

Legal Update: FirstGroup plc v Paulley



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The Importance of FirstGroup plc v Paulley [2017] UKSC 4



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Mr Paulley, a wheelchair user, wished to travel on a bus operated by FirstGroup. The bus was equipped with a lowering platform, wheelchair ramp and a space (“the space”) with a sign reading “Please give up this space if needed for a wheelchair user.” However, on attempting to board the bus, Mr Paulley was asked by the bus driver to wait as the space was occupied by a woman with a pushchair containing her sleeping child. The driver asked the woman to fold down her pushchair and vacate the space. She refused and Mr Paulley found himself awaiting the next bus.

Mr Paulley issued court proceedings against FirstGroup claiming unlawful discrimination against him on the ground of his disability. FirstGroup had, he claimed, failed to make ‘reasonable adjustments’ to its policies pursuant to the Equality Act, 2010. The relevant policy at the time of the incident was, Lady Hale was to say in the Supreme Court, one of making the wheelchair space provided on their buses available on a ‘first come, first served’ basis and doing no more than request occupants to vacate the space if it was required by a wheelchair using passenger. The courts agreed with Mr Paulley at the first instance hearing but allowed an appeal by FirstGroup in the Court of Appeal. Mr Paulley took his case to the Supreme Court.

The case is of importance to all service providers and all wheelchair users. Potentially, the comments made by the judges of the Supreme Court relating to provisions, criteria or practices adopted by a service provider are of relevance to all disabled persons. Is adoption of a provision, criteria or practice (e.g. to provide parking spaces or fitted out toilets for persons with disabilities) alone enough to comply

with the law or does the policy need to be enforced? If so, how far is a service provider expected to go?

Equality Act, 2010

Pursuant to the Act, a service provider has a duty to make reasonable adjustments to, inter alia, a provision, criterion or practice which puts a disabled person at a substantial disadvantage in relation to a matter in comparison with persons who are not disabled and to take such steps as it is reasonable to take to avoid the disadvantage (see s20 of the Act).

Mr Paulley claimed a breach of s29(2) by FirstGroup. Section 29 states:

(1) A person (a “service-provider”) concerned with the provision of a service to the public or a section of the public (for payment or not) must not discriminate against a person requiring the service by not providing the person with the service.

(2) A service-provider (A) must not, in providing the service, discriminate against a person (B)—
(a) as to the terms on which A provides the service to B;
(b) by terminating the provision of the service to B;
(c) by subjecting B to any other detriment.

Had FirstGroup breached the 2010 Act?

What steps had FirstGroup taken?

FirstGroup had provided a space for wheelchair users and the means of assisting the wheelchair user on to the bus. At the time of the incident FirstGroup had also published its policy about wheelchairs on buses as follows:

“As part of our commitment to providing accessible travel for wheelchair users virtually all our buses have a dedicated area for wheelchair users; other passengers are asked to give up the space for wheelchairs. ... If the bus is full or if there is already a wheelchair user on board unfortunately we will not be able to carry another wheelchair user. ...

Wheelchairs do not have priority over buggies, but to ensure that all our customers are treated fairly and with consideration, other customers are asked to move to another part of the bus to allow you to board. Unfortunately, if a fellow passenger refuses to move you will need to wait for the next bus.”

By the time of the trial, the published policy had changed and read as follows:

“As part of our commitment to providing accessible travel for wheelchair users virtually all our buses have a dedicated wheelchair area for wheelchair users; other passengers are asked to give up the space for wheelchairs. ...

Wheelchair users have priority use of the wheelchair space. If this is occupied with a buggy, standing passengers or otherwise full, and there is space elsewhere on the vehicle, the driver will ask that it is made free for a wheelchair user. Please note that the driver has no power to compel passengers to move in this way and is reliant on the goodwill of the passengers concerned. Unfortunately, if a fellow passenger refuses to move you will need to wait for the next bus.”

FirstGroup’s bus was a public service vehicle pursuant to the Public Passenger Vehicles Act, 1981. The provision of the wheelchair space complied with the Public Service Vehicles Accessibility Regulations, 2000. The 1981 Act also enables conduct regulations to be made (Public Service Vehicles (Conduct of Drivers, Inspectors, Conductors and Passengers) Regulations 1990) authorising the driver of a bus or, at his request, a police constable to remove a passenger who infringes the Regulations. FirstGroup’s policy was of requesting and not requiring a person, who was not a wheelchair user, to vacate the wheelchair space if required by a wheelchair user.

The Judges’ views

The seven Supreme Court judges who heard the appeal agreed that FirstGroup’s policy should have gone further than it did and that it breached the Act. Each judge, therefore, allowed Mr Paulley’s appeal. However, despite Lord Neuberger’s opinion that it would be ‘regrettable’ not to express a view as to how much further FirstGroup’s policy should have gone, there is no firm judicial consensus. Only Lord Reed expressed total agreement with a fellow judge (Lord Neuberger). Nevertheless, it is possible to conclude that FirstGroup should have required, rather than merely requested the woman with the pushchair to vacate the wheelchair space and thus enable Mr Paulley to ride on the bus.

Lord Neuberger went further. He concluded that it was not enough for FirstGroup to instruct its drivers simply to request non-wheelchair users to vacate the space and then do nothing if the request was rejected. However, he accepted that allowance must be made for the fact that there will be a variety of different circumstances in which a non-wheelchair user refuses to vacate the space required by a wheelchair user. He felt the driver’s approach could depend on:

“(i) the reason for the refusal, including, in particular the needs of the non-wheelchair user; (ii) the surrounding circumstances, including whether the bus is full or has vacant places, whether the bus is on time, and the frequency of the service; and (possibly) (iii) the character of the driver.”

Lord Toulson considered the bus company rather than the driver’s approach and held that:

“...the bus company ought to have adopted a policy of training its staff to make clear, in circumstances where a wheelchair user wanted to board the bus but the wheelchair space was occupied by somebody who could reasonably and readily move was occupied by somebody who could reasonably and readily move to another part of the bus, that the person occupying it must do so.”

Both judges expressed the view that delaying the bus for a few moments might shame the non-wheelchair user into vacating the space. Lord Sumption, however, had:

“...misgivings about aspects of the reasoning of Lord Neuberger and Lord Toulson, which would impose on drivers a duty to “require” the non-wheelchair user to move and in some cases to stop the bus “for a few minutes”, thereby inconveniencing every other passenger in order to shame the non-wheelchair user into doing something that the law does not require him to do.”

Despite that he felt that this was not a case in which it would be right to dissent. He said, therefore:

“In a situation where there is no ideal solution, but only more or less unsatisfactory ones, I think that the approach of Lord Neuberger and Lord Toulson comes as close to giving effect to the policy of this legislation as a court legitimately can. I therefore agree with their proposed disposition of this difficult appeal.”

Lady Hale and Lord Kerr concentrated on the notice on the bus. Lady Hale stated:

“With a proper system of notices, making the position plain, backed up with firm statements from the driver, everyone would know where they stood. The culture would change. Disruption and confrontation would be unlikely.”

Lord Kerr said something similar:

“The question whether a notice which instructs rather than requests passengers to vacate a wheelchair space when it is required by a wheelchair user must be viewed solely in terms of whether this is a reasonable adjustment to make in order to avoid the discrimination that the wheelchair user would otherwise suffer.

Viewed in that way, the answer is plain. It is an entirely reasonable adjustment. It removes the element of choice on the part of the passenger occupying the space. They know, and, importantly, know in advance, that they will have to move. Some passengers may not like it

but that is not the point. Such a notice, as well as eliminating any scope for debate, constitutes a significant statement which accords precisely with the Government’s policy of providing comprehensive and enforceable civil rights for disabled people and achieving a fully accessible public transport system for them”.

Lord Clarke agreed. He concluded that if the lady with the pushchair had been required to move as opposed to merely being asked to do so, she would have done so. He agreed it should have been made clear that wheelchair users had priority over others when it came to the use of the wheelchair space and that disruption and confrontation would be unlikely.

Conclusions

Public service vehicles (be they buses, trains or other vehicles) are frequently crowded and space provided for wheelchair users is often occupied by other users. However, the vehicle operator should make it abundantly clear that the space is provided primarily for wheelchair users and must be vacated if required by a prime user. Notices to this effect should be clearly worded requiring and not requesting other users to vacate the space if necessary. Experience indicates that failure to vacate for a wheelchair user is, thankfully, not frequently seen.

In many other instances, however, it seems necessary to keep space for wheelchair users free from other users e.g. in car parks, theatres, sport stadia etc.. Examples and circumstances will vary.

In both instances, enforcement must be considered by the service providers. Having a provision, criterion or practice alone is not sufficient. Consideration must include whether enforcement will be an absolute provision (i.e. always used) or whether ‘reasonableness’ is to play its part. Take, for example, a wheelchair space being occupied by a person with a sight disability and his assistance dog. Or someone with a mobility disability using a walking frame. No, these matters are not as easy as they may sound – they never are!



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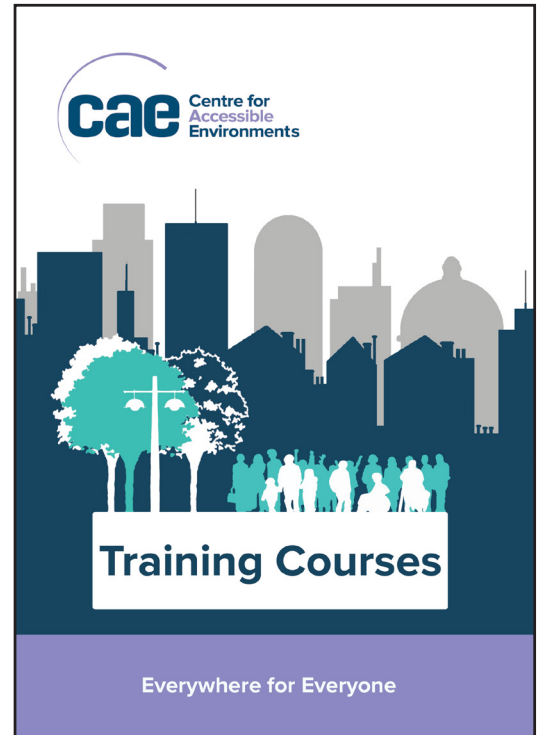
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