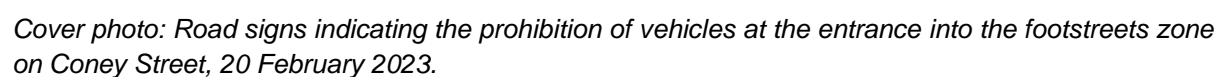


The Blue Badge Test in York: Can the realisation of disabled people's rights and the prevention of terrorism be reconciled?





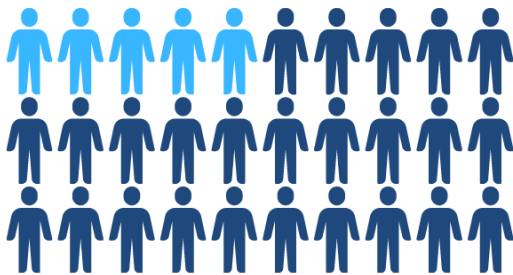


is violating the rights of disabled people through disproportionately restrictive counter-terrorism measures. Concrete action must be taken to ensure authorities are complying with their human rights and equality obligations. Accordingly, based on the research findings, this report suggests recommendations to both the Council and the North Yorkshire Police (Section 5).



Executive summary

In the 2021 census, 17%
of York's population
identified as disabled



**York has 7,000
Blue Badge holders
who can no longer
use a vehicle to
access or park in
the city centre
during footstreet
hours**

Some Key Findings

- Disabled people are non-homogenous
- City of York Council is accountable for removing Blue Badge access
- The right to life has been disproportionately prioritised
- The removal of the exemption is indirectly discriminatory
- Discrimination is misunderstood by authorities
- Many human rights have been impacted
- People question the validity of the counter-terror justification
- People believe the terror threat has been over-inflated
- York's counter terror measures are ineffective
- The Council's response has not been proportionate and is in violation of international human rights law

The rights of disabled people and counter-terror initiatives can be reconciled, however the Council's approach has been imbalanced.

The adverse impacts of the access removal for Blue Badge holders have not been adequately considered. This has led to discrimination.



GLOSSARY

ATTRO	Anti-Terrorism Traffic Regulation Order
BBAE	Blue badge access exemption to the York City Centre footstreets that was in place until permanently removed in 2021 through a Traffic Regulation Order
BBH(s)	Blue Badge Holder(s)
Blue Badge	Disabled parking and access permit
ComRPD	UN Committee on the Rights of Persons with Disabilities
CRPD	UN Convention on the Rights of Persons with Disabilities
CT	Counter-terrorism
CTITF	UN Counter-Terrorism Implementation Task Force
CYC	City of York Council
Disabled person / people	People who are disadvantaged or excluded from mainstream activities by contemporary organisations taking little or no account of those with physical, sensory, or cognitive impairments ⁷
ECHR	European Convention on Human Rights
EIA(s)	Equality Impact Assessment(s)
HRA 1998	Human Rights Act 1998
HVM(s)	Hostile Vehicle Mitigation(s)
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
NYP	North Yorkshire Police
PSED	Public Sector Equality Duty
RtB	Reverse the Ban coalition
RTRA 1984	Road Traffic Regulation Act 1984
Siracusa Principles	Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights
TRO(s)	Traffic Regulation Order(s)
VAW	Vehicle as a Weapon

⁷ Even though the Committee on the Rights of Persons with Disabilities recommends emphasising the person, not the disability or condition when referring to an individual with a disability, disabled people in York prefer the term disabled person over the term persons with disabilities. Therefore, the former is used throughout this report.

CONTENTS



INTRODUCTION

York's city centre includes a pedestrianised zone (termed the footstreets). Between designated pedestrian hours established by the City of York Council (CYC), the footstreets are closed to most vehicles. Currently the pedestrian hours are 10:30am until 5pm, seven days a week, however these vary across different times of the year and around events in the city centre. There are a limited number of exemptions where vehicular access to the footstreets is granted by CYC during pedestrian hours. Disabled parking and access permit holders, known as Blue Badge holders (BBHs) used to have an access exemption to the footstreets enabling them to access the city centre in their own or others' vehicles, including taxis, at any time of the day.

At the beginning of the COVID-19 pandemic the Blue Badge access exemption (BBAE) was suspended through a temporary Traffic Regulation Order (TRO) in order to comply with social distancing guidelines. Following this, the suspension was maintained under the justification that it would improve the local economy through facilitating the licensing of a greater number of pavement cafés.⁸ In 2021 the BBAE was permanently revoked under a new justification, that of counter-terrorism (CT), more specifically hostile vehicle mitigation (HVM).⁹

Temporary measures to prevent entry into the footstreets are currently in place with a view to fitting permanent barriers in 2023. The BBAE removal has had wide-ranging impacts on many individuals and organisations. BBHs in York, and visitors to York who hold a Blue Badge, have had their ability to access the city centre impeded and subsequently a number of their human rights restricted. Family members and carers of BBHs have also been impacted by the removal as well as local businesses which have lost customers due to accessibility restrictions. Some broader, intangible impacts include a loss in confidence of local authorities and an erosion of York's reputation among residents and visitors who feel excluded.

⁸ York Human Rights City, 'York Human Rights City Network Indicator Report: Human rights in York: A reason to believe?' (2021) <www.yorkhumanrights.org/wp-content/uploads/2022/03/York-Human-Rights-City-Network-Indicator-Report-for-2021-FINAL.pdf> accessed 21 February 2023, 11.

⁹ City of York Council (CYC), 'Equalities Impact Assessment: Consideration of changes to the City Centre Traffic regulation order Removal of exemptions for city centre access during the pedestrian hours and introduction of dedicated blue badge parking bays on selected streets' (3 November 2021) <<https://democracy.york.gov.uk/documents/b34743/Agenda%20Supplements%20Monday%2008-Nov-2021%2017.30%20Customer%20and%20Corporate%20Services%20Scrutiny%20Management%20C.pdf?T=9>> accessed 10 February 2023, (Equalities Impact Assessment 3 November 2021) 493.



METHODOLOGY

The present research analyses whether it is possible to reconcile the prevention of terrorism in York city centre and the rights of disabled people. This study relied on detailed doctrinal and case-law research into domestic and international human rights law and standards regarding CT and the rights of disabled people. Legal standards have then been applied to the BBAE removal, aided by findings from expert interviews.

The researchers have conducted a thorough review of the existing literature on the subjects of CT, with a focus on HVM, and the human rights of disabled people. In addition to this, the context of the BBAE removal has been studied by viewing webcasts of CYC meetings and reading CYC reports on the situation. Moreover, the report has been informed by the public responses received to the CYC's statutory consultation regarding the BBAE removal, as well as comments made as part of the Reverse the Ban Coalition (RtB)'s postcard campaign. In this way, the affected community remained central to this research.

Primary data for the report has been obtained through 14 semi-structured interviews with various stakeholders. Four interviews were conducted with CT academics and four with disability rights academics from institutions including the University of Oxford, the London School of Economics, the University of Leeds, and Durham University. In addition to this, interviews were also completed with the former-Superintendent of the NYP,¹⁰ a disability expert from York, one city planner, one access expert, the founder of York Access Hub and the York ME Community, and the Chair of CYC's Protect and Prepare (Counter Terrorism) Task Group. The researchers have interviewed an equal number of stakeholders with expertise in both disability rights and CT - in order to provide a balanced view of each topic (as exemplified in Figure 1).

This research was approached using Loubere's systematic and reflexive interviewing and reporting method.¹¹ The three researchers conducted interviews jointly, with two taking notes and one asking questions. After each interview the researchers engaged in reflexive dialogue and jointly drafted systematic interview reports. These reports were then immediately coded and analysed using the programme NVivo. The benefit of Loubere's innovative approach is that it permits the coding and analysis process to take place during, rather than after the fieldwork, thus maximising the opportunity for flexibility by critically engaging with emerging themes. The key themes identified through this process were used to inform the key findings of the report and to

¹⁰ He was the acting Superintendent at the time of the interview, but has since retired.

¹¹ Nicholas Loubere, 'Questioning Transcription: The Case for the Systematic and Reflexive Interviewing and Reporting (SRIR) Method' (2016) 18(2) FQS <www.qualitative-research.net/index.php/fqs/article/view/2739/4110> accessed 16 February 2023.



strengthen the analysis of the BBAE removal against international human rights law standards.¹²

Figure 1: Interviewee expertise

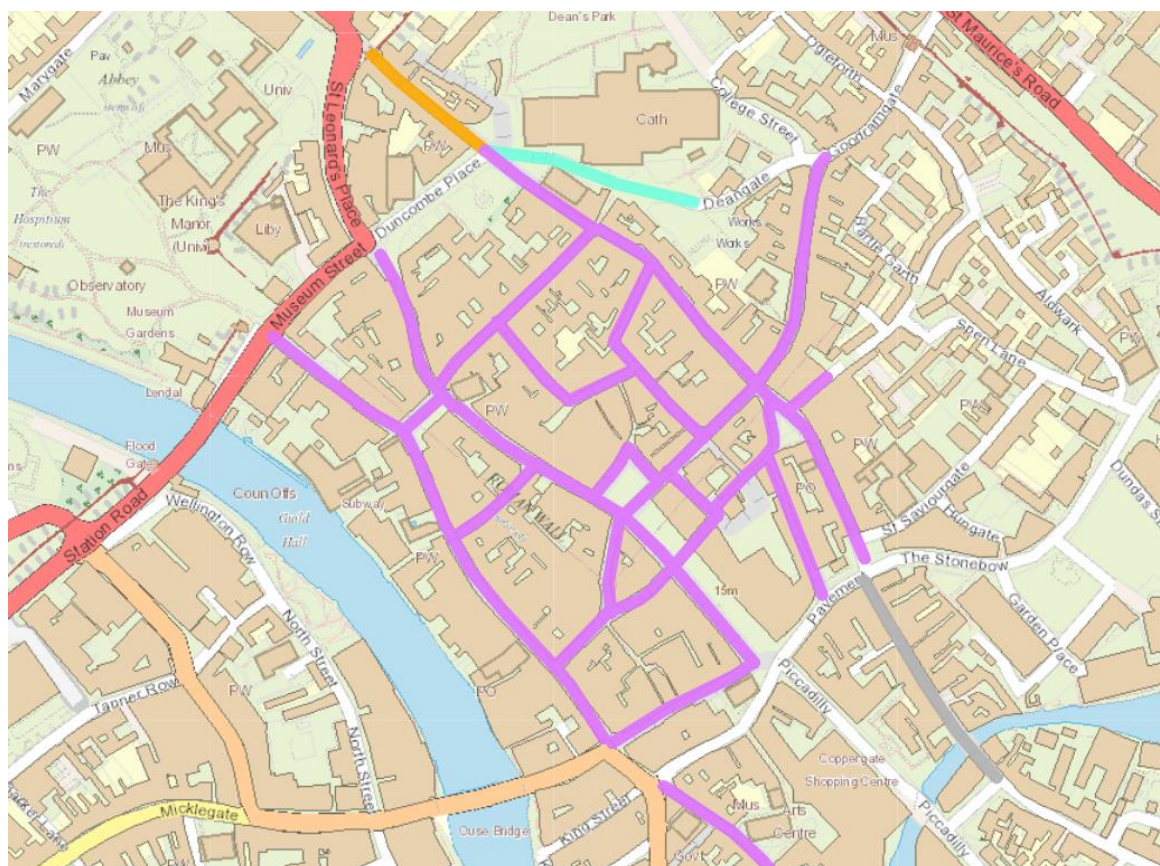
Interviewees		Expertise		
		Disability rights	CT	Access
Academics		4	4	0
Experts or advocates		2	0	2
State actors		0	2	0

¹² Loubere n 11.



After the BBAE was removed, BBHs were no longer permitted to access the footstreets (depicted in purple on Figure 3) during pedestrianised hours which fluctuate but are presently 10:30am to 5pm.¹⁶

Figure 3: A map of the footstreets¹⁷



BBHs have been granted a degree of vehicular access to pedestrianised streets in the centre of York since the 1980s. In June 2020 their access was temporarily suspended, but instead of being reinstated, their access was permanently revoked in November 2021.

¹⁶ CYC, 'Footstreets' <www.york.gov.uk/footstreets> accessed 6 February 2023.

¹⁷ © Crown copyright and database rights 2023 Ordnance Survey: 100020818.



1.1. The diversity of individuals who have a Blue Badge

Key Finding 1: Authorities have given insufficient consideration to the non-homogeneous nature of disabled people in the decision to remove the BBAE.

The expansive diversity of disabled individuals, as emphasised in the UN Convention on the Rights of Persons with Disabilities (CRPD),¹⁸ is widely acknowledged in modern society. Eligibility for a Blue Badge encapsulates a vast spectrum of disorders and conditions, and some BBHs do not identify as disabled. This was also a recurring theme that emerged in interviews with disability academics and experts who reiterated the importance of being cognisant of such diversity. The non-homogeneous nature of BBHs should be central in all assessments of the impacts of council decisions and attempted mitigations.

'If they ask 100 Blue badge holders, they'll get 100 different answers because we're not a homogeneous group'.¹⁹

CYC has enacted some mitigations in effort to meet the needs of those affected by the BBAE removal, including the employment of an access officer by CYC, additional Blue Badge parking spaces on the edges of the footstreets, and Dial & Ride access into some of the footstreets. However, their implementation has been delayed and piecemeal and the mitigations themselves are not suitable for all BBHs. Further mitigating measures have also been planned including improved ShopMobility service, plans to trial a shuttle service from car parks to the city centre, plans for extra benches and more dropped kerbs, and improved information on parking and accessibility in the city centre. These still fall short of what would be necessary to facilitate access into the city centre for all BBHs. To use York Disability Rights Forum's metaphor²⁰ - each measure is a jigsaw piece that might help some BBHs, though not all. Ultimately, the jigsaw is incomplete, with missing pieces representing the cohort of people for whom none of the mitigations suffice as reasonable accommodation pursuant to the CRPD²¹ and the Equality Act²² (see Section 3.1). CYC has accepted that these measures do

¹⁸ Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force 3 May 2008) 2515 UNTS 3 (CRPD) preamble.

¹⁹ Interview with a disability expert (Online, United Kingdom, 28 November 2022).

²⁰ CYC, 'Customer and Corporate Services Scrutiny Management Committee and Health and Adult Social Care Policy and Scrutiny Committee - Commissioned Joint Committee meeting' (25 November 2021) 1:34:20 <www.youtube.com/watch?v=hHC4FcOSk_Q&t=209s> accessed 10 February 2023.

²¹ CRPD art 5(3).

²² Equality Act 2010, s 21.



not fully mitigate the impacts of the exemption removal.²³ However, the consequences of this have not been properly acknowledged, including the discrimination faced by those individuals who are now unable to access the city centre.²⁴

Figure 5: An incomplete jigsaw of mitigations



CYC has failed to comprehend the non-homogeneous nature of disabled people in York and more broadly. Mitigations do not meet the government's inclusive mobility best practice guidance.²⁵ Nor do they address the varied range of needs of disabled people, including those related to psychosocial and intellectual impairments which have been identified by the UN Refugee Agency as commonly overlooked.²⁶ Statistics claiming to represent the voice of disabled people were made to justify the exemption removal: 'The majority of people who identified themselves as disabled and responded to Our Big Conversation were in favour of the changes to the footstreets (60%)'.²⁷ CYC

²³ Equalities Impact Assessment 3 November 2021 n 9, 511.

²⁴ See Section 3.1.

²⁵ Department for Transport, 'Inclusive Mobility: A Guide to Best Practice on Access to Pedestrian and Transport Infrastructure' (December 2021)

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1044542/inclusive-mobility-a-guide-to-best-practice-on-access-to-pedestrian-and-transport-infrastructure.pdf> accessed 21 February 2023, 26, 43, and 77.

²⁶ UN High Commissioner for Refugees, 'Emergency Handbook: Persons with disabilities' Version 2.1

<<https://emergency.unhcr.org/entry/43586/persons-with-disabilities>> accessed 30 January 2023.

²⁷ CYC, 'Equalities Impact Assessment: Removal of exemptions for city centre access during the Pedestrian Hours –request to undertake Statutory Consultation' (10 June 2021),



failed to enumerate these respondents as a proportion of the disabled people living in York, thus misrepresenting the level of support. BBHs and disabled people are not synonymous, and the experience of each disabled person will be hugely varied. In using this statistic, CYC has homogenised those affected by the exemption removal. Some felt as though CYC had utilised the diversity of the cohort as a tool to further its HVM initiative through pitting groups of individuals with different disabilities against each other.²⁸

1.2. Misrepresentation of decision-making responsibility

Key Finding 2: Police guidance has been misrepresented by CYC staff as mandating specific action in order to dilute their accountability for the BBAE removal.

A thorough review of CYC meetings, agenda documents, and communications from NYP regarding CT in York, left uncertainty regarding the responsible authority behind the BBAE removal. This lack of clarity was perpetuated through interviews conducted with spokespersons from the CYC and the NYP, with each recalling the other entity as the accountable party. CYC claimed that their removal of the BBAE was obligated by virtue of NYP's advice.²⁹ Conversely, NYP advised that the advice given to CYC was national-level guidance, and that access to York city centre is ultimately a matter for CYC to determine.³⁰

The Chair of CYC's Protect and Prepare (Counter Terrorism) Task Group alluded to the ability of the council to deviate from NYP CT guidance, stating that, had the original CT advice been followed, the pedestrianised zone would have been much larger.³¹ This suggests that CYC has the capacity to be selective when implementing NYP's advice. CYC was not forthcoming in response to a query asking for clarification regarding the extent to which they consider themselves able to deviate from NYP guidance.

Ultimately, it is the CYC's prerogative, as the democratically elected executive, to act in the best interests of its community.³² By virtue of their devolved decision-making

<<https://democracy.york.gov.uk/documents/s150551/Annex%20L%20Equalities%20Impact%20Assessment.pdf>> accessed 12 February 2023, (Equalities Impact Assessment 10 June 2021) 10.

²⁸ CYC, 'Customer and Corporate Services Scrutiny Management Committee' (8 November 2021) 1:15:30 <www.youtube.com/watch?v=8YLipTvdgLA> accessed 28 January 2023.

²⁹ Interview with Jane Mowat, Chair of the Protect and Prepare (Counter Terrorism) Task Group, CYC (Online, United Kingdom, 6 December 2022).

³⁰ Interview with Mark Khan, Former-Superintendent, NYP (Online, United Kingdom, 30 November 2022).

³¹ Interview with Jane Mowat, Chair of the Protect and Prepare (Counter Terrorism) Task Group, CYC (Online, United Kingdom, 6 December 2022).

³² Local Council Association, 'The General Power of Competence Empowering councils to make a difference' (July 2013) <www.local.gov.uk/sites/default/files/documents/general-power-competence--0ac.pdf> accessed 10 February 2023.



power, CYC has jurisdiction over matters of access into the city centre.³³ The exception to this is where police impose an Anti-Terror Traffic Regulation Order (ATTRO) which is an enforced TRO. ATTROs ‘enable protective security measures to reduce vulnerability and mitigate impacts of terror attacks on or near roads’.³⁴ NYP did not avail themselves of this capacity and no ATTRO was enforced in York. Further, NYP’s acting Superintendent at the time advised that NYP had ‘no appetite’ to instate one.³⁵ CYC is thus the authoritative entity for the BBAE removal and carries the responsibility for ensuring the policy amendment complies with human rights law.

1.3. The impact of COVID-19 on the BBAE removal

Key Finding 3: COVID-19 had a profound impact on the BBAE removal, mimicking the broader global trend of temporary or emergency laws and policies being used to implement more invasive, permanent changes.

The COVID-19 pandemic has created an exceptional set of circumstances which Lebreton argues enables States to introduce more extensive derogations from human rights, as well as implement temporary measures as a way to ensure more invasive, permanent changes.³⁶ In the field of CT, this is a common phenomenon, utilised to make invasive restrictions more palatable.³⁷ Blackburn *et al* note that CT measures allow ‘states to act more repressively and less accountably’ by implementing measures which appear temporary but operate in a permanent manner.³⁸ Unless temporary measures have ‘extremely well-defined boundaries’, the possibility of them becoming permanent is very high.³⁹

The fieldwork conducted in York confirmed this phenomenon. The CYC has used this method to push through the BBAE removal, and had COVID-19 not occurred, the road to removing the exemption would have been significantly more laboured – and potentially unsuccessful. During the pre-decision scrutiny meeting of 8 November 2021, the Director of Transport, Environment and Planning emphasised the impermanence of the decision and its changeability.⁴⁰ In the same meeting, a Liberal-

³³ Localism Act 2011, s 2 and 15.

³⁴ Counter-Terrorism and Border Security Act 2019.

³⁵ Interview with Mark Khan, Former-Superintendent, NYP (Online, United Kingdom, 30 November 2022).

³⁶ Audrey Lebreton, ‘COVID-19 pandemic and derogation to human rights’, (2020) 7(1) *Journal of Law and the Biosciences* <<https://academic.oup.com/jlb/article/7/1/Isaa015/5828398?login=true>> accessed 19 February 2023, 1.

³⁷ Interview with CT researcher (Online, United Kingdom, 9 December 2022).

³⁸ Jessie Blackburn, Fiona de Londras, Lydia Morgan, *Accountability and Review in the Counter-Terrorist State* (Bristol University Press 2019), 13 and 38.

³⁹ Interview with CT researcher (Online, United Kingdom, 9 December 2022).

⁴⁰ CYC, ‘Customer and Corporate Services Scrutiny Management Committee’ (8 November 2021) 2:55:28 <www.youtube.com/watch?v=8YLipTvdgLA> accessed 28 January 2023.



Democrat Councillor and the Chair of Housing and Community Safety Policy and Scrutiny Committee hypothesised that the decision to exclude BBHs could be reversed “If we find ourselves in a year’s time that the terror threat has diminished to such an extent”.⁴¹ This indicates CYC’s utilisation of the temporary nature to impose what could in reality be permanent changes. A CYC representative acknowledged the Council’s decision to utilise the pandemic as an opportunity to implement the council’s HVM plan due to the extended emergency powers.⁴²

‘Decisions made under emergency measures should not be used as a trojan horse to make them permanent’.⁴³

1.4. The failure to implement a sterile zone

Key Finding 4: Guidance given by NYP and CT specialists to implement a sterile zone is not being met in York.

NYP and CT specialists provided guidance to CYC on creating a sterile zone for HVM.⁴⁴ The suggested sterile zone permits access only for emergency response vehicles in order to be effective; ‘it is necessary to create a sterile zone free from all vehicles at times when the area is a crowded place. Entry to such areas must be restricted to emergency response vehicles’.⁴⁵ The present research has found that CYC did not follow the advice of NYP and have failed to implement a sterile zone. Many more vehicles besides emergency vehicles access the footstreets during pedestrianised hours (some lawfully and some not). While BBAE and other exemptions have been revoked, some exemptions persist, including ‘emergency services; emergency utility works; security deliveries; and Dial & Ride vehicles’.⁴⁶ However, this list is not exhaustive and CYC’s Head of Traffic is authorised to grant access permissions. The list of such permissions is not publicly available but does include bin collections.⁴⁷ It is also unclear whether access by those with revoked

⁴¹ CYC, ‘Customer and Corporate Services Scrutiny Management Committee’ (8 November 2021) 3:48:30 <www.youtube.com/watch?v=8YLipTvdgLA> accessed 28 January 2023.

⁴² Interview with Jane Mowat, Chair of the Protect and Prepare (Counter Terrorism) Task Group, CYC (Online, United Kingdom, 6 December 2022).

⁴³ Helen Jones from York Disability Rights Forum. CYC, ‘Customer and Corporate Services Scrutiny Management Committee’ (8 November 2021) 13:30 <www.youtube.com/watch?v=8YLipTvdgLA> accessed 28 January 2023.

⁴⁴ CYC, ‘Notice of a public meeting of Customer and Corporate Services Scrutiny Management Committee for 7 November 2022’ <<https://democracy.york.gov.uk/documents/g13581/Public%20reports%20pack%20Monday%2007-Nov-2022%2017.30%20Customer%20and%20Corporate%20Services%20Scrutiny%20Management%20.pdf?T=10>> accessed 12 February 2023, 63 - 64.

⁴⁵ *ibid*, 63.

⁴⁶ CYC, ‘City Centre Access for vehicles’ <www.york.gov.uk/CityCentreAccess> accessed 2 February 2022.

⁴⁷ Information received from CYC’s Directorate of Place in response to a Freedom of Information request (21 February 2023).



2. THE RIGHT TO LIFE: THE HUMAN RIGHT PROTECTED BY THE REMOVAL OF THE BLUE BADGE ACCESS EXEMPTION

The right to life is enshrined in UK legislation through Section 2 of the Human Rights Act 1998 (HRA 1998) by which ‘everyone’s right to life shall be protected by law’.⁵¹ The right can also be found in the European Convention on Human Rights (ECHR)⁵² and the International Covenant on Civil and Political Rights (ICCPR).⁵³ According to the ICCPR, the right to life entitles individuals not only to freedom from acts and omissions that could cause their death unnaturally or prematurely, but also to the enjoyment of a life with dignity.⁵⁴

Terrorist attacks threaten the right to life of citizens. States hold a positive obligation to protect against a terrorist threat to life dependent on its treaty obligations. The UK has obligations under both the ECHR and the ICCPR.

Despite the deep-rooted concept that all human rights are interrelated, interdependent and indivisible,⁵⁵ a false hierarchy is often perpetuated.

Key Finding 5: Local authorities in York have incorrectly perceived the right to life as overriding all other rights, inflating it to a level of disproportionate priority.

“If there's life to be saved, it comes at the top of the tree for me”.⁵⁶

The perception that the right to life, and by extension national security, always takes precedence in law is incorrect. Scheinin warns us that ‘it would be a mistake to conclude that security generally trumps human rights’.⁵⁷ However, this narrative is perpetuated by authorities in York to justify the BBAE removal. Former-Superintendent of NYP questioned whether the police, as an entity, puts too much weight on the right

⁵¹ Human Rights Act 1998 (HRA 1998) s 2.

⁵² Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR).

⁵³ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).

⁵⁴ UN Human Rights Committee (HRCCom), ‘General Comment No. 36: Right to life’ (3 September 2019) UN Doc CCPR/C/GC/36, (HRCCom General Comment 36) para 33.

⁵⁵ World Conference on Human Rights in Vienna, ‘Vienna Declaration and Programme of Action’ (adopted 25 June 1993) UN Doc A/CONF.157/23, s 1 para 5.

⁵⁶ Interview with Mark Khan, Former-Superintendent, NYP (Online, United Kingdom, 30 November 2022).

⁵⁷ Martin Scheinin, ‘Terrorism’ in Daniel Moeckli, Sangeeta Shah and Sandesh Sivakumaran (eds), *International Human Rights Law*, (4th edn, OUP 2022) 605.



International Covenant on Economic, Social and Cultural Rights (ICESCR),⁶⁵ and Article 5 of the CRPD.

Indirect discrimination is when a general policy or practice disadvantages an individual or group of individuals with a shared protected characteristic – such as disability. It is predicated on the concept of substantive equality which considers combatting structural and power imbalances as crucial to achieving equality.⁶⁶ There is no requirement for the policy to be intentionally disadvantageous. Most legal prohibitions of discrimination extend to indirect discrimination and thus it is governed by the same legal provisions, with the exception of the Equality Act of which a stand-alone section (Section 19) renders indirect discrimination unlawful. Indirect discrimination can in certain circumstances be lawful if it is a proportionate means of achieving a legitimate aim.⁶⁷

Due to the BBAE removal in York, and the implementation of pedestrianised footstreets, an unknown proportion of disabled people now cannot access the city centre, whereas others without this protected characteristic can. CYC's policy is indirectly discriminatory against this cohort as, although the prohibition of vehicles in the footstreets is a norm applied equally to everyone, it impacts disabled people in a greater way. As Aristotle asserted, treating unequals equally is as discriminatory as unequal treatment among equals.⁶⁸

'Disabled people are workers, consumers, visitors, residents and tourists. But most of all they are human beings. They have rights protected by the Equality Act 2010 and the city I am from has breached these by making changes that have caused indirect discrimination'.⁶⁹

The reasonable adjustment (or accommodation) duty is an intrinsic, and immediate, element of the right to non-discrimination of disabled people.⁷⁰ Section 20 of the Equality Act and Article 5(3) of the CRPD impose the duty for public sector organisations to modify their approach to ensure disabled people can access services equally to non-disabled people. A failure to do so is discriminatory. Reasonableness

⁶⁵ International Covenant on Economic Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR).

⁶⁶ ComRPD General Comment 6 n 62, para 10.

⁶⁷ Equality Act 2010, s 19(2)(d).

⁶⁸ Aristotle, *Nicomachean Ethics*, 5.3 1131a20 – 1132a24.

⁶⁹ Reverse the Ban (RtB), 'Petition to City of York Council on behalf of Reverse the Ban' (20 October 2022) <<https://democracy.york.gov.uk/documents/s163422/Annex%20B.pdf>> accessed 10 February 2023, (RtB Petition) 9.

⁷⁰ Committee on Economic, Social and Cultural Rights, 'General Comment No. 5: Persons with Disabilities' (9 December 1994) UN Doc E/1995/22, para 15.



is defined by the UN Committee on the Rights of Persons with Disabilities (ComRPD) as a measure that is relevant, appropriate, and effective for the disabled person affected.⁷¹ The reasonable adjustment duty is qualified by the requirement that the measure does not impose a disproportionate or undue burden on the duty-bearer.⁷² Reasonable adjustments are required when a 'provision, criterion or practice... which puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled'.⁷³

The insufficient mitigation measures enacted by CYC (see Section 1.1) have denied a group of individuals any plausible means of accessing or utilising the footstreets without pain or discomfort. For example, CYC failed to consider that there are some disabled people who cannot walk or wheel any considerable distance;⁷⁴ others who are unable to walk a distance longer than 50 metres⁷⁵ and thus cannot get to the footstreets from Blue Badge parking on the outskirts; some with sensory impairments for whom cafe furniture is a hazard; people who cannot use public transport due to cognitive impairments; and others still for whom their vehicle is a necessary safe space, a symbol of independence, or a location to store medication. In addition to this, even after gaining access to the footstreets 'the physical condition of the infrastructure is very challenging' for some disabled people.⁷⁶

'6 months ago I fell on the dreadful pavements and broke my hip. I have been unable to get to York to the bank. I think the city council should spend more money on the pavements'.⁷⁷

Not only has there been insufficient reasonable adjustments made for those with physical, sensory, or cognitive impairments to be able to access the footstreets, but the previous adjustments of allowing BBH vehicular access and parking in some of the footstreets pre-2020 has been repealed in a regressive step.

In *Roads v Central Train*,⁷⁸ the Court of Appeal held that in order to establish that disabled people have been substantially disadvantaged for the purposes of Section

⁷¹ ComRPD General Comment 6 n 62, para 25(a).

⁷² ComRPD General Comment 6 n 62, para 25.

⁷³ Equality Act 2010, s 20.

⁷⁴ CYC, 'Customer and Corporate Services Scrutiny Management Committee' (7 November 2022) 11:06 <www.youtube.com/watch?v=ox2ShERXeoQ&t=1216s&ab_channel=CityofYorkCouncil> accessed 14 February 2023.

⁷⁵ Department for Transport, 'Inclusive Mobility: A Guide to Best Practice on Access to Pedestrian and Transport Infrastructure' (December 2021) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1044542/inclusive-mobility-a-guide-to-best-practice-on-access-to-pedestrian-and-transport-infrastructure.pdf> accessed 21 February 2023, 26.

⁷⁶ Martin Higgitt Report n 14, 4.

⁷⁷ RtB Petition n 69, 13.

⁷⁸ [2004] EWCA Civ 1541 (2005) 21 Const.L.J. 456.



20 of the Equality Act, it was not necessary to show that all or most disabled people would have been so affected; instead, demonstrating any significant impact on the group would be sufficient.⁷⁹ The BBAE removal does not adversely affect all disabled people in the same manner, as not all disabled people are BBHs and not all BBHs have the same needs. However, for many, the policy change has imposed severe implications for their daily lives which is likely to satisfy *Roads*' significant impact test. The Court further stated that, to assess whether reasonable adjustment has been made, the service provider or public authority must 'provide access to a service as close as it is reasonably possible to get to the standard normally offered to the public at large'.⁸⁰ In contravention of this, the current mitigations in place cannot meet the access needs of some BBHs with physical, sensory, or cognitive impairments.

'The lack of access amounts to disability discrimination with this council's repeated failure to make reasonable adjustments. Someone needs to go round York in a wheelchair and see just how difficult it is for someone with mobility issues to navigate the city'.⁸¹

The reasonable adjustment duty within the Equality Act extends as an anticipatory duty. Lawson and Orchard explain this duty as requiring 'providers of services and public functions continually to identify any possible disability-related disadvantage, and to take reasonable steps to avoid or remove it'.⁸² This duty ensures that government entities and actors think about what is 'likely to be needed in advance'.⁸³ Accordingly, CYC should have anticipated the detriment some disabled people would experience due to the removal of the BBAE.

Key Finding 7: Members of local authorities (both CYC and NYP) did not fully comprehend the concept of discrimination.

The UN Special Rapporteur on the Rights of Persons with Disabilities has highlighted that attitudinal barriers have led to misconceptions about the rights of disabled people

⁷⁹ *Roads v Central Train*, para 26.

⁸⁰ *ibid* para 13.

⁸¹ RtB Petition n 69, 13.

⁸² Anna Lawson and Maria Orchard, 'The anticipatory reasonable adjustment duty: Removing the blockages?' (July 2021) 80(2) Cambridge Law Journal 308 <www.cambridge.org/core/services/aop-cambridge-core/content/view/A53FC6A50C0B0BE44EAD5989B2D9E2FD/S0008197321000568a.pdf/the-anticipatory-reasonable-adjustment-duty-removing-the-blockages.pdf> accessed 20 February 2023, 308.

⁸³ Public Health England, 'Reasonable adjustments: a legal duty' (15 September 2020) <www.gov.uk/government/publications/reasonable-adjustments-a-legal-duty/reasonable-adjustments-a-legal-duty> accessed 2 February 2023.



across the globe.⁸⁴ York's local council and police are no exception. They did not assert that the removal of the exemption was lawful discrimination that was strictly necessary, rather they denied discrimination and failed to consider the disproportionate effect of the BBAE removal on disabled people (De Schutter terms this as disparate impact discrimination).⁸⁵ Former-Superintendent of NYP voiced the opinion that "It is discriminatory against anyone who uses a car".⁸⁶

This exposes an ableist assumption and the misinterpretation of equality as an assimilation to a non-disabled "norm". It also suggests a predisposed bias against a disabled minority. Comments such as this, and the failure to identify the indirectly discriminatory effect of the BBAE removal, led to the key finding that a fundamental misunderstanding of discrimination exists among State entities in York. The ComRPD asserts that 'discrimination cannot be combated without awareness-raising among all sectors of government and society... to change or abolish compounded pejorative disability stereotypes and negative attitudes'.⁸⁷ In order to ensure decision-makers address the situation appropriately they must first understand and acknowledge the discrimination present and then justify and mitigate it. Evidently, this has not been done in York.

Key Finding 8: Equality Impact Assessments completed by the CYC have been insufficient, failing to uphold their public sector equality duty under the Equality Act and their rights obligations in the HRA 1998.

According to the HRA 1998, it is unlawful for a public authority to act in a way which is incompatible with an ECHR right.⁸⁸ Within the scope of the Equality Act public authorities have an obligation to give 'due regard to the need to eliminate discrimination...[and] advance equality of opportunity' - termed a public sector equality duty (PSED).⁸⁹ PSED is a process-oriented duty, based on the need to have due regard to disability equality in relevant decision-making, unlike the anticipatory reasonable adjustment duty which looks to outcomes. To comply with the PSED, public authorities 'must remove or minimise disadvantages suffered by persons who share a relevant protected characteristic'⁹⁰ and encourage such individuals to participate in public life.

⁸⁴ UNGA, 'Report of the Special Rapporteur of the Human Rights Council on the rights of persons with disabilities' (9 August 2016) UN Doc A/71/314, para 7.

⁸⁵ Olivier De Schutter, *International Human Rights Law: Cases, Materials, Commentary* (3rd edition, Cambridge University Press 2019) 3rd edition, 723.

⁸⁶ Interview with Mark Khan, Former-Superintendent, NYP (Online, United Kingdom, 30 November 2022).

⁸⁷ ComRPD General Comment 6 n 62, para 39.

⁸⁸ HRA 1998 s 6.

⁸⁹ The Equality Act 2010, s 149.

⁹⁰ The Equality Act 2010, s 149(3).



‘As a local resident in York I feel that I am excluded [from] my own city ... due to my support needs and disability’.⁹¹

Domestic case law shows that ‘the “due regard” duty must be fulfilled before and at the time’ a policy is being considered.⁹² Case law holds that paying due regard should ‘be more than simply giving consideration to disability equality’.⁹³ A precedent of the relevant council upholding equality is insufficient,⁹⁴ thus York’s reputation as a Human Rights City does not lessen their PSED.

‘Where large numbers of vulnerable people ... are affected, the due regard necessary is very high’.⁹⁵

Although CYC is aware of their PSED duty and has conducted an Equality Impact Assessment (EIA) to assess the effects of removing the BBAE,⁹⁶ it has failed to adequately consider the human rights implications the restriction has triggered. The EIA dated 10 June 2021 did not acknowledge any human rights impacts.⁹⁷ The latter EIA, dated 3 November 2021,⁹⁸ acknowledged the adverse impact of two human rights—the Article 8 right to a private and family life and the Article 14 right to freedom from discrimination—but failed to acknowledge any other impacted rights. The EIA reads:

‘Removing the ability to drive and park in these streets will increase the distance people with reduced mobility have to travel on foot or using a wheelchair or mobility scooter, making shops and services in the foot street area less accessible during foot street hours’.⁹⁹

This is a problematic, ableist assumption and fails to consider those individuals who are unable to travel on foot, by wheelchair or by mobility scooter, as well as those who require access to a vehicle for other means such as to store medication or as a place

⁹¹ RtB Petition n 69, 5.

⁹² *R (Brown) v Secretary of State for Work and Pensions* [2008] EWHC 3158 (Admin) para 90.

⁹³ *R (Chavda) v Harrow LBC* [2007] EWHC 3064 (Admin) para 33.

⁹⁴ *ibid* para 40.

⁹⁵ *Hajrula, R (on the application of) v London Councils* [2011] EWHC 448 (Admin) para 69.

⁹⁶ Public Agenda Pack, Customer and Corporate Services Scrutiny Management Committee & Health and Adult Social Care Policy and Scrutiny Committee - Commissioned Joint Committee meeting (25 October 2021).

⁹⁷ Equalities Impact Assessment 10 June 2021 n 27, 15.

⁹⁸ Equalities Impact Assessment 3 November 2021 n 9, 491.

⁹⁹ *ibid*, 501.



of safety. This statement attempts to homogenise BBHs by assuming they all have physical or mobility impairments and failing to acknowledge the broad diversity of needs they may possess. CYC has failed to give due regard to the need to eliminate disability discrimination and appears instead to have treated the EIA completion as a tick box exercise, in contravention of their PSED.¹⁰⁰

3.2. The right to access

Accessibility is a key tenet of ensuring equality for disabled people. In order to comply with the right to access, governments must ensure that the built environment is usable for disabled people on an equal basis with others.¹⁰¹ The ComRPD interprets accessibility as the full and equal participation of disabled people in society.¹⁰² This right becomes infringed upon as soon as disabled people do not have access to ‘the physical environment, to transportation, to information and communication, [...] and to other facilities and services open or provided to the public’¹⁰³ resulting in unequal opportunities to participate in society.

York is an old city and access for those with physical and sensory impairments is already difficult as a result of under-investment in the infrastructure, with cobbles and lack of dropped kerbs providing obstacles. While access to the city centre has been worsened by the removal of the BBAE, this has been compounded by the subsequent proliferation of pavement cafés which has increased the number of disabled people facing access challenges.¹⁰⁴ The fact that BBHs’ right to access has been withdrawn is a regressive step that violates the principles of progressive realisation enshrined in Article 9 of the CRPD.

“BBHs should and could easily have access [to the city centre]
without any hazard to public security”.¹⁰⁵

The right to access is a precondition for the unfettered exercise and enjoyment of other human rights. BBHs who can no longer access York city centre may, by extension, be unable to realise a number of other rights (see Figure 6). The CRPD notes that

¹⁰⁰ *R (on the application of Kaur and Shah) v London Borough of Ealing* [2008] EWHC 2062 (Admin), para 24.

¹⁰¹ ComRPD General Comment 6 n 62, para 40.

¹⁰² CRPD art 9.

¹⁰³ ComRPD, ‘General comment No. 2 (2014) on accessibility’ (11 April 2014) UN Doc CRPD/C/GC/2, para 1.

¹⁰⁴ Interview with Professor Tom Shakespeare, the London School of Hygiene and Tropical Medicine (Online, United Kingdom, 6 December 2022).

¹⁰⁵ Interview with Lucia Zedner, Professor of Criminal Justice, University of Oxford (Online, United Kingdom, 5 January 2023)



accessibility enables other civil and political, or economic, social, and cultural rights to be realisable as well - they are dependent on one another.¹⁰⁶

Key Finding 9: The human rights impacts of the BBAE are far-reaching and engage a multitude of civil, political, economic, social and cultural rights, expanding far beyond those acknowledged or anticipated by CYC.

Secondary rights of BBHs in York that could be restricted due to the BBAE removal:

- The right to religion¹⁰⁷ could be considered restricted as the access to the four places of worship within the footstreets area has become limited.¹⁰⁸
- The right to health¹⁰⁹ can also be considered restricted as the access of BBHs to health facilities within the footstreets is limited. For some, reaching their opticians, general practitioners, and designated pharmacies has become impossible. This may have profound mental health implications on some BBHs.

“The impact of the ban has taken an intense toll on the emotional and mental health of myself, my friends and family”¹¹⁰

- The right to participation in cultural life could also be infringed via restrictions on the right to accessibility.¹¹¹ The CRPD enshrines disabled peoples’ right to access ‘theatres, museums, cinemas, libraries, and tourism services [...] monuments and sites of national cultural importance’ on an equal basis to non-disabled people.¹¹² Many of York’s cultural attractions and events are located within the footstreets and as a result of the BBAE, BBHs are left without the ability to access and fully enjoy them.

¹⁰⁶ Interview with Professor Tom Shakespeare, the London School of Hygiene and Tropical Medicine (Online, United Kingdom, 6 December 2022)

¹⁰⁷ ICCPR art 18; ECHR art 9; and HRA 1998 s9.

¹⁰⁸ St Sampson’s Centre on Church Street, The Holy Trinity Church in Goodramgate, St Helen’s Church in Stonegate, and St Martin le Grand on Coney Street.

¹⁰⁹ ICESCR art 12; and CRPD arts 17 and 25.

¹¹⁰ RtB Petition n 69, 7.

¹¹¹ CRPD art 30; and ICESCR art 15(a).

¹¹² CRPD art 30.



'It is appalling that people with reduced mobility are prevented from participating in York's social and cultural life'.¹¹³

- While the right to life is used as the justification of the BBAE removal, it is also a right threatened by the policy change. The UN Human Rights Committee states that a lack of access impairs peoples' right to life as it limits the full enjoyment of a life with dignity.¹¹⁴ This has left some BBH in York living in isolation¹¹⁵ with one individual reporting feeling suicidal.¹¹⁶ The BBAE removal thus represents the decision of CYC to prioritise the right to life of some over that of others.

'Isolation is a killer'.¹¹⁷

- The BBAE removal could, in some situations, amount to inhuman or degrading treatment.¹¹⁸ In particular, one individual has described enduring 'a long and painful walk, in the wind and rain'.¹¹⁹
- The lack of access to the footstreets between 10:30am and 5pm limits the employment opportunities of BBHs and could be in violation of their right to employment.¹²⁰ If access is not achieved then BBHs cannot benefit from their rights under Article 27 of the CRPD¹²¹ - 'to work on an equal basis with others'.¹²² This could, in turn, exacerbate the socio-economic disadvantage of some disabled people.
- There is also a limitation of the right to peaceful assembly.¹²³ While the right can be exercised in theory, the lack of access for disabled people to the city centre limits their right to participate in peaceful assemblies – which ordinarily occur within the footstreets.

¹¹³ RtB Petition n 69, 9.

¹¹⁴ HRCOM General Comment 36 n 54, para 26.

¹¹⁵ RtB Petition n 69, 9.

¹¹⁶ *ibid*, 5.

¹¹⁷ *ibid*, 9.

¹¹⁸ ECHR art 3; HRA 1998 s 3; ICCPR art 7; and CRPD art 15.

¹¹⁹ RtB Petition n 69, 5.

¹²⁰ CRPD art 27; and ICESCR art 6.

¹²¹ CRPD art 27.

¹²² *ibid*.

¹²³ ICCPR art 21; ECHR art 11; and HRA 1998 s 11.



3.3. The rights to personal mobility and living independently

The BBAE removal could also be in violation of the rights of personal mobility and living independently,¹²⁴ as enshrined in the CRPD. The right to personal mobility is realised when disabled people can enjoy it 'with the greatest possible independence including by facilitating the personal mobility of persons with disabilities in the manner and at the time of their choice, and at affordable cost'.¹²⁵ The CYC breached this right and instead ensured that BBHs in York are dependent on their family members or public transport - which may not be suitable for all BBHs. In turn, this has also breached the provision within the right to living independently of full inclusion in the community – BBHs in York lack the opportunity to choose their place of residence, and they do not have access to many community support services anymore.¹²⁶ Their segregation from the community is not prevented, but rather ensured.

"The only thing that makes me disabled is people like you".¹²⁷

3.4. The right to private and family life

The right to private and family life is enshrined in domestic UK law through Section 8 of the HRA 1998 (and Article 8 of the ECHR) which entails respect for everyone's 'private and family life, home, and correspondence'.¹²⁸ This is subject to limitations in cases pertaining to 'national security, public safety, economic well-being of the country, prevention of disorder or crime, protection of health or morals, or protection of the rights and freedoms of others'.¹²⁹ ECHR case law confirms that Article 8 can be used in cases of accessibility to public buildings by disabled people,¹³⁰ when this lack of access interferes with their rights to personal development and to establish interpersonal relationships.¹³¹ The BBAE removal has altered the way some disabled people in York go about living their lives and it has affected how they interact with others.

"This ban effectively ends the ability for me to share the wonders of the city centre with my family".¹³²

¹²⁴ CRPD arts 19 and 20.

¹²⁵ CRPD art 20.

¹²⁶ CRPD art 19.

¹²⁷ CYC, 'Agenda Supplement: Customer and Corporate Services Scrutiny Management Committee for 8 November 2021' (29 October 2021) <<https://democracy.york.gov.uk/documents/b34743/Agenda%20Supplements%20Monday%2008-Nov-2021%2017.30%20Customer%20and%20Corporate%20Services%20Scrutiny%20Management%20C.pdf?T=9>> Annex P, 840.

¹²⁸ HRA 1998 s 8.

¹²⁹ *ibid.*

¹³⁰ *Arnar Helgi Lárusson v Iceland* App no 23077/19 (ECtHR, 31 May 2022) para 47.

¹³¹ *Zehnalová and Zehnal v the Czech Republic* App no 38621/97 (ECtHR, 14 May 2002) 12.

¹³² RtB Petition n 69, 26.



Human Rights Act (1998) (HRA) – UK Act of Parliament, came into force in October 2000. Its purpose was to incorporate rights from the ECHR into domestic law.

Equality Act (2010) – UK Act of Parliament, came into force in October 2010.

European Convention on Human Rights (ECHR) - full name: Convention for the Protection of Human Rights and Fundamental Freedoms. Signed by the UK on 4 November 1950, ratified on 8 March 1951, entered into force on 3 September 1953.

International Covenant on Civil and Political Rights (ICCPR) - signed by the UK in 1968 and ratified in 1976.

International Covenant on Economic Social and Cultural Rights (ICESCR) - signed by the UK in 1968 and ratified in 1976.

Convention on the Rights of Persons with Disabilities (CRPD) - signed by the UK in 2007 and ratified in 2009.

Figure 6: Table of law

Right	Domestic law	Regional law	International law
PRIMARY RIGHTS AFFECTED			
Right to life	Article 2 of HRA	Article 2 of ECHR	Article 6 of ICCPR
Right to non-discrimination	Article 14 of HRA Sections 13-19 of Equality Act	Article 14 of ECHR and Protocol 12* of the ECHR	Articles 2, 3, and 26 of ICCPR Articles 2 and 3 of ICESCR Article 3b and 5 of CRPD
Right to reasonable accommodation	Section 20 of Equality Act		Article 5 of CRPD
Right to access / freedom of movement	-	Protocol 4** Article 2 of the ECHR	Article 9 of CRPD Article 12 (freedom of movement) of ICCPR
Right to private and family life	Article 8 of HRA	Article 8 of ECHR	Article 17 of ICCPR
Right to live independently and be included in the community	-	-	Article 19 of CRPD
Right to personal mobility	-	-	Article 20 of CRPD
SECONDARY RIGHTS AFFECTED			
Right to religion	Article 9 of HRA	Article 9 of ECHR	Article 18 of ICCPR
Right to assembly	Article 11 of HRA	Article 11 of ECHR	Article 21 of ICCPR
Right to health	-	-	Article 12 of ICESCR Articles 17 and 25 of CRPD
Right to participation in cultural life	-	-	Article 15(a) of ICESCR Article 30 of CRPD
Prohibition of inhuman and degrading treatment	Article 3 of HRA	Article 3 of ECHR	Article 7 of ICCPR Article 15 of CRPD
Right to employment	-	-	Article 6 of ICESCR Article 27 of CRPD

* UK has not ratified

** UK has signed but not ratified



4. RECONCILING THE REALISATION OF DISABLED PEOPLE'S RIGHTS AND THE PREVENTION OF TERRORISM

Most qualified human rights may be restricted provided they meet the following strict three-part test:

1. Provided by law;
2. In pursuit of a legitimate aim; and
3. Necessary in a democratic society.

4.1. The law used to remove the blue badge access exemption

Key Finding 10: In restricting the rights of disabled people through the BBAE removal, CYC met the human rights law requirement of legality.

The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights (Siracusa Principles) dictate that, in order for a restriction of a qualified right to be provided by law, the law relied upon must (a) be provided for by national law; (b) not be arbitrary or unreasonable; (c) be clear and accessible to everyone; and (d) have adequate safeguards against abuse.¹³³ ECHR jurisprudence builds on these legal standards. *Rotaru v Romania* requires the quality of the law to be scrutinised in order to ascertain whether it is sufficiently precise to enable any individual under its jurisdiction to appropriately regulate their conduct.¹³⁴

Both the temporary TRO which suspended the BBAE and the permanent TRO which revoked it, were provided for in domestic law. The CYC is granted the power to impose TROs under the Road Traffic Regulation Act 1984 (RTRA 1984). Section 2 of the RTRA 1984 allows TROs to be used to 'prohibit, restrict or regulate use of a road, or of any part of the width of a road by traffic including motor vehicles, bicycles and pedestrians'.¹³⁵

The temporary TRO was put in place by CYC under extended road traffic regulation powers granted through emergency COVID-19 legislation.¹³⁶ On 18 November 2021,

¹³³ Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, (adopted 28 September 1984) UN Doc E/CN.4/1985/4 (Siracusa Principles) paras 15 – 18.

¹³⁴ *Rotaru v Romania* App no 28341/95 (ECtHR, 4 May 2000) paras 55-57.

¹³⁵ The Road Traffic Regulation Act 1984 (RTRA 1984), s 2.

¹³⁶ The Traffic Orders Procedure (Coronavirus) (Amendment) (England) Regulations 2020, s 18.



CYC made a permanent TRO under Section 1 of the RTRA 1984 under the justification of CT. The RTRA 1984 permits the imposition of a TRO ‘to avoid danger to persons or other traffic using the road or any other road or to prevent the likelihood of any such danger arising’.¹³⁷ The CYC’s actions under the RTRA 1984 are likely to satisfy the legality requirement as the law clearly defines the power of public authorities to impose TROs and circumstances in which TROs can be put in place.

The RTRA 1984 allows any person to question the validity of a TRO on the grounds that it exceeds the relevant powers through an application to the High Court within six weeks.¹³⁸ This is likely to satisfy the requirement for the provision of adequate safeguards against abuse, though some may question the practical functionality and effectiveness of this appeal procedure.

Before a TRO is made, the Council must comply with statutory requirements set out in the Local Authorities Traffic Orders (Procedure) (England & Wales) Regulations 1996 which includes the requirement for formal consultation and advertisement. The CYC did conduct a statutory consultation for the TRO amendment. It was advertised from 9 July to 6 August 2021 and later extended until 13 August 2021.¹³⁹ Despite claiming that the 200+ objections made by the public during the consultation have been duly considered,¹⁴⁰ CYC has failed to respond to them, thus casting doubt on whether the 1996 Regulations have been satisfied.

4.2. The CYC’s reasons for removing the exemption

Key Finding 11: In its removal of the BBAE the CYC has advised that their aim was primarily HVM which satisfies the legal test of legitimacy.

In order to lawfully restrict a qualified human right (such as the right to a private life) or to justify indirect discrimination against an individual with a protected characteristic, the action must be in pursuit of a legitimate aim.¹⁴¹ CYC stated that their aims in removing the BBAE were threefold: to increase public safety by supporting the

¹³⁷ RTRA 1984, s 1(1)(a).

¹³⁸ *ibid*, sch 9 s 35.

¹³⁹ Equalities Impact Assessment 3 November 2021 n 9, 490.

¹⁴⁰ CYC, ‘Notice of a public meeting of Customer and Corporate Services Scrutiny Management Committee for 7 November 2022’ <<https://democracy.york.gov.uk/documents/g13581/Public%20reports%20pack%20Monday%2007-Nov-2022%2017.30%20Customer%20and%20Corporate%20Services%20Scrutiny%20Management%20.pdf?T=10>> accessed 20 February 2023, 13.

¹⁴¹ See for example, Article 8(2) of the ECHR.



implementation of HVM measures; to reduce the level of conflict between vehicles and pedestrians; and to facilitate pavement cafés.¹⁴²

The appropriate legal grounds that the justification of HVM is likely to fall under is ‘national security’, ‘public safety’ and ‘the prevention of disorder or crime’.¹⁴³ In matters of national security, States are afforded a wide margin of appreciation by international human rights courts and treaty bodies, as they are best placed to be able to ascertain their country’s threat level.¹⁴⁴ MI5 identifies the current national threat level as ‘substantial’ meaning an attack is likely.¹⁴⁵ It is worth noting that since it began being published in 2006, the national threat level has never been ranked less than substantial.¹⁴⁶ One interviewee, a CT researcher, criticised the lack of scrutiny over national security determinations:

“Executive is in control of deciding what the threats are and nobody gets to question it”.¹⁴⁷

Key Finding 12: Respondents to RtB’s postcard campaign as well as interviewees doubted the validity of CYC’s reliance on CT as a justification for the BBAE removal.

Some alleged CT to be a false pretence¹⁴⁸ and believed the true aim to be commodification of the public realm and/or a political anti-car agenda.¹⁴⁹ The Siracusa Principles state that ‘no limitation referred to in the Covenant shall be applied for any purpose other than that for which it has been prescribed’.¹⁵⁰ Evidence from scrutiny meeting minutes and public comments by officials indicate strong environmental and economic justifications for the removal.¹⁵¹ However, these justifications have been surpassed by the CT justification. Furthermore, the BBAE had been suspended under alternative justifications prior to the CT justification being applied.¹⁵² The validity of the national security rationale is therefore in doubt and the Siracusa Principles may have been breached.

¹⁴² Equalities Impact Assessment 3 November 2021 n 9, 493.

¹⁴³ See for example, HRA 1998 s 8(2) and ECHR art 8.

¹⁴⁴ See for example, *Konstantin Markin v Russia* App no 30078/06 (ECtHR, 22 March 2012) para 112.

¹⁴⁵ MI5, ‘Threat Levels’ <www.mi5.gov.uk/threat-levels> accessed 2 February 2023.

¹⁴⁶ *ibid.*

¹⁴⁷ Interview with a CT researcher (Online, United Kingdom, 9 December 2022).

¹⁴⁸ RtB Petition n 69, 29.

¹⁴⁹ Interview with a disability expert (Online, United Kingdom, 28 November 2022).

¹⁵⁰ Siracusa Principles, Principle I(A)(6).

¹⁵¹ See for example, CYC, ‘Customer and Corporate Services Scrutiny Management Committee’ (8 November 2021) <www.youtube.com/watch?v=8YLipTvdgLA> accessed 28 January 2023.

¹⁵² See Figure 4.



failing to disaggregate the severity of outcomes from the likelihood of their occurrence,¹⁵⁸ as these actions will lead to a warped perception of threat and disproportionate mitigation measures.

“Often told the risk from terrorism is very high, the reality of being involved in some kind of terror incident is statistically remarkably low”.¹⁵⁹

VAW terror attacks rose to unprecedented levels across Europe in 2016-2017, however, in recent years they have become less frequent with new terror methodologies, such as single-person attacks and bladed weapon attacks, taking precedence.¹⁶⁰ Two law professors observed that the retroactive law and policy response of the UK government is predicated on the latest terror attack, making the policies “always one step behind”.¹⁶¹

“It looks like they are clearly overreacting. Cars are not driving into people every single day”.¹⁶²

Another observation of the fieldwork is the inappropriate use of terrorist terminology to fuel public demand for greater protection.¹⁶³ Scheinin documents that governments have ‘increasingly resorted to vague and broad definitions of terrorism’ and that there is a compelling global consensus that the imperative of combating terrorism often permits repressive action.¹⁶⁴ The present research supports this finding. CYC and NYP have sought to legitimise a more intrusive response by using terrorist terminology. While not all VAW attacks in York would amount to terrorist action, using the terrorism label has cultivated fear and encouraged disproportionate mitigations.

“They've created this narrative that we're all in imminent danger. Which I fundamentally doubt”.¹⁶⁵

¹⁵⁸ Interview with Lucia Zedner, Professor of Criminal Justice, University of Oxford (Online, United Kingdom, 5 January 2023).

¹⁵⁹ Interview with Dr Jessie Blackburne, Associate Professor in Public Law and Human Rights, Durham University (Online, United Kingdom, 7 December 2022).

¹⁶⁰ Interview with a CT researcher (Online, United Kingdom, 9 December 2022).

¹⁶¹ Interview with Lucia Zedner, Professor of Criminal Justice, University of Oxford, (Online, United Kingdom, 5 January 2023).

¹⁶² Interview with an Independent Researcher (Online, United Kingdom, 7 December 2022).

¹⁶³ Interview with Lucia Zedner, Professor of Criminal Justice, University of Oxford (Online, United Kingdom, 5 January 2023).

¹⁶⁴ Scheinin n 57, 610.

¹⁶⁵ Interview with a disability expert (Online, United Kingdom, 28 November 2022).



4.3.2. How egregious are the negative impacts on BBHs?

The extent of the negative impact on the enjoyment of rights by BBHs must be ascertained in order to make an assessment of proportionality.¹⁶⁶

Key Finding 14: The negative impacts felt by BBHs since the BBAE was removed are far-reaching and severe.

In response to the CYC's Statutory TRO Advertisement, many BBHs noted that the temporary restrictions 'had a devastating impact on their daily life, quality of life, and social life',¹⁶⁷ as well as their mental health. Many felt that 'the Council were prioritising visitors and tourists over residents with a Blue Badge'.¹⁶⁸ There is a clear impact on the mental health of BBHs, in addition to the numerous human rights that they are no longer able to fully exercise and enjoy (see Figure 6).

"There is a moment in the implementation [of a measure] that adversely affects any section of the population when City Councils are obliged to reflect on the ethics of what they are doing".¹⁶⁹

Following the applicant's arguments in the case of *Hatton and others v the United Kingdom*, the intimate nature of affected rights warrants a narrower margin of appreciation afforded to the State.¹⁷⁰ Resultantly, the margin afforded to the CYC when balancing the proportionality of the BBAE removal is constricted due to the deeply personal nature of the rights engaged (see Key Finding 9).

4.3.3. Are CYC's HVM measures effective?

In order to determine the necessity and proportionality of the BBAE removal, its ameliorating effects as a HVM measure must be investigated to determine its effectiveness in countering the potential threat of terrorism.¹⁷¹

¹⁶⁶ CTITF n 154, 12.

¹⁶⁷ CYC, 'Report of the Corporate Director of Place Portfolio of the Executive Member for Transport: Decision: Consideration of changes to the City Centre Traffic regulation order' (18 November 2021) <<https://democracy.york.gov.uk/documents/b34743/Agenda%20Supplements%20Monday%2008-Nov-2021%2017.30%20Customer%20and%20Corporate%20Services%20Scrutiny%20Management%20C.pdf?T=9>> accessed 16 February 2023, 469.

¹⁶⁸ *ibid.*

¹⁶⁹ Interview with Lucia Zedner, Professor of Criminal Justice, University of Oxford (York, United Kingdom, 5 January 2023).

¹⁷⁰ *Hatton and others v United Kingdom* App no 36022/97 (ECtHR, 8 July 2003) para 103.

¹⁷¹ CTITF n 154, 12.



Key Finding 15: As a CT measure, the removal of the BBAE in the footstreets is inadequately effective to warrant such an egregious human rights interference.

As determined in Key Finding 4, the recommended sterile zone for the city centre has not been fulfilled. In addition, the planned permanent HVM architecture is a mitigation strategy, not an absolute prevention.

‘There is no method that will stop an attack 100%, what you’re trying to do is mitigate’.¹⁷²

It is not guaranteed that the removal of the BBAE and the erection of CT barriers will prevent loss of life due to a terror attack. An Associate Professor in Public Law and Human Rights at Durham University commented: “You can’t stop terrorism”.¹⁷³ Sadly there are many other ways that those with intent can inflict harm. Whether it be a VAW attack when the pedestrian hours are not in place or in a high footfall location outside of the footstreets such as Duncombe Place,¹⁷⁴ or an alternative terrorist methodology. Hence, the narrative of restricting the rights of disabled people in order to protect life is misrepresentative.

“Banning blue badge holders might inhibit but is not going to stop a terrorist attack”.¹⁷⁵

4.3.4. Was the BBAE removal proportionate and necessary?

CT measures should not only be effective but also proportionate, the latter is what allows them to be implemented in a manner that follows international human rights law.¹⁷⁶

Key Finding 16: The legal requirement of proportionality has not been met by the CYC when removing the BBAE.

¹⁷² Interview with Mark Khan, Former-Superintendent, NYP (Online, United Kingdom, 30 November 2022).

¹⁷³ Interview with Dr Jessie Blackbourne, Associate Professor in Public Law and Human Rights, Durham University (Online, United Kingdom, 7 December 2022).

¹⁷⁴ CYC, ‘Decision Session - Executive Member for Transport’ (22 March 2022) 36:40 <www.youtube.com/watch?v=R4yVmNQEPH0&ab_channel=CityofYorkCouncil> accessed 10 February 2023.

¹⁷⁵ Interview with Conor Gearty, Professor of Human Rights Law, London School of Economics (Online, United Kingdom, 7 December 2022).

¹⁷⁶ Interview with Conor Gearty, Professor of Human Rights Law, London School of Economics (Online, United Kingdom, 7 December 2022).



Assessing a CT measure's proportionality - both in theory and in practice – must not be done without considering the balance between the negative and positive impacts of the limiting measure. Any weighing of the competing rights must take into account the centrality of the principle of non-discrimination. There is no room for unlawful discrimination within the framework of CT. The UN Counter-Terrorism Implementation Task Force (CTITF) asserts that discrimination should not be permitted as an element of CT and that if it does occur, it should be objectively and reasonably justified.¹⁷⁷

In the latest publicly available version of the EIA used to remove the BBAE—dated 3 November 2021—CYC recognises the need to apply a proportionality test which should include 'whether a fair balance has been struck between the rights of the individual and the interests of the wider community'.¹⁷⁸ However, there is a noticeable lack of an actual proportionality assessment being made, the EIA simply states that the measure is 'a proportionate means of achieving a legitimate aim'.¹⁷⁹ The right to life is disproportionately prioritised (see Key Finding 5), despite the EIA recognising that removing the BBAE would impact 'people's ability to live independently, attend appointments, see people who are important to them, and be part of their community'.¹⁸⁰ The balancing of interests should also be done in a way where the risk is engaged with, not as a 'blank check on a proportionality assessment'.¹⁸¹

"It does seem like it has an overwhelming impact on one group with very little regard to the balance of the actual risk of terrorism in York".¹⁸²

Further, CYC did not identify the number of BBHs who (regardless of attempted mitigations) are rendered unable to access the city centre, stating that the data was not available.¹⁸³ A proportionality assessment cannot be undertaken without knowledge of the number of people whose human rights would be adversely affected. In addition, CYC failed to anticipate who might fall into this category in the future.

¹⁷⁷ CTITF n 154, 19.

¹⁷⁸ Equalities Impact Assessment 3 November 2021 n 9, 507.

¹⁷⁹ *ibid.*

¹⁸⁰ *ibid.*

¹⁸¹ Interview with Conor Gearty, Professor of Human Rights Law, London School of Economics (Online, United Kingdom, 7 December 2022).

¹⁸² Interview with Dr Jessie Blackbourne, Associate Professor in Public Law and Human Rights, Durham University (Online, United Kingdom, 7 December 2022).

¹⁸³ CYC, 'Report of the Corporate Director of Place Portfolio of the Executive Member for Transport: Decision: Consideration of changes to the City Centre Traffic regulation order' (18 November 2021) <<https://democracy.york.gov.uk/documents/b34743/Agenda%20Supplements%20Monday%2008-Nov-2021%2017.30%20Customer%20and%20Corporate%20Services%20Scrutiny%20Management%20C.pdf?T=9>> accessed 16 February 2023, 472.



The Council maintains that when making this decision, the impact on BBHs has been considered and recognised but that the negative effect of the BBAE removal does not outweigh the benefits provided by the HVM measures. It also claims to have found no other way of delivering the safety benefits of the CT measures without impacting disabled people in York.¹⁸⁴ In their own balancing act, the authorities submit that the duty to protect life has been balanced against the interests and infringed rights of BBHs and that the former takes precedence over the latter.¹⁸⁵ However, Zedner and Ashworth note that ‘the metaphor of balance here is fraught with difficulty’.¹⁸⁶ Waldron also critiques the legal balancing act and asserts that, in cases where security gains for the majority are being balanced against the loss of rights and freedoms for the minority, then attention must be paid ‘to the few/most dimensions of the balance, not just the liberty/security balance’.¹⁸⁷

“We fixate on certain type of threats but fail to acknowledge the threats to our individual rights and personal security”.¹⁸⁸

The CTITF has reiterated that qualified rights and freedoms can be permissibly restricted in the process of combating terrorism.¹⁸⁹ However, in this instance the interference is not proportionate.

Key Finding 17: The removal of the BBAE, thus preventing access into the footstreets for BBHs between 10:30am and 5pm is not the least restrictive means of achieving the legitimate aim of HVM.

When implementing CT measures, the authority imposing them should not use more restrictive means than required to achieve the legitimate aim being pursued.¹⁹⁰ This is a requirement set by the least restrictive appropriate measure principle which also requires authorities to ensure that the CT initiatives they implement are ‘proportionate and consistent with the preventive purpose’.¹⁹¹

¹⁸⁴ CYC, ‘Report of the Corporate Director of Place Portfolio of the Executive Member for Transport: Decision: Consideration of changes to the City Centre Traffic regulation order’ (18 November 2021)

<<https://democracy.york.gov.uk/documents/b34743/Agenda%20Supplements%20Monday%2008-Nov-2021%2017.30%20Customer%20and%20Corporate%20Services%20Scrutiny%20Management%20C.pdf?T=9>> accessed 16 February 2023, 481.

¹⁸⁵ *ibid.*

¹⁸⁶ Lucia Zednar and Andrew Ashworth, ‘The Rise and Restraint of the Preventive State’ (January 2019) 2 Annual Review of Criminology 429 <www.annualreviews.org/doi/full/10.1146/annurev-criminol-011518-024526> accessed 7 February 2023.

¹⁸⁷ Jeremy Waldron, *Torture, Terror and Trade-Offs: Philosophy for the White House* (OUP 2012) 36.

¹⁸⁸ Interview with Lucia Zedner, Professor of Criminal Justice, University of Oxford (Online, United Kingdom, 5 January 2023).

¹⁸⁹ CTITF n 154, 11.

¹⁹⁰ Siracusa Principles para 11.

¹⁹¹ Zednar and Ashworth n 186.



In order to comply with the least restrictive principle, the BBAE removal would need to be directly proportionate to the national security threat and no more imposing than absolutely necessary. Noting that the terror threat level fluctuates and is more severe at busier times such as weekends, the imposition of inflexible and unmoving HVMs is guaranteed to not be proportionate all the time.

The mitigations should vary in parallel to the threat. CYC's temporary measures to enforce the sterile zone have included extended footstreet hours, barriers, and security staff throughout the Christmas market,¹⁹² while other events with equally high footfall, such as the Platinum Jubilee celebrations, lacked such HVM mitigations.¹⁹³ This oscillation in CYC's CT response is inconsistent with the terror threat in the UK, which has not fallen below substantial since July 2019.¹⁹⁴

The use of more stringent measures, such as barriers, may be warranted at the busiest times when the footstreets have the highest footfall, however, less restrictive measures should be in place at times when the threat is lower. For instance, Former-Superintendent of NYP conceded that barriers might "not be needed on a Rainy Tuesday afternoon".¹⁹⁵ The approach in York does not adequately follow this requirement. At times CT measures have even been reduced to the use of a singular traffic cone at Goodramgate.¹⁹⁶

"During a terrorist attack, the driver is unlikely to comply with the rules of the road".¹⁹⁷

CYC's approach is thus not very effective nor proportionate to the apparent threat York is facing. The legitimate aim of preventing terrorism can be achieved through other, less restrictive methods. Martin Higgitt Associates document that similar historic cities such as Bath, Chester and Freiburg (Germany) have managed to install less restrictive CT measures than York, permitting Blue Badge access and parking within pedestrianised streets in the city centres.¹⁹⁸

¹⁹² BBC News, 'York: Anti-terror bollards to return to city centre' (BBC News, 28 October 2022) <www.bbc.co.uk/news/uk-england-york-north-yorkshire-63425078> accessed 20 February 2023.

¹⁹³ Stephen Lewis, 'York gets ready to party for Queen's Platinum Jubilee' (*The Press*, 6 February 2022) <www.yorkpress.co.uk/news/19902921.york-gets-ready-party-queens-platinum-jubilee/> accessed 21 February 2023.

¹⁹⁴ MI5, 'Threat Levels' <www.mi5.gov.uk/threat-levels> accessed 20 February 2023.

¹⁹⁵ Interview with Mark Khan, Former-Superintendent, NYP (Online, United Kingdom, 30 November 2022).

¹⁹⁶ Interview with a disability expert (York, United Kingdom, 28 November 2022).

¹⁹⁷ Centre for the Protection of National Infrastructure, 'Hostile Vehicle Mitigation' (2021) <www.cpni.gov.uk/hostile-vehicle-mitigation-hvm> accessed 2 February 2023.

¹⁹⁸ Martin Higgitt Report n 14, 56-57 and 63.



Key Finding 18: Alternative justifications listed in the EIA also fail the legal test of necessity.

Regarding the alternative justification of reducing the level of conflict between vehicles and pedestrians, the number of road traffic incidents within the footstreets area and pedestrianised hours have been minute. Therefore, such invasive measures as the BBAE removal, are far from proportionate. In the last ten years there have been a total of 54 reported accidents involving vehicles in the footstreets, out of which only 17 took place within the pedestrianised hours - only 31% of all incidents recorded.¹⁹⁹ There is no data regarding whether any of these incidents involved vehicles operated under a Blue Badge.

Less restrictive measures, such as enforcing a lower speed limit in the footstreets, could have achieved the aforementioned aim thus rendering the BBAE removal unnecessary and ultimately unlawful. Recommendations have been made to reduce the speed limit which is currently 30 mph with an advisory but unenforceable speed limit of 10 mph.²⁰⁰ However, CYC has failed to implement this.²⁰¹

The justification of facilitating pavement cafes advancement, listed in the EIA, also fails the legal test of necessity. The severe effects on BBHs surpass the economic benefits of additional cafe licences. Furthermore, the removal of the BBAE also has far-reaching economic impacts with BBHs deciding to spend their “purple pound” elsewhere.²⁰²

¹⁹⁹ CYC, 'Agenda Supplement for Customer and Corporate Services Scrutiny Management Committee' (8 November 2021) <<https://democracy.york.gov.uk/documents/b34743/Agenda%20Supplements%20Monday%2008-Nov-2021%2017.30%20Customer%20and%20Corporate%20Services%20Scrutiny%20Management%20C.pdf?T=9>> accessed 2 February 2023, Annex W, 986.

²⁰⁰ CYC, 'Customer and Corporate Services Scrutiny Management Committee' (8 November 2021) 50:11 <www.youtube.com/watch?v=8YLipTvdgLA> accessed 28 January 2023.

²⁰¹ CYC, 'Report of the Corporate Director of Place Portfolio of the Executive Member for Transport: Decision: Consideration of changes to the City Centre Traffic regulation order' (18 November 2021) <<https://democracy.york.gov.uk/documents/b34743/Agenda%20Supplements%20Monday%2008-Nov-2021%2017.30%20Customer%20and%20Corporate%20Services%20Scrutiny%20Management%20C.pdf?T=9>> accessed 16 February 2023, 472.

²⁰² BBC News, 'The power of the 'purple pound' explained' (BBC News, 22 February 2017 <www.bbc.co.uk/news/av/business-39040760> accessed 16 February 2023.



5. RECOMMENDATIONS

To CYC

- Keep an up-to-date record of the disabled population in York, accounting for the different forms of disability, intersecting identities, and restrictions experienced by this population - including impacts of the BBAE removal. Obtain and analyse (in a participator manner) empirical data quantifying for how many York resident BBHs the mitigation measures are insufficient – noting this figure will not be comprehensive as it will exclude non-resident visitors to the city.
- In order to meet their PSED, update the EIA for the BBAE removal ensuring considerations of equality are central. Include a detailed proportionality assessment that sufficiently weighs all the human rights restrictions and the severity of the impacts on the daily lives of BBHs. Ensure a realistic perception of the terror threat is used in the necessity determination.
- Implement mandatory staff training initiatives to ensure human rights and discrimination are comprehensively understood and actively considered in decision-making. Conduct quality checks of EIAs to safeguard against breaches of Equality Act and HRA 1998 obligations.
- Revisit the list of access exemptions to the footstreets, ensuring it is not discriminatory, noting that a sterile zone is not in place unless the only exemption is emergency vehicles.
- If it is determined that the implementation of a sterile zone is proportionate and appropriate, ensure temporary measures while awaiting permanent fixtures are sufficient to enforce it.
- Conduct a survey of all the streets on the edge of the pedestrianised zone which could accommodate nearby Blue Badge parking with details of distances to the pedestrianised area (remembering that 50 metres without a rest is the maximum distance recommended for some disabled people), as well as the conditions of the pavement, such as width, lighting, and camber.
- In consultation with BBHs, implement a comprehensive and holistic range of mitigations for BBHs unable to access the city centre. Ensure consideration is given for individuals who may become BBHs in the future.



- Reinstate the BBAE to some footstreets in the interim until the co-production and implementation of sufficient and reasonable mitigations that permit all BBHs to access the city centre.
- In consultation with BBHs, consider additional mitigation measures and alternative HVM architecture, referencing other effective systems in different cities, including Automated Number Plate Recognition, staffed barriers, and access permits.

To NYP

- Deliver mandatory staff training on human rights and discrimination to ensure comprehensive understanding and to debunk any misconceptions.²⁰³

CONCLUSION

Through the very core of the CYC's decision to withdraw the disability access exemption runs a problematic and stigmatising rhetoric that disabled people are a burden on society. The ComRPD notes that this rhetoric is a concerning global trend.²⁰⁴ In York, the Council has gone further than this - not only are disabled people painted as a hindrance, but also as a risk to the safety and security of others. This problematic narrative imposes a caustic dichotomy of "us v them" and encourages the public to perceive the very existence of disabled people in the city centre as a threat to their lives. The rights of disabled people and CT initiatives can be reconciled, however CYC's approach has been an imbalanced one that affords disproportionate weight to the right to life based on an over-inflated perception of the terror threat and an undervalued consideration of the adverse impacts on BBHs.

²⁰³ On 23 February 2023, upon reviewing a draft of this report, Mark Khan, Former-Superintendent of NYP, shared his observation via email that there is a significant amount of in-depth, mandatory training on human rights law and its application for NYP staff, led by the College of Policing. Analysing the quantity and quality of the human rights training conducted within NYP was outside of the scope of this research, however, further research would be beneficial to provide clarity on this and to help achieve this recommendation.

²⁰⁴ ComRPD General Comment 6 n 62, para 2.



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