes towards disabled persons; and
- (f) the need to encourage participation by disabled persons in public life."

Liverpool, in making its decision, had failed to have due regard to the needs of persons who use wheelchairs larger than the "reference" wheelchair.

It is important to be clear that TfL, when it carried out its review between September 2003 and December 2005, was well aware that the vehicles which then complied with the CoF were not accessible to the users of large wheelchairs: see §6.11 of the decision document. TfL did not, therefore, make the same mistake that Liverpool made. Nonetheless, because s. 49A of the DDA did not come into force until about a year after the TfL review was completed, that review did not analyse the needs of disabled persons with the provisions of the DDA in mind.

The alleged reliance on the PCO Notice of January 2007

Manganese Bronze Holdings plc (MBH) owns London Taxis International Ltd, which manufactures a range of vehicles that comply with the current CoF. KPM UK Taxis plc (KPM) imports Mercedes base vehicles and uses them to manufacture taxis which comply with the current CoF. Both of them claim to have made substantial investments on the footing that, in the light of the statement made in the CoF in January 2007, the CoF would not be reviewed until about 2017.

It is well established, however, that such legitimate expectations could not be relied upon to prevent TfL from complying with its legal obligations.

What TfL now proposes to do

Because the effect of the current CoF on users of large wheelchairs has not been considered since the coming into force of the relevant provisions of the DDA, TfL considers that it is now obliged by s. 49A of the DDA to give due consideration to the matters set out in that sub-section. Even if it were not so obliged, TfL is committed to ensuring that the transport needs of disabled people are appropriately met. For that reason, and in the light of the clarification by Mr Justice Blake of the effect of the DDA on taxi licensing regimes, it is appropriate for TfL to now to consider in the specific context of London the matters set out in s. 49A(1). Much of the information needed to address these matters is already in existence. Some was considered in the course of 2005 review. Some was included in the evidence before the Court in the *Lunt* case. However, a limited amount of further research will be needed to identify:

1. How many people in London use wheelchairs which, when in use, cannot be safely and comfortably accommodated by taxis currently operating in London;
2. How many of those people would be likely to hail taxis on the street rather than pre-book;
3. What other means of transport are available to them; and

4. To what extent they would be materially assisted by having a taxi fleet containing some accessible taxis.

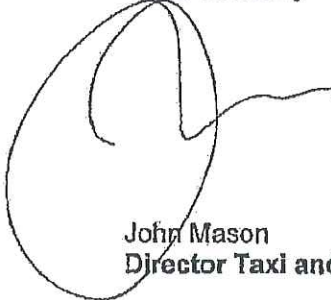
The research will take the form of discussions with groups representing disabled people and consideration of the views of the Department for Transport and other authorities. Once this research has been done, TfL will use it, together with the other information already at its disposal, to address the matters set out in s. 49A(1) of the DDA. If the research shows that there is a case for making taxis more accessible to disabled people who use larger wheelchairs, TfL will then review whether and how to change the CoF to achieve this. TfL expects to be in a position to announce whether such a review is necessary by the end of March 2010. If it decides that a review is necessary, the review will include consultation with taxi drivers, users and manufacturers.

Other matters arising from the *Lunt* judgment

Except to the extent set out above, TfL does not propose to review at this stage whether the CoF, or particular aspects of them, are lawful whether under Article 28 EC or otherwise. Arguments based on Article 28 EC were among the many grounds of challenge advanced by Allied in relation to the 2003 decision. Those arguments were fully considered at the time of review completed in December 2005. The decision announced at that time was not challenged, even though allied had been very fully engaged in the review. It has since been relied upon by third parties. Nothing in the *Lunt* judgment requires that TfL re-open at this stage the issue whether the CoF in their current form are contrary to Article 28 EC.

In the meantime, if you have any questions, please do not hesitate to contact me.

Yours sincerely

A handwritten signature in black ink, appearing to be 'John Mason', written over a large, faint circular stamp or watermark.

John Mason
Director Taxi and Private Hire