Case Number: 2305160/2021

EMPLOYMENT TRIBUNALS

Claimant: Mr C Johnson

Respondent: Transport for London

Heard at: London South

On: 30 May 2023, 31 May 2023 (evidence)
1 June 2023, 14 June 2023 (Chambers)

Before: Employment Judge Sekhon
Mr C Mardner
Mr P Morcom

Representation
Claimant: Mr Toms, Counsel
Respondent: Ms Crew, Counsel

RESERVED JUDGMENT

The unanimous Judgment of the Tribunal is that:

1. **The claims of direct disability discrimination contrary to section 13 Equality Act 2010, harassment contrary to section 26 Equality Act 2010, and victimisation contrary to section 27 Equality Act 2010 are dismissed upon withdrawal by the claimant.**
2. **The claim of failure to comply with the duty to make reasonable adjustments contrary to section 20/21 Equality Act 2010 is not well founded and dismissed.**

REASONS

Background of the claim and this hearing

1. This is the reserved judgment with reasons following the hearing on 30, 31 May 2023 and the subsequent day in Chambers on 1 June 2023 and 14 June 2023.

2. The claimant, Mr Johnson, commenced working as a taxi driver in April 2014 and is self-employed. The respondent, Transport for London, has statutory authority to grant licences to taxi drivers in London.

3. By a claim form issued on 14 October 2201, the claimant makes complaints of disability discrimination, specifically direct discrimination (section 13 Equality Act 2010), failure to make reasonable adjustments (section 20/21 Equality Act 2010), victimisation (section 27 Equality Act 2010) and harassment (section 26 Equality Act 2010). At the outset of the

hearing, the claimant confirmed that he withdrew the complaints relating to direct disability discrimination, victimisation, and harassment.

4. The claimant was diagnosed with Spondylosis and Schmorl's Nodes (arthritis in the discs of his spine) following a road traffic accident on 6 May 2019. It is accepted by the respondent by letter dated 5 April 2023 that the claimant is a disabled person by reason of his medical condition of "Spondylosis and Schmorl's Nodes and degenerative disc disease" at times material to this claim.

5. In the ET3, the respondent denies that the claimant has been discriminated against or treated detrimentally as alleged and they sought further information on the substantial disadvantage that the claimant has suffered. The respondent asserted that the Tribunal did not have jurisdiction to hear any discrimination claims as it denied that it is a qualifications body within the meaning of section 54 of the Equality Act 2010. At the outset of the hearing, the respondent conceded that they are a qualifications body within the meaning of section 54.

6. Further clarification was provided by the claimant on 18 November 2022 which stated that the claimant faces a substantial disadvantage because he cannot assist wheelchair users who require physical assistance due to his disability. Further particulars were provided on 20 December 2022 in relation to the financial assistance that the claimant avers the respondent could have provided as a reasonable adjustment.

7. Early conciliation commenced on 25 August 2021 and the ACAS certificate is dated 9 September 2021.

8. The Tribunal were provided with the following: -

   (a) Mr Johnson's witness statement (undated and unsigned) and a witness statement on behalf of the respondent from Mr Robinson (General Manager of the Taxis and Private Hire department part of the Licensing and Regulation directorate at the respondent) which was also undated and unsigned. The Tribunal clarified with both parties, that the witness statements were exchanged on 19 May 2023 and accepted oral evidence oral evidence from each party that the statement was true to their best knowledge.

   (b) An agreed evidence Bundle – indexed with 625 pages.

   (c) Respondent and claimant's Chronology.

   (d) Respondent's cast list.

   (e) Respondent and claimant's draft List of Issues.

9. A preliminary hearing took place before Employment Judge Smith on 28 November 2022 by CVP and the respondent's application to strike out the claimant's reasonable adjustments claim under Rule 37(1)(a) on grounds that it has no reasonable prospect of success was dismissed.

10. As no Case Management hearing had taken place, at the outset of the hearing the Tribunal discussed any adjustments that the parties needed for this hearing. To assist the claimant in managing the impact of his disability at this hearing, it was agreed that the Tribunal would arrange a break every 45 minutes for 5-10 minutes to enable him to stretch and help relieve any pain. The claimant was made aware that he could request further breaks if required and stand up during the hearing if needed. The respondent confirmed that their witness, Mr Robinson, had epilepsy and that he may require a break if he experiences symptoms, and the Tribunal would be alert to signs if this should occur. These measures were accommodated throughout the hearing.

11. This claim was listed for a three-day in person final hearing to deal with liability. Based on the discussions with the parties, the Tribunal informed the parties that it was not possible to hear submissions on remedy within the time allotted to the Tribunal. It was also clear that the Tribunal did not have sufficient time to deliberate and to deliver a judgment. The Tribunal therefore informed the parties that they would reserve the decision.

The complaints and the issues

12. At the outset of the hearing, the parties provided the Tribunal with an agreed List of Issues, and after some discussion this was amended to reflect the parties' positions. This is referred to below. The Tribunal confirmed that these were the only issues that they would determine.

13. The Tribunal heard oral submissions from both Counsel. Both Counsel provided the Tribunal with their final written submissions and the Tribunal are very grateful for the assistance we received. We shall not set out the entirety of the parties' submissions but took them into account in reaching the decisions set out below. We have dealt with the parts of the submissions that seem to us to be the most important within our discussions and conclusions.

Relevant Law

Equality Act 2010 claims – general law and Statutory Code of Practice

14. The power of the Equality and Human Rights Commission to issue a code of practice ("the Code") to ensure or facilitate compliance with the Equality Act 2010 is afforded by Section 14 of the Equality Act 2006. Paragraph 1.13 of the Code explains that:

"The Code does not impose legal obligations. Nor is it an authoritative statement of the law; only the tribunals and the courts can provide such authority. However, the Code can be used in evidence in legal proceedings brought under the Act. Tribunals and courts must take into account any part of the Code that appears to them relevant to any questions arising in proceedings."

Paragraph 6.2 of that Code describes the duty to make reasonable adjustments as follows:

"The duty to make reasonable adjustments is a cornerstone of the Act and requires employers to take positive steps to ensure that disabled people can access and progress in employment. This goes beyond simply avoiding treating disabled workers, job applicants and potential job applicants unfavourably and means taking additional steps to which non-disabled workers and applicants are not entitled."

15. The Tribunal also note the following paragraphs of the Code:

a. *Paragraph 6.14,* which provides the purpose of the comparison with people who are not disabled is to establish whether it is because of disability that a particular PCP or physical feature or the absence of an auxiliary aid disadvantages the disabled person in question.
b. *Paragraph 6.24*, which provides that there is no onus upon a disabled person to suggest what adjustments should be made; however, where the disabled person does so, the employer should assess whether this is reasonable in avoiding the substantial disadvantage.
c. *Paragraphs 6.32 and 17.80*, which state that it is good practice for an employer to ask a disabled employee about possible adjustments and agree any proposed adjustments in advance.
d. *Paragraph 6.30*, which provides that the act does not allow an employer to justify a failure to make a reasonable adjustment. Where the duty applies, the question is whether or not the adjustment is objectively reasonable. If it is, then the failure to make the adjustment is unlawful discrimination.

e. *The respondent refers to 6.27*, which provides if making a particular adjustment would increase the risk to health and safety of any person (including the disabled worker in question) then this is a relevant factor in deciding whether it is reasonable to make that adjustment. Suitable and sufficient risk assessments should be used to help determine whether such risk is likely to arise.
f. *The claimant refers to 6.28,* which provides the following as some of the factors which might be taken into account when deciding what is a reasonable step for an employer to have to take: • whether taking any particular steps would be effective in preventing the substantial disadvantage; • the practicability of the step; • the financial and other costs of making the adjustment and the extent of any disruption caused; • the extent of the employer's financial or other resources; • the availability to the employer of financial or other assistance to help make an adjustment (such as advice through Access to Work); and • the type and size of the employer.

Failure to make reasonable adjustments (section 20-21 Equality Act 2010)

16. Section 39(5) Equality Act 2010 applies to an employer the duty to make reasonable adjustments. Further provisions about the duty to make reasonable adjustments appear in Section 20 Equality Act 2010 which provides as relevant:

"(1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.
(2) The duty comprises the following three requirements.
(3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.
(4) The second requirement is a requirement, where a physical feature puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.
(5) The third requirement is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid."
Section 21 Equality Act 2010 provides as relevant:
"(1) A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.
(2) A discriminates against a disabled person if A fails to comply with that duty in relation to that person."
...

17. The proper approach to reasonable adjustments claims remains that suggested by the EAT in ***Environment Agency v Rowan*** *[2008] IRLR 20*. A Tribunal should have regard to:
- the provision, criterion or practice applied by or on behalf of the employer; or
- the physical feature of premises occupied by the employer.
- the identity of non-disabled comparators (where appropriate); and
- the nature and extent of the substantial disadvantage suffered by the claimant.

18. The importance of a Tribunal going through each of the constituent parts of the provisions relating to the duty to make reasonable adjustments was emphasised by the ***EAT in Environment Agency –v- Rowan [2008] ICR 218*** and reinforced in The ***Royal Bank of Scotland –v- Ashton*** *[2011] ICR 632* and the Court of Appeal in ***Newham Sixth Form College v Sanders*** *[2014] EWCA Civ 734.*

19. In ‘reasonable adjustments’ cases the claimant is required at the first stage: (a) to establish the provision, criterion or practice relied upon; and (b) to demonstrate substantial disadvantage. In some cases the proposed adjustment may not be identified until after the alleged failure to implement it and this may exceptionally be as late as the tribunal hearing itself: The burden then shifts to the respondent to show that the disadvantage would not have been eliminated or reduced by the proposed adjustment and/or that the adjustment was not a reasonable one. **(*Project Management Institute v Latif [2007] IRLR 579).***

Substantial Disadvantage

20. The word ‘substantial’ used in sub-section 20(3) is defined in section 212(1) of the EA 2010 and means ‘more than minor or trivial’.

21. Ms Chew and Mr Toms referred the Tribunal to the case of ***Sheikholeslami v University of Edinburgh (2018) IRLR 1090,*** *paragraphs 47-53* and the Tribunal have considered these. For ease of reference we set out paragraphs 48,49,52 below,

“48. It is well established that the duty to make reasonable adjustments arises where a PCP puts a disabled person at a substantial disadvantage compared with people who are not disabled. The purpose of the comparison exercise with people who are not disabled is to test whether the PCP has the effect of producing the relevant disadvantage as between those who are and those who are not disabled, and whether what causes the disadvantage is the PCP. That is not a causation question as the employment tribunal appears to suggest at para [200] (repeatedly emphasising the words 'because of her disability'). For this reason also, there is no requirement to identify a comparator or comparator group whose circumstances are the same or nearly the same as the disabled person's circumstances.

49. The Equality Act 2010 provides that a substantial disadvantage is one which is more than minor or trivial: see s 212(1). The EHRC Code of Practice states that the requirement that an effect must be substantial reflects the general understanding of disability as a limitation going beyond the normal differences in ability which might exist among people: see para 8 of App 1. The fact that both groups are treated equally and that both may suffer a disadvantage in consequence does not eliminate the claim. Both groups might be disadvantaged but the PCP may bite harder on the disabled or a group of disabled people than it does on those without disability. Whether there is a substantial disadvantage as a result of the application of a PCP in a particular case is a question of fact assessed on an objective basis and measured by comparison with what the position would be if the disabled person in question did not have a disability…..

52.It may be that the Tribunal fell into the trap of requiring a comparator who meets the requirements of being in the same or materially similar circumstances as the disabled person (except for the disability) and was therefore wrongly focused on comparing the Claimant with an individual suffering stress following a course of perceived discrimination, who requests a transfer to a different School in consequence. It was not necessary for the Claimant to satisfy the Tribunal that someone who did not have a disability but whose circumstances were otherwise the same as hers would have been treated differently since a like-for-like comparison is not required in reasonable adjustments claim. Even in a case where disabled and nondisabled employees are treated in the same way and are both subject to the same sanction when absent from work, that does not eliminate the discrimination: if the PCP bites more harshly on the disabled employee, putting that employee at a substantial disadvantage compared to the non-disabled, that is sufficient (see Griffiths v Secretary of State for Work and Pensions [2017] ICR 160 (Court of Appeal)).”

Meaning of "PCP"

22. The words "provision, criterion or practice" (PCP) are not defined in The Equality Act 2010. The Commission Code of Practice paragraph 6.10 says the phrase *"should be construed widely so as to include for example any formal or informal policy, rules, practices, arrangements or qualifications including one off decisions and actions".*

23. In ***Ishola v Transport for London [2020] EWCA Civ 112*** Lady Justice Simler considered what might amount to a PCP at para 35:

"It seems to me that 'practice' here connotes some form of continuum in the sense that it is the way in which things generally are or will be done. That does not mean it is necessary for the PCP or 'practice' to have been applied to anyone else in fact. Something may be a practice or done 'in practice' if it carries with it an indication that it will or would be done again in future if a hypothetical similar case arises. Like Kerr J, I consider that although a one-off decision or act can be a practice, it is not necessarily one." (per Simler LJ) (emphasis added).

24. The requirement to demonstrate a 'practice' does not mean that a single instance or event cannot qualify but that to do so there must be an 'element of repetition' see ***Nottingham City Transport v Harvey*** *UKEAT/0032/12JOJ.* This might be demonstrated by showing that the treatment would be repeated if the same circumstances ever arose again.

Reasonable steps

25. The question for the Tribunal is whether, objectively, the respondent has complied with its duty to make reasonable adjustments: see ***Tarbuck v Sainsbury's Supermarkets*** *[2006] IRLR 664*. Ultimately, it is the Tribunal's view of what is reasonable that matters: see ***Smith v Churchills Stairlifts plc [2006] ICR 524, at ¶46.***

26. The Tribunal is not concerned with the processes by which the employer reached its decision to make or not make particular adjustments nor with the employer's reasoning: ***Royal Bank of Scotland v Ashton [2011] ICR 632, EAT***. Carrying out an assessment or consulting an employee as to what adjustments might be required is not of itself a reasonable adjustment: ***Rider v Leeds City Council EAT 0243/11, Tarbuck v Sainsbury's Supermarkets Ltd [2006] IRLR 664, EAT.***

27. In ***Leeds Teaching Hospital NHS Trust v Foster EAT 0552/10*** the EAT held that there does not necessarily have to be a good or real prospect of an adjustment removing a disadvantage for that adjustment to be a reasonable one. It is sufficient for the Tribunal to find that there would have been a prospect of it being alleviated.

28. The uncertainty of whether a particular adjustment would be effective is relevant, but this does not mean that taking the step is not reasonable. As set out by Elias LJ in ***Griffiths v Secretary of State for Work and Pensions*** *[2017] ICR 160 at 170:*

"*So far as efficacy is concerned, it may be that it is not clear whether the step proposed will be effective or not. It may still be reasonable to take the step notwithstanding that success is not guaranteed; the uncertainty is one of the factors to weigh up when assessing the question of reasonableness*".

29. The duty thus imposed by section 20(3) necessarily requires that the disabled person be treated differently in recognition of their particular needs (see per Lady Hale at paragraph 47 ***Archibald v Fife Council [2004] UKHL 32);*** depending on the circumstances of the case, that could require the creation of a new role (see Archibald v Fife, per Lord Hope at

paragraphs 69-71, and ***Chief Constable of South Yorkshire Police v Jelic [2010] IRLR 744***, per Cox J at paragraph 45).

30. The guidance given by Lady Hale in ***Archibald v Fife Council [2004] UKHL 32*** which whilst referring to the Disability Discrimination Act 1995 is equally applicable to the Equality Act 2010.

"*.....this legislation is different from the Sex Discrimination Act 1975 and the Race Relations Act 1976. In the latter two, men and women or black and white, as the case may be, are opposite sides of the same coin. Each is to be treated in the same way. Treating men more favourably than women discriminates against women. Treating women more favourably than men discriminates against men. Pregnancy apart, the differences between the genders are generally regarded as irrelevant. The 1995 Act, however, does not regard the differences between disabled people and others as irrelevant. It does not expect each to be treated in the same way. It expects reasonable adjustments to be made to cater for the special needs of disabled people. It necessarily entails an element of more favourable treatment.*

31. The Tribunal considered the cases and law referred to them by Ms Chew, as follows: -

Griffiths v DWP [2016] IRLR 216,
Burke v College of Law: [2023] EWCA Civ 37
Paulley case v First Group Plc [2017] 1 WLR 423
Section 167 of Equality Act 2010

32. The Tribunal considered the cases and law referred to them by Mr Toms, as follows: -

Romec v Rudham (2007) All ER (D) 206
Cumbria Probation Board v Collingwood (2008) All ER (D) 04
Cosgrove v Caesar and Howie (2001) IRLR 653; Southampton City College v Randall (2006) IRLR 18.
Fareham College Corporation v Walters (2009) IRLR 991 where Cox J states,

"58.We agree with Mr Dyal that, for this reason, Mr Salter's reference to evidence as to another employee dismissed after a nine-month absence is misplaced. Such a like-for-like comparison has no place in a disability discrimination reasonable adjustments complaint, as is clear from the case of Archibald v Fife*. It was not therefore necessary for this claimant to satisfy the tribunal that someone who did not have a disability but whose circumstances were otherwise the same as hers would have been treated differently. To hold otherwise, in our judgment, would defeat the purpose of the disability discrimination legislation.*

59. In the present case the provision, criterion or practice identified by the tribunal was the respondent's refusal to permit this claimant to have a phased return to work. That meant, in this case, that it required her to return and to resume her work without a phased return. It is entirely clear from this that the comparator group is other employees of the respondent who are not disabled and who are able forthwith to attend work and to carry out the essential tasks required of them in their post. Members of that group are not liable to be dismissed on grounds of disability, whereas because of her disability the claimant could not do her job, could not comply with that criterion and was liable to dismissal."

Rationale for primary findings

33. In arriving at our primary findings, we have had careful regard to all the evidence put before us. We have considered the coherence, consistency, and general plausibility of the witness evidence that we heard and have read. We have also attached particular importance to contemporaneous documents.

34. We find that both Mr Johnson and Mr Robinson were honest and sincere when providing their account of the facts and did their best to assist the Tribunal.

Findings of fact

35. The Tribunal refer to the relevant pages of the bundle in square brackets below.

36. Set out below are the findings of fact, on the balance of probabilities. The Tribunal considered relevant and necessary to determine the issues we were required to decide. We do not seek to set out each detail provided to the Tribunal, nor make findings on every matter in dispute between the parties. The Tribunal has, however, considered all the evidence provided and has borne it all in mind.

Factual Background

37. The claimant commenced working as a self-employed taxi driver in driver in April 2014 and continues to work as a taxi driver but working reduced hours due to his disability.

38. Following a road traffic accident on 6 May 2019, the claimant has been diagnosed with Spondylosis and Schmorl's Nodes and a degenerative disc disease. The respondent accepts that the claimant is disabled for the purposes of the Equality Act on 25 April 2023.

The Respondent's duties

39. The respondent is responsible for the licensing and regulation of taxis (otherwise known as Hackney carriages, black cabs, and cabs) and private hire vehicles ("PHV") (otherwise known as minicabs executive cars, chauffeur services, limousines and some school and day centre transport services) in London.

40. The Tribunal note paragraph 28 of the claimant's witness statement which sets out other licensing authorities outside of London have a policy of allowing a mixture of wheelchair accessible and non-wheelchair accessible taxis. The Tribunal have been provided with no further evidence about this. The Tribunal do not find the comparison of licensing for London with other licensing authorities outside of London helpful as the respondent operates under a different statutory framework than other licensing authorities in England and Wales.

41. Specifically, the respondent is a functional body of the Greater London Authority, and the Mayor of London is the Chair of the respondent Board. Under the Greater London Act 1999 ("GLAA"), the respondent has to exercise its powers and functions for the purpose of developing and implementing policies for the promotion and encouragement of safe, integrated, efficient and economic transport facilities and services to, from and within Greater London (section 141 and section 154 of the GLAA) and has a duty to help the Mayor of London complete his duties including delivering the Mayor's Transport Strategy which includes:

    (a) Ensuring that London has a safe, secure, accessible, world-class taxi and private hire service with opportunity for all providers to flourish.

    (b) Enhancing London's streets and public transport network so as to enable all Londoners, including disabled and older people, to travel spontaneously and independently, making the transport system navigable and accessible to all.

42. The respondent's powers of granting licenses are conferred to it by section 6 of the Metropolitan Public Carriages Act 1869 and section 7 of the London Cab Order 1934. We do not set out the provisions here but note that this legislation enables the respondent to set the terms and conditions on which licences are granted and revoked in London and this includes that the vehicle in respect of which the application is made conforms to the Conditions of Fitness ("CF") laid down by the respondent. The respondent therefore sets their own policy and the requirements that need to be met by taxi drivers and their vehicles in London before they can be issued a licence. They do so with regard to their obligations set out in paragraph 32 above.

The difference between taxis and PHVs

43. The Tribunal have been provided a list of the key differences between taxis and PHV's as an attachment to Mr Robinson's statement and the differences are not set out in detail here. This document was not disputed by the claimant. The Tribunal note the Private Hire (London) Act 1998 sets out provisions for the licensing of operators of PHVs and their vehicles. This Act at section 7(2)(a)(iii) provides that the respondent must be satisfied that the vehicle for which a license is sought by a PHV operator, is not of such design and appearance as would lead any person to believe that the vehicle is a taxi. The Tribunal find that legislation therefore sets out the requirement for PHVs and taxis to be distinct so that taxis are easily identifiable by the public.

44. In addition to the appearance of the vehicles, the Tribunal find that the difference between taxis and PHV's include that a person can hail a taxi from the street or attend a taxi rank to hire them whereas PHV's need to be prebooked through an operator or on an online application. Taxi drivers can also access most bus lanes in London and several dedicated rapid charging points across London. Taxis are exempt from the London's congestion charging scheme and the ultra-low emission scheme. They can also display advertising to the exterior of their vehicle. These benefits are not available to the drivers of PHVs.

45. Taxis and PHVs are subject to different systems of regulation. The regulations which apply to taxis are more stringent than for PHVs and the process for obtaining a taxi licence is more rigorous than obtaining a PHV licence. All taxis licensed by the respondent are designated as wheelchair accessible and listed on their website as being so complying with the requirements of section 167 Equality Act 2010. All taxis have been wheelchair accessible since 2000.

46. The licensing application for a person who wishes to obtain a taxi licence assesses whether an applicant is 'fit and proper' to be licensed and is physically fit to drive members of the public and will not put them at unnecessary risk. The Tribunal note the Taxi and PHV driver Policy [126-235] sets out further information on the process for obtaining a licence but the Tribunal do not refer to this here as it is not relevant to the issues save for that the Tribunal note that each taxi driver must undertake the Knowledge of London which requires a geographical recall of 320 routes plus all the roads and landmarks within a quarter mile radius of the start and end points of each route. Paragraph 4.29 [211-212] sets out information on the exemption from having to assist wheelchair users under Section 165 Equality Act 2010.

47. The respondent also requires the vehicle that the taxi driver uses to meet certain criteria before the respondent will grant the user a licence. The criteria are set out in the Conditions of Fitness [55-68] ("CF document"). This is comprehensive document setting out the specifications that the taxi vehicle must comply with to obtain a licence from the respondent

and extends to 14 pages. We do not set out each requirement here but set out below the requirements discussed during the hearing. We have also reviewed and considered paragraph 67 of Mr Robinson's statement which explains some of the key requirements.

48. The CF document states at the outset,

"The Licensing Authority retains the general discretion to grant exemptions in other circumstances where it considers it reasonable to do so."

49. The CF document includes that all taxi vehicles must: -

(a) Be fully equipped to approved standards in order that wheelchair passengers may be carried (para 3.2 and 15.1),
(b) Have an approved card payment system (taximeter) in the passenger compartment (para 3.3 and 24),
(c) Be capable of being turned so as to proceed in the opposite direction without reversing between two vertical parallel planes not more than 8.535 metres apart. This is known as the turning circle (para 7.1),
(d) Have separate lighting controls in the passenger compartment within reach of disabled passengers (para 10.1),
(e) The body of the taxi must have a partially glazed partition separating the passenger and the driver and the overall length must not exceed 5 metres which is essential for determining taxi rank sizes (paragraph 14)
(f) Have "facilities for the disabled" which includes approved anchorages, heights and opening of the doorway, grab handles at the door entrances to assist elderly and the disabled in a contrasting colour, distance between the roof and the floor must be 1.3 metres, a ramp for loading of a wheelchair (para 15),
(g) Have dimensions and spacing of seats in the passenger compartment to assist the elderly and disabled, have seatbelts, head restraints, colour contrasting sight patches for passenger seats and an induction loop system (para 16),
(h) Include a partition between the driver's compartment and the passenger compartment with a facility for making payment for the driver (para 17),
(i) Have flooring in the passenger compartment, which is slip resistant material, can be easily cleaned, and does not impede the movement of wheelchairs and must contrast in colour (para 22),
(j) Have a taxi sign visible day and night when the taxi is available for hire (para 25),
(k) Ensure any advertisements placed on the exterior and interior of the taxi are suitable (para 29)

50. Applications for new taxi vehicles must be made in writing to the respondent and must be accompanied by dimensioned drawings or blueprints, together with detailed specifications. Any new vehicle requires inspection and testing before this is approved and an inspection manual is at [69-125]. The CF document states that at paragraph 5.2 that new taxis offered for this type of approval must be so constructed as to facilitate the carriage of disabled persons and must be capable as a minimum of accommodating a disabled person in a DfT reference wheelchair in the passenger compartment.

<u>Taxi vehicle costs and availability</u>

51. The Taxi and Private Hire Vehicle Licensing Best Practice Guidance [242] when discussing the specification of vehicle types that may be licensed by the respondent sets out at paragraphs 27 and 28 that best practice is for local licensing authorities to adopt the principle

of specifying as many different types of vehicle as possible, leaving it open to the taxi and PHV trades to put forward vehicles of their own choice which can be shown to meet those criteria. It is suggested that local licensing authorities should give very careful consideration to a policy which automatically rules out particular types of vehicles or prescribes only one type or a small number of types of vehicles. This gives the example that authorities should be particularly cautious about specifying only purpose-built taxis, with the strict constraint on supply that that implies.

52. This guidance covers both taxis and PHVs and refers to local licensing authorities that are outside of London and do not have the same statutory framework as the respondent.

53. Taxi vehicles are required to meet air quality measures and all new licensed taxis must be zero emissions capable. Existing diesel taxis that were already licensed in London can continue to be licensed until they are 12 years old.

54. To help drivers make the switch to cleaner vehicles, financial support is available through the respondent for a grant of up to £10,000 to the owners of older, more polluting vehicles to retire them from the London fleet. The Tribunal find that this grant has been given to the respondent by the Government as part of the delicensing scheme. There is also a grant of £7,500 to purchase a new ZEC taxi. The Tribunal find that this grant has been given to the respondent by the Office for Zero Emissions Vehicles and linked to Mayor of London's commitment to improving air quality. The Tribunal find that the respondent can only use these funds for furthering the aims for which they were given.

55. The respondent accepts that the requirements for vehicles to be licenced as taxis in London are very comprehensive and include a high level of specifications in terms of accessibility for passengers with mobility and other impairments and that accordingly there are only a small number of vehicle models capable of being licensed as taxis.

56. Save for the vehicles that the respondent has already approved, the respondent has never agreed to licence a different vehicle that requires significant modifications to comply with CF document. The Tribunal have read paragraph 82 of Mr Robinson's statement where he sets out examples where the respondent has exercised their discretion to exempt vehicles from elements of the CF document. The Tribunal find that the examples given do not remove the requirement for the vehicle to be wheelchair accessible or have a reduced turning circle as set out in the CF doesn't.

57. The claimant set out in correspondence to the respondent the availability and cost of taxi vehicles on each occasion he asked them to license a different vehicle. This was not disputed by the respondent and are as follows: -

    (a) 23 April 2020 – LEVC electric taxi costs in the region of £70,0000 including finance payments.
    (b) 27 June 2021 – The Respondent only allows two makes of taxis to be licensed from new. The Nissan Dynamo electric taxi costs £48,995 plus VAT (£959 per month plus VAT) and the LEVC model cost £83,000 after finance an £800 per month with a balloon payment exceeding £15,000 at the end of the lease hire agreement.
    (c) 11 August 2021- The Nissan Dynamo (which is the significantly cheaper version of the only two taxis for which TfL licence) costs £1,068.80 per month or £246.60 is the weekly equivalent. The weekly rental costs from a fleet garage for a Nissan Dynamo wheelchair accessible taxi is approximately £300 per week and £350 per week for a LEVC wheelchair accessible taxi.

58. The respondent accepts that at there is currently only one new taxi that can be purchased the LEVC which costs at least £100,000. This is because TX4 diesel taxis are being phased out and the company that manufacture Nissan Dynamos have gone out of business in November 2022. The respondent is not a manufacturer of taxi vehicles and does not have any control over the manufacturers of taxi vehicles.

59. Both parties agree that there are different ways taxi vehicles can be licenced as follows: -

    (a) Purchasing a taxi vehicle outright or through a hire purchase scheme and applying for a licence
    (b) Renting a taxi that has already been licensed from a taxi fleet owner also known as a taxi 'proprietor'. This can be on either on a short- or long-term basis; and
    (c) Sharing access to a licensed taxi with one or more other licensed taxi drivers.

60. The claimant accepted that he has not explored option (c) of sharing a vehicle as he does not know of any taxi drivers who would be willing to and who live near him so it would not be practicable to do so.

61. On 28 October 2021, the claimant rented a diesel TX4 taxi at a copy of £240 per week. The rental agreement is at [373].

62. On 21 March 2022, the claimant hired a Zero Emission TX4 taxi at £340 per week. The rental agreement is at [432]. The claimant found this electric taxi had features that helped with his disability, including adjustable lumbar support, heated driver seat and more leg room. These were not features available in the diesel TX4 taxi.

Claimant's relationship with the respondent

63. Without a licence from the respondent, the claimant cannot lawfully drive a taxi in London. The claimant is required to engage with any compliance inspections or regulatory notices issued by the respondent.

64. The respondent accepted on the first day of the hearing that they are a qualifications body for the purposes of Section 54 of Equality Act 2010. Prior to this they denied that this was the case. Section 53 of the Equality Act 2010 makes it unlawful for qualifications bodies to discriminate against, harass, or victimise a person when conferring relevant equalisations, (which includes renewing or extending a relevant qualification). It provides that applying a competent standard to a disabled person is not disability discrimination, provided the application of the standard is justified. It also imposes a duty on qualifications bodies to make reasonable adjustments for disabled people. The respondent does not have a disability policy for London taxi drivers.

65. The claimant is self-employed taxi driver and is not employed by the respondent. He accepted that he deducted his taxi rental costs from his turnover profit as a business expense. He also claims for acupuncture twice a week as a business expense.

66. The respondent has no control over the dates, time, location, or duration that the claimant works and is under no obligation to provide the claimant with work. The claimant can choose to work at a taxi rank, by a mobile application or by being hailed on the streets. The claimant can choose not to work at all. The respondent has no knowledge of when the claimant works or what they earn.

67. The claimant resides in Bishop's Stortford which is approximately 35 miles outside of London and it takes him approximately 1 hour to drive to London. His local council is East Hertfordshire Council and they do not require that vehicles are wheelchair accessible.

68. The claimant has not provided any financial information to the Tribunal to evidence the hours that he has worked since he was able to do so from October 2021. He could not recall his earnings when giving oral evidence. He can only work approximately 20 hours a week excluding travel times and breaks due to his disability.

69. The claimant accepts that the respondent changing its policy would not result in him being able to work more hours, but he would get a financial benefit if the respondent agreed for him to license a cheaper vehicle. He was only offered a limited opportunity to discuss his applications with the respondent in an early email response from the Applications team on 20 April 2020 [302].

Disability

70. The respondent accepted that the claimant is disabled for the purposes of the Equality Act on 25 April 2023.

71. The claimant was involved in a road traffic accident on 6 May 2019. The accident caused injuries to his knees, right hip and lumbar spine and he was subsequently diagnosed with Spondylosis and Schmorl's Nodes (i.e. Arthritis in the discs of his spine).

72. The respondent does not dispute that the claimant's disability affects him in the following ways: -
    (a) He is unable to lift heavy objects e.g. lift lawnmower, wet washing.
    (b) He is unable to stand over in the forward press position without lumber pain.
    (c) Bending and twisting can lead to muscle setbacks (spasms and a twisted body).
    (d) He can sit comfortably for up to 45 minutes and can drive for up to 60 minutes without a stretch / rest and this reduces to 30 minutes after 5 hours of driving.
    (e) He cannot drive until later in the day due to the severe pain he experiences when he wakes up. He finds that acupuncture assists him in remaining mobile.
    (f) The claimant cannot drive full-time hours due to his disability.

73. On 25 March 2020 [298,299], Dr Mayo, GP at South Street Surgery, wrote to the respondent's Licensing Team and confirmed that claimant suffered from Spondylosis to his lower back which would not improve but that this would not preclude him from performing any necessary manoeuvres in line with DVLA requirements when driving or that that would affect his alertness or ability to drive. She stated, *"This has caused low back pain and stiffening which has limited his ability to lift heavy objects [requiring a permanent wheelchair exemption) and meaning that he needs to drive for short periods and then stop to stretch and rest his back, i.e. not sitting at the wheel for long periods of time without a short break."*

74. On 27 July 2020 the claimant saw Dr Ahmed, consultant orthopaedic surgeon. His letter [328], states that the claimant was suffering from severe back pain and agonising pain at 7/10 and he was not improving. He was referred for a bilateral medial branch block in August 2020 and the injections took place in April 2021. He could not drive a taxi following the injections. On 13 August 2021, the claimant had Radiofrequency Ablation.

75. On 1 September 2021, the claimant was assessed by the respondent's Occupational Health agent, Dr Ahmad, and the report outcome states [349],

"In view of the above, before he could be considered fit and safe for vocational driving it is suggested that he undergoes a practical driving assessment to meet DVLA group 2 medical standards for vocational driving."

76. On 9 September 2021, the respondent wrote to the claimant sending Dr Ahmad's report and requesting further medical information about his fitness to drive. The respondent requested that the claimant undertake a practical disability driving assessment to meet DVLA group 2 medical standards for vocational driving. The claimant attended and passed the driving assessment on 28 October 2021 [368-372].

77. The claimant returned to work on a part-time basis as a taxi driver on 29 October 2021, working approximately 20 hours per week. He continues to have acupuncture and remains on medication to assist with his back problems.

78. The claimant applied to the DWP to see if he would qualify for support under the Access to Work ("ATW") scheme. His application is at [386] and he set out due to the costs of taxi hire and the fact that he could only work part time hours due to his disability, his earnings were not sufficient to make a living.

79. On 9 December 2021, DWP refused the claimant's application for taxi rental costs [392] as this did not meet their criteria as the wheelchair taxi requested is standard equipment for his job.

80. The claimant appealed the DWP's decision [402] and suggested that they contact TFL to discuss reasonable adjustments. DWP refused his appeal [414] and made the point that his disability does not prevent him driving a vehicle which meets either the Department for Transport standards or Transport for London standards. There is further correspondence in the bundle between the claimant and DWP which the Tribunal have not referred to as this was not raised or referred to at the hearing.

Chronology of events

81. Prior to issuing the claimant a taxi licence in 2014, the respondent required the claimant to pass a Wheelchair Test Assessment which included training on how to lower the ramp of the black cab safely, load the wheelchair user passenger safely and attach the separate carabiners and safety belts to ensure the wheelchair user passenger was secured safely in the vehicle passenger compartment.

82. Following receipt of a taxi licence in April 2014, the claimant worked as a full-time taxi driver until he was involved in a road traffic accident on 6 May 2019. Between 2014 and 2019, the claimant leased a diesel TX4 vehicle for his black cab which complied with CF document [55].

83. On 25 July 2019, the claimant applied for an exemption to providing physical assistance to passengers because of his own disability (as set out in paragraph 62 -64 above), which was supported by his GP.

84. On 23 August 2019 [297], the claimant was granted a wheelchair exemption on his taxi licence by the respondent, until 23 April 2020 which meant that he was excused from

physically assisting passengers who were wheelchair users into his taxi as he could not do so due to his disability. The certificate is at [306]. This exemption has subsequently been extended by the respondent on 21 April 2020 until 23 April 2023 {certificate at 303] and since extended to 2026 so that the claimant remains exempt.

85. Mr Robinson's evidence was that approximately 200 taxi drivers have wheelchair exemptions in London.

86. There is a dispute of fact between the claimant and the respondent as to whether the claimant could safely pick up a passenger in a wheelchair and this is discussed further below. The Tribunal find that the claimant would need to display his wheelchair exemption certificate on his vehicle and there will be occasions where the wheelchair user would need the claimant to explain to them that he had a wheelchair exemption certificate on medical grounds which prevented him from assisting the wheelchair user in the course of working as a licensed driver.

87. On 20 April 2020 the claimant emailed the respondent chasing for the outcome of his request for a renewal of his licence application. The respondent set out by letter that he could contact the vehicle licensing team and driver and operator licensing team by email or by telephone. The claimant has provided the Tribunal with correspondence with the respondent. The Tribunal has been provided no evidence that the claimant spoke to the respondent on the telephone.

88. On 21 April 2020 [301], the claimant put the respondent on notice that he intended to apply to seek their agreement to licence a Toyota Prius as a taxi vehicle. This was a fully electric saloon car or Toyota Prius, and this was not compliant with the CF document as this was not wheelchair accessible and did not have the appropriate turning circle. He provided his telephone number if the respondent wished to discuss the matter.

89. In oral evidence, the claimant accepted that an exemption certificate did not preclude his (the licence holder's) obligation to ensure their taxi complies with accessibility regulations or remove the responsibility to carry a wheelchair user under legislation. However the Tribunal find that his correspondence on 21 April, 23 April 2020 and 27 June 2021 does not reflect that the claimant understood this to be the case.

90. On 21 April 2020 he wrote,

"a wheelchair exemption means that I can never use the wheelchair function of a taxi, so I have no need to drive a wheelchair accessible vehicle, nor can I afford the added expense of the wheelchair element."

91. Further on 23 April 2020 he wrote,

"Thank you for the renewal of my taxi driver licence which includes an exemption from assisting wheelchair users which releases me from some of the duties set out in s.165 of the Equality Act (providing assistance to wheelchair users)" but then later states, "Given the fact that I now have no need to drive a wheelchair accessible vehicle because of my disability and wheelchair exemption…"

92. Further on 27 June 2021 he wrote,

"I am once again asking that you allow me to licence a hackney carriage vehicle that does not have the wheelchair facility…….the material differences being that the NV-200 electric

van doesn't have the wheelchair functions (which I could never use due to my disability) and it doesn't have a turning circle."

First Application

93. On 23 April 2020 [314] the claimant asked the respondent's permission to license a Nissan Leaf 40kWh Tekna Auto as a taxi seeking an exemption from the respondent's CF document. He said he "could not work for as many hours as an able-bodied taxi driver if sitting at the wheel for long periods causes a physical problem" and that he was "commercially disadvantaged to that of an able-bodied person". The vehicle he proposed cost £25,995 as opposed to the LEVC electric taxi costing £70,000.

94. He provided the respondent with a link to the vehicle specifications bit did not provide a blueprint. He set out that the vehicle would be affixed with yellow taxi "for hire" signage in the relevant places, a calibrated TfL taxi meter and printer inside of the cab, a fix credit card payment machine, and all signage (including identifiers) will be on display as what is on display in other taxi models. These are the only modifications that he set out would be made.

95. The vehicle proposed by the claimant was a fully electric saloon car. The claimant accepted that this was not compliant with the CF document as this was not wheelchair accessible (did not have interior dimensions and safety features needed to ensure wheelchair users could access the vehicle), did not have the appropriate turning circle, and did not have grab rails, induction loop or a large enough passenger compartment inside the vehicle. The claimant did not specify in his letter that he intended to modify the vehicle he proposed to comply with these requirements in the CF document.

96. In this letter the claimant stated that a refusal or failure to respond to his request within 28 days would trigger a disability discrimination claim. The claimant said he was available to discuss this request by phone and gave his mobile number.

97. The claimant chased the respondent for a response to his letter of 23 April 2020 on 11 May 2020 [313].

98. The respondent replied on 15 May 2020 [312] acknowledging the claimant's correspondence and providing a link to the CF document explaining that if the claimant considered the vehicle, he proposed would satisfy the CF document that he would speak to the Vehicle Policy team. The respondent explained that it is common for a manufacturer to go through the process of getting a new vehicle approved, rather than an individual licensee. In addition the respondent stated that due to the Covid-19 pandemic and the need to meet social distancing guidelines, they had limited capacity available to license a taxi or private hire vehicle that is new to licensing and that due to the limited amount of resources available to process new applications, the respondent requested that vehicles are only put forward for licensing in exceptional circumstances, where the applicant will be carrying out critical work and is able to provide evidence that this is the case. They stated that they consider each application on a case-by-case basis.

99. The claimant sent further emails about his request of 23 April 2020 and wrote to the respondent on 15 May, 21 May, 27 May, 29 May, 10 June, and 15 June 2020.

100. In his email of 21 May 2020 [309], he stated, *"I feel absolutely awful asking to licence a saloon car as a London hackney carriage, as this will obviously collapse the conditions of fitness policy."*

101. In his email of 27 May 2020 [308], the claimant wrote that the respondent was under a duty to make reasonable adjustments.

102. In his email of 29 May 2020 [326], the claimant threatened a disability discrimination claim. In his email of 15 June 2020 [324], the claimant wrote that, "*I am acutely aware this vehicle does not meet TfL's conditions of fitness policy."*

103. The respondent wrote a detailed letter to the claimant on 15 June 2020 [322] stating that they would not grant permission to use a Nissan Leaf as a hackney carriage as it was their policy that, "*all taxis in London are designated taxis i.e. they comply with necessary accessibility requirements to be placed on the list of wheelchair accessible vehicles*" and *"have to meet the specific accessibility requirements set out in the Conditions of Fitness"* and they attached a link to the document. The saloon car that the claimant wished to license did not meet the Conditions of Fitness and the respondent did not consider it appropriate to waive these requirements.

104. The respondent referred to section 165 of the Equality Act 2020 which, *"requires the drivers of those vehicles to carry passengers in wheelchairs, provide assistance to those passengers and prohibits them from charging extra."* The respondent explained that the claimant's wheelchair exemption did not "*prevent passengers who require mobility assistance from benefiting from the accessibility features provided by a London taxi – these include, a large interior passenger compartment, a doorway not less than 1.2 metres high, visible grab handles, intermediate steps and induction loops. Additionally, passengers in wheelchairs may be able to stow their wheelchair into the vehicle and transfer to a seat or may be accompanied by someone that can provide them with the required assistance."*

105. The Tribunal accept the respondent's position that this letter concentrated its response on wheelchair accessibility as this is what the claimant raised in his application of 23 April 2020 but also highlighted other issues with the vehicle that did not comply with the CF document as set out in paragraph 95 above and referred to the CF document generally.

106. The Tribunal find that the respondent's response did not specifically refer to the fact that the vehicle proposed by the claimant did not have an appropriate turning circle or that the external appearance of the vehicle did not look like other taxis, however the claimant was referred to the CF document. He was also provided a link to the CF document and told by the respondent that taxis needed to comply with the CF document to be licensed in the respondent's email of 15 May 2020. The Tribunal find that the appropriate turning circle requirements are set out in the CF document at paragraph 7, the vehicle body and length are set out at paragraph 14 and interior dimensions and door dimensions are at paragraph 15.

107. On 16 June 2020 [320] the claimant wrote to Keith Prince, London Assembly member and copied in Boris Johnson and Keir Starmer into his correspondence. He also wrote to the respondent [321] to reconsider their decision referring to their policy that set out the respondent has general discretion to exempt vehicles in exceptional circumstances and the claimant referred to the Equality Act.

108. On 16 June 2020 [327], the respondent replied stating that they had considered all the points the claimant raised and had nothing further to add to the substantive response already provided.

Second application

109. On 27 June 2021 [334,335], the claimant wrote to the respondent explaining that he is not currently driving a taxi but that he was seeking a reasonable adjustment for permission to use a Nissan NV-200 electric van as a taxi which he accepted did not have a wheelchair facility or appropriate turning circle but it was a cheaper vehicle (£22,999 to purchase or £250 per month plus VAT whereas the Nissan Dynamo electric taxi cost £48,995 or £959 per month plus VAT). Further the Nissan NV-200 had the same specification as the Nissan Dynamo which the respondent approved for licensing regarding emissions. He explained his request was based on the costs and his lack of ability to work the amount of time an able-bodied person would work to pay for the costs of purchasing or hiring a vehicle. He requested a response within 10 days.

110. The claimant provided a link to the taxi specification but did not provide any blueprints. He did not specify how he intended to adapt this vehicle to meet the requirements in the CF document. It is unclear to the Tribunal what modifications the claimant intended to make when making his application. The Tribunal find that at the very least he intended to modify the vehicle in the same way as he suggested in his email of 23 April 2020 at paragraph 85 above.

111. The claimant accepted in oral evidence that the Nissan NV-200 electric van was an MVP and that it did not have internal features as set out in the CF document such as grab rails, induction loop or a large enough passenger compartment inside the vehicle.

112. The Tribunal has been provided a picture of the Nissan NV 200 and it was accepted by the respondent that externally it looks like the Nissan Dynamo which is approved by the respondent. The respondent accepts that the Nissan NV-200 was the base vehicle for the Nissan Dynamo which was then substantially modified by a vehicle manufacturer to meet the requirements in the CF document including making the vehicle being wheelchair accessible.

113. The Tribunal accept Mr Robinson's evidence that the NV 200 does not look like a taxi from the interior and substantial modifications would have to be carried out to ensure that it has the safety features of a taxi as set out in the CF document. The Tribunal note Mr Robinson's evidence at paragraph 90 of his statement where he states that the NV-200 can be licensed as a PHV vehicle in London.

114. On 5 July 2021 [330] the claimant chased the respondent for a response to his application on 27 June 2021. Mr Maskell of the respondent wrote to Mr Robinson and Ms Chapman on 5 July 2021 explaining that the claimant now wished to licence a Nissan NV-200 which did not meet the CF document stating that he did not think there is anything further to add to the substantive response provided to the claimant the previous year. Mr Robinson wrote on 6 July 2021 that the previous response was still relevant despite it being a different vehicle. The Tribunal do not find that this exchange of correspondence provides evidence that the respondent did not consider the claimant's second application.

115. On 9 July 2021 [333], Neil Hassett of the respondent, refused the claimant's request to license an electric NV200. The Tribunal find this letter sets out the same response that the respondent gave the claimant on 15 June 2020 as the issues with both vehicles proposed by the claimant were the same, namely they failed to comply with the CF document as both vehicles were not wheelchair accessible and failed to meet the specific accessibility

requirements set out in the CF document. The respondent sent the CF document to the claimant again. The respondent stated,

"The vehicle that you wish to licence as a London taxi will not meet the Conditions of Fitness as described in this email and our previous emails; and we do not consider it appropriate to waive these requirements. Our decision to maintain a consistent and fair accessibility policy has been considered carefully so that it remains consistent with relevant provisions of the Equality Act 2010 and our policy to ensure that all licensed taxi vehicles remain accessible to all classes of Londoners."

116. The Tribunal do not find that the letter of 15 June 2020 and 9 July 2021 were near identical translates into the respondent not considering the claimant's application. The Tribunal accept Mr Robinson's evidence that each application was considered by the respondent and across the different teams (vehicle licensing team and operator licensing team) and that both vehicles were not licensed for the same reasons.

117. On 9 July 2021, the claimant challenged Mr Hassett's response and stated that as they were not making a reasonable adjustment for a disabled person, he intended to refer this to his union, the RMT.

118. On 12 July 2021 [339], the claimant wrote to the respondent copying in a member of the RMT asking the respondent what reasonable adjustments they were going to make to help him get back to work as a taxi driver given that that he could only drive part of the time an able-bodied person could. He asked what difference it would make to disabled Londoners if the respondent licenced one taxi as a non-wheelchair accessible. He set out that if he was at a taxi rank the disabled passenger could get into the taxi behind and that an unhired taxi passing along a street is not legally bound to stop when hailed as it is not legally plying for hire when it is in motion and therefore a taxi driver does not commit an offence if they fail to stop for a disabled person. He therefore asked the respondent to explain what real impact there would be to disabled travellers if they licensed him a licensing an NV200 to him. The Tribunal have not seen a response to this letter in the bundle.

119. On 18 July 2021 [337], the claimant emailed the respondent again asking them to reconsider the decision and to consider the impact of the policy on disabled drivers emphasising section 28 of the Department of Transport Guidance for local authorities which refers to purpose-built taxis. The Tribunal have not seen a response to this letter in the bundle.

120. The Tribunal has seen correspondence on various dates commencing in July 2021 which we do not set out here where the claimant has asked the respondent for information under the Data Subject Access Request, but we were not referred to this correspondence and it is not relevant to the issues before us.

Third application

121. On 11 August 2021 [346/7/8] and 12 August 2021 [345/6], the claimant emailed the respondent to request permission again to drive a Nissan E-Nv200 Evalia Electric Estate YC66TNO as a taxi. He stated that, *"It is fully electric (thus fitting with the Mayor of London clear air strategy) and the same shape as the Nissan Dynamo, however, the cost is £390 per month or £97.50 is roughly the weekly equivalent. In contrast, the Nissan Dynamo (which is the significantly cheaper version of the only two taxis for which TfL licence) costs £1068.80 per month or £246.60 is the weekly equivalent".*

122. He provided a link to the vehicle but did not provide blueprint specifications. He did not set out what alterations he proposed to make to comply with the CF document or how this did not comply with the CF document. The claimant accepted in oral evidence that this vehicle had the same limitations and did not comply with the CF document in the same way as his previous request on 27 June 2021.

123. The Tribunal find that each of the requests made by claimant for the respondent to licence different vehicles related to vehicles that did not fit with the requirements in the CF document as the vehicles were not wheelchair accessible, did not have the appropriate turning circle, did not have the right dimensions for the passenger compartment or partition, did not have grab rails, an induction loop, taxi signage, taxi meter or credit card machine. This is not disputed by the claimant, and he accepted that these were core requirements.

124. The claimant accepted that he has been able to drive an electric vehicle despite his disability and his requests to use alternate vehicles were due to financial reasons alone due to the fact that he cannot work full time hours due to his disability and were not for physical reasons relating to his disability.

125. On 8 January 2022 the claimant contacted the respondent seeking what prescribed notice of exemption he had to exhibit on the taxi and in what prescribed manner.

126. On 18 January 2022, the claimant wrote to Keith Price [426] asking for a meeting with him to discuss the respondent not complying with the regulators code, copying in the respondent.

127. There is a dispute of fact between the parties relating to the costs of each modification required to the vehicles proposed by the claimant to comply with the CF document including those referred to by the claimant in his email dated 23 April 2020 (set out at paragraph 85 above) and how easy it would be to carry out these modifications. This is discussed further below.

128. The claimant has not provided the Tribunal with evidence as to a list of modifications or the costs for each modification that he proposed to carry out on the NV 200. In oral evidence he accepted it would cost around £12,000 to reduce the turning circle of the NV 200 to comply with the turning circle requirements. He accepted that the NV200 would require a taxi light and taximeter to be fitted but did not set out the costs of this. He was of the view these costs would not be as significant as they were more typical of taxi modifications generally provided to PHVs and taxis elsewhere.

129. It was not in dispute that any modifications to a new proposed vehicle would require a bespoke inspection by the respondent to check the work was carried out to industry standards and was safe for the public.

Conclusion and Findings

130. The following conclusions and analysis are based on the findings which have been reached above by the Tribunal and the applicable law. Those findings will not in every conclusion below be cross-referenced unless the Tribunal considered it necessary to do so for emphasis or otherwise. We set out our responses to the List of Issues as follows:

List of issues

Disability (section 6 Equality Act 2010)

1. **The respondent has conceded that claimant is disabled within the meaning of Section 6 Equality Act 2010 by email dated 5 April 2023 [54].**

131. The respondent accepts that the claimant has a disability within the meaning of s.6(1) of the Equality Act 2010, namely Spondylosis and Schmorl's Nodes and degenerative disc disease. The respondent has raised no issue that they did not have knowledge of the claimant's disability at the material times relevant to this claim.

Qualification body

2. **The respondent conceded at the outset of the hearing on 30 May 2023 that they are a qualification body within the meaning of Section 54 Equality Act 2010.**

132. Section 53 of the Equality Act 2010 imposes a duty on qualifications bodies to make reasonable adjustments for disabled people. The respondent accepted that they do not have a disability policy for London taxi drivers.

Reasonable adjustments (Sections 20, 21 and 53(6) Equality Act 2010)

3. **The respondent accepts that they have the provision, criteria, or practice ("PCP") of requiring all taxi drivers in London to have vehicle that is wheelchair accessible.**

133. As a matter of fact this PCP was applied in respect of the claimant.

4. **Is the relevant non-disabled comparator:-**

   (a) as the claimant asserts, non-disabled taxi drivers who are not limited in their driving hours of work due to their disability and, consequently, who can afford to pay for a taxi with wheelchair access, or

   (b) as the respondent asserts, non-disabled taxi drivers who can work the same comparable hours as the claimant for reasons other than disability.

134. As set out in paragraphs 62-67, the Tribunal find that the claimant cannot work full time hours, namely more than approximately 20 hours a week due to his condition of Spondylosis and Schmorl's Nodes and degenerative disc disease. It was not disputed by the respondent that the claimant could not sit and therefore drive for more than 45 minutes without a break and that he cannot work until later in the day due to the pain he suffers, and this is what limits the number of hours that he can work. Further the respondent accepted that common sense dictates that working less hours means earning less money.

135. Ms Crew's submissions were that when identifying the appropriate comparator that there is an inconsistency in the law as paragraph 16 of the ECHR code does not state comparators need to be identified in reasonable adjustment claims but she referred the Tribunal to paragraphs 47 to 53 of the *Sheikholeslami* case in which the EAT helpfully set out what the Tribunal should consider when identifying the appropriate comparator.

136. Ms Crew submits that the Tribunal need to look at a comparator who is not materially in different circumstances to the claimant and therefore the appropriate group is non-disabled taxi drivers who can work the same comparable hours as the claimant for reasons other than disability. Ms Crew submits that the disadvantage would then be the same for this group and the claimant, namely by working reduced hours this means that their income is reduced and their ability to afford a vehicle from their earnings which is approved by the respondent would

be affected. Ms Crew in her submissions argues that the claimant is therefore not at a substantial disadvantage due to his disability in comparison with taxi drivers who are not disabled and work the same comparable hours as he does.

137. Mr Toms also refers the Tribunal to *Sheikholeslami* case but states that the correct comparison is with non-disabled taxi drivers who would not be subject to any limitation on their working hours due to their health. Mr Toms states that to accept the respondent's suggested comparator would do precisely what Mrs Justice Simler in the *Sheikholeslami* case stated was not necessary, namely, seeking to identify a comparator or comparator group whose circumstances are the same or nearly the same to those of the disabled person's circumstances.

138. Mr Toms submits that applying the respondent's comparator would be limiting the group to a section on non-disabled workers who are of an unknown quantity and for whom the respondent has not provided any evidence. Further it does not limit the comparison to what the position would have been if the disabled person did not have the disability.

139. Applying the approach of Mrs Justice Simler, Mr Toms submits the correct comparison is between the claimant and non-disabled persons more generally who would not be subject to any limitation on their working hours due to their health. Mr Tom submits that his is the correct approach and refers the Tribunal to the paragraphs 58 and 59 of Judgement of Cox J in Fareham College Corporation v Walters (2009) IRLR 991 which is set out above.

140. The Tribunal having considered both Counsel's submissions and case law referred to above, prefer Mr Tom's submissions. The Tribunal in particular note the reasoning in paragraph 52 of the *Sheikholeslami case* which sets out that the Tribunal can fall into the trap of requiring a comparator who meets the requirements of being in the same or materially similar circumstances as the disabled person (except for the disability). The Tribunal are reminded that the comparison exercise is required by it to test whether the PCP has the effect of disadvantaging the disabled person more than trivially in comparison with others who do not have any disability.

141. Here the claimant by virtue of his disability is only able to work reduced hours and the Tribunal have found this as a matter of fact. There has been no evidence put before the Tribunal that there is an alternative (non-disability related) reason for the claimant being only able to work part time hours and this is not an issue that has been disputed by the respondent. The claimant compares himself with fellow non-disabled taxi drivers who can work as many hours as they wish and are not therefore limited in what they can earn.

142. The Tribunal conclude that the correct comparators would be non-disabled taxi drivers who would not be subject to any limitation on their working hours due to their health.

5. Does the PCP cause the claimant a substantial disadvantage due to his disability in comparison with taxi drivers who are not disabled? It is claimant's case that it does as,

(a) he cannot assist wheelchair users due to his disability.

(b) he nevertheless is required under C's policy to have a wheelchair accessible taxi under R's Vehicle Conditions of Fitness policy; and

(c) he cannot afford the costs of such a vehicle as he can only work limited hours due to his disability.

143. Ms Crew in her submissions accepts (a) as a matter of fact. The respondent's submission is that they have made a reasonable adjustment by providing the claimant with an exemption

certificate such that he does not have to physically assist wheelchair users. Mr Tom's argues that this was not a reasonable adjustment, but the respondent had no option to grant an exemption as this was the law. Irrespective of the position, it is not in dispute that the claimant was provided with a wheelchair exemption and that this has been renewed and remains in place.

144. In respect of (b) and (c) the respondent accepts that the respondent expects the claimant to drive a wheelchair accessible taxi under the CF document as the claimant remains under an obligation to carry wheelchair passengers under section 165 of the Equality Act 2010. Ms Crew accepts that the claimant can only work limited hours due to his disability and that working less hours would result in less pay but argues that the PCP did not put the claimant at a substantial disadvantage compared to others without the claimant's disability who can only work part time hours. Further the claimant is not seeking a physical reasonable adjustment to a taxi so that he can drive this more comfortably to assist with his disability or so that he could drive for longer. He is saying there are adverse financial consequences that flow from him being able to work limited hours only.

145. The Tribunal accept Ms Crew's arguments that the claimant is potentially not substantially disadvantaged compared to other non-disabled taxi driver who can only work limited hours comparable to the claimant, but the Tribunal have found that this is not the appropriate comparator in this case for the reasons given above.

146. It is common sense that as the claimant cannot work as many hours as a non-disabled taxi driver, his ability to earn through taxi fares is limited compared to another taxi driver who is not restricted in the number of hours they can work. The reason the claimant can not work longer hours is due to his disability. The question for the Tribunal is whether the claimant was substantially disadvantaged due to his disability and the Tribunal finds that the financial consequences for the claimant compared to non-disabled taxi drivers who were not limited in the number of hours they could work due to their health, were more than trivial.

147. Whilst Ms Crew's argument that the taxi vehicle rental or purchase costs are tax deductible, this still would require the claimant to work a certain number of minimal hours to earn a living. Further the claimant does not have a vast choice of vehicles that he could purchase / rent as all taxi vehicles have to approved by the respondent and the respondent accepts that the number of vehicles they license are limited (paragraph 46 above). At the time the claimant sought the respondent's permission to licence different vehicles, namely 23 April 2020, 27 June 2021, and 11 August 2021 there were limited vehicles which the claimant could purchase / rent (as set out in paragraph 48,49 above).

148. Ms Crew asserts that the claimant has provided no evidence of the level of his income in his witness statement, and he could not recall a figure when giving oral evidence. The Tribunal accept that the burden of proof is on the claimant to demonstrate a substantial disadvantage.

149. The Tribunal accept the claimant's evidence that he works approximately 20 hours a week and the respondent did not challenge the claimant's evidence that he struggles financially to pay for the rent on a taxi. This is approximately half a full-time working week of 40 hours and as there is no restriction on the number of hours taxi drivers work, they could work more than 40 hours if they wished to do so. The Tribunal accept that taxi fares are set to compensate for operating costs but accept the claimant's argument that these are not based on part time working hours and that there are no differential rates for part time drivers.

150. Accordingly, the Tribunal find that the claimant was placed at a substantial disadvantage due to his disability in comparison with taxi drivers who are not disabled and for whom there is no restriction on the number of hours they can work due to their health.

6. If the claimant was put at a substantial disadvantage due to his disability by the PCP, should the respondent have implemented the following reasonable adjustments:

(a) allowing the claimant to licence an alternative vehicle such as the NV200 with appropriate other modifications.

First application

151. The Tribunal find that the respondent's refusal of the claimant's first application dated 23 April 2020 seeking the respondent's permission to licence a Nissan Leaf 40kWh Tekna Auto was in all the circumstances objectively reasonable.

152. It is common ground between the parties that this was a saloon car which is different externally from a taxi. The Tribunal find that a saloon vehicle is substantially different externally from a taxi vehicle. The Tribunal do not accept that affixing a yellow taxi "for hire" sign and signage (including identifiers) on display as in other taxi models would be sufficient to make the saloon vehicle proposed by the claimant easily identifiable by the public as a London taxi. Whilst the respondent states this is just one of many ways in which the Nissan Leaf 40kWh Tekna Auto does not comply with the CF document, the Tribunal do consider it necessary to consider the other issues here (as they are discussed further below) and because the Tribunal find the external appearance of a saloon vehicle was a sufficient reason alone for the respondent to reasonably refuse to licence the saloon vehicle.

153. The Tribunal find that there is primary legislation in place (referred to at para 34 above) to ensure that PHVs are not of such design and appearance as would lead any person to believe that the vehicle is a taxi, and that this legislation does so to ensure that taxis are distinct and easily identifiable by the public as only taxis can be hailed from the street. The Tribunal have set out the differences between taxis and PHVs at paragraphs 34-41 above and do not repeat them here and it is therefore right that taxis are easily identifiable by the public.

154. The Tribunal accept Mr Robinson's evidence that as the respondent are responsible for licensing both PHVs and taxis they are responsible for complying with the legislation referred to above. The Tribunal also accept Mr Robinson's evidence at paragraphs 29 and 30 of the importance of the public being able to identify a taxi for safety purposes and for practical reasons of traffic enforcement and ensuring legitimate vehicles are at taxi ranks and charging points across London.

155. The Tribunal find that the claimant accepts this to some extent in his email of 21 May 2020 referred at paragraph 91 above where he accepts that a saloon car would collapse the conditions of fitness policy.

156. The Tribunal note that the claimant was informed by email dated 15 June 2020 that the Nissan Leaf 40kWh Tekna did not meet the requirements in the CF document and whilst the external appearance was not referred to by the respondent as a specific issue, the Tribunal find that the CF document refers to dimensions of the vehicle including the length of the taxis which must be 5 metres so they fit in taxi ranks and the dimensions of doors and the passenger compartment which in addition to enabling the accessibility of the vehicle would also affect the external appearance.

157. The Tribunal therefore find it was therefore objectively reasonable in all the circumstances for the respondent to refuse the claimant's first request.

158. For the avoidance of doubt, for the same reasons as above, the Tribunal find it would have been objectively reasonable for the respondent to refuse to licence a fully electric saloon car or Toyota Prius as suggested in the claimant's letter dated 21 April 2020.

Second application

159. The claimant sought a reasonable adjustment from the respondent by his second application on 27 June 2021 to license a Nissan NV-200 electric van as a taxi.

Appearance

160. As at paragraph 103 above, it is accepted by the parties that the Nissan NV-200 has the same external appearance as the Nissan Dynamo which the respondent approved for licensing as a taxi.

161. Mr Robinson's evidence is that NV200 can also be licensed as a PHV vehicle in London which would create a conflict with the legislation referred to at paragraph 34. However, the Tribunal, having seen a picture of the Nissan NV200, find that with the appropriate taxi light and signage externally, this vehicle is capable of being easily identified by the public as a taxi and the issues identified by the Tribunal above in respect of the saloon vehicles do not apply here. The Tribunal accept that the NV200 differed significantly to the Nissan Dynamo internally which had been modified to meet the requirements of the CF document and this is discussed further below.

NV200 does not meet the requirements of Conditions of Fitness

162. Ms Crew's submission is that it was reasonable for the respondent not to licence the NV 200 because this did not comply with the requirements of the CF document in numerous ways not identified by the claimant in his application. In addition to the fact the NV 200 was not wheelchair accessible and did not have the appropriate turning circle (factors which were identified by the claimant), the claimant accepted in cross examination that The NV 200 did not have other core requirements of a taxi, including that the passenger compartment did not have the right dimensions and specification, it did not have grab rails, induction loop, taxi signage or taxi meter. Dealing with the issues raised by the respondent in turn: -

The NV200 was not Wheelchair accessible.

163. Ms Crew submits, whilst the claimant had a wheelchair exemption, this would not preclude him from carrying wheelchair passengers as he asserts in his applications, as a wheelchair user may be able to secure themselves in the taxi or may be travelling with others who could secure the wheelchair user. Further the claimant has an obligation to carry disabled passengers in wheelchairs as set out under section 165 -172 of the Equality Act 2010. The respondent avers that if the claimant was at a taxi rank, he would have to carry a wheelchair user if they or their companion could secure the wheelchair user in the vehicle and stow the wheelchair if required without any physical assistance from the claimant.

164. The respondent disputes that asking the wheelchair user to use the taxi behind was in line with the claimant's legal obligation, as stated in the legislative regulation, in that a taxi driver at the front of a taxi rank should be ready to accept a journey. Further it is not always the case that another taxi is available on the taxi rank. The respondent avers that such a practice

would not reflect the respondent's commitment to ensuring that disabled people have the same opportunities to travel as other members of the public and the Mayor of London's transport strategy (set out in paragraph 32 above).

165. The claimant accepted that he had an obligation to carry wheelchair users under the legislation, but his evidence was that as he has a wheelchair exemption, he cannot physically secure a wheelchair passenger or their vehicle in the taxi. He did not consider that he could safely carry wheelchair users as he could not transport a passenger without safety belts being secured and he did not accept the respondent's argument that the wheelchair user and/or their travelling companion would know how to secure the carabiners and belts correctly, safely, or securely in his taxi. He stated this would potentially invalidate his insurance if there was an accident.

166. The claimant averred that he had to undergo training in how to safely secure a wheelchair passenger into a taxi in April 2014. He submitted that all taxis are different, and the carabiners are in different places in different vehicles and so a wheelchair user and / or their companion would not know how to secure the wheelchair user safely. Further he stated that there is no rule that a taxi driver must stop to pick up a passenger who hails them, but he accepted there was a rule at a taxi rank where the first two taxis should be ready to pick up passengers. He stated if a wheelchair user was at a taxi rank, they would be able to use the next taxi in the rank.

167. The Tribunal do not accept the claimant's arguments that he could not carry a wheelchair passenger and accept that there are circumstances when this would be possible as the respondent has identified. The claimant had training to secure wheelchair passengers in April 2014 but has not received further training on the other taxis he has driven since and did not raise this as an issue. The Tribunal therefore find that a carer or companion accompanying a wheelchair user, on the balance of probabilities, would be able to secure the wheelchair user into the taxi particularly if they are used to doing so in different vehicles. Further even if the claimant could not physically assist, he could supervise and direct the wheelchair user and or companion in how to safely secure the wheelchair user in. In addition, the Tribunal accept Mr Robinson's evidence at paragraph 57 of his statement where he explains that the dimensions of the passenger compartment and design features including grab rails in the CF document allow a large number of wheelchair users to enter taxi themselves with no physical assistance.

168. The claimant's evidence was that he had only been hailed once by a wheelchair user passenger since October 2021, however the Tribunal accept the respondent's submissions that potentially any future fare could be a wheelchair user and the wheelchair user would have access to an accessible taxi if they hailed the taxi or hired this at a taxi rank thus ensuring that disabled people have the same opportunities to travel as other members of the public.

169. In the Tribunal's view, whilst there may be occasions when a wheelchair exemption my mean that there are users unable to use the claimant's taxi, there may well be some who could. This is therefore not a case where the respondent is seeking to enforce a requirement on the claimant for the CF document of the taxi being wheelchair accessible which is a redundant function.

170. The Tribunal accept that despite the claimant's wheelchair exception, the feature for the taxi vehicle to be wheelchair accessible was objectively reasonable and for the respondent to

include this requirement in the CF document and seek for all taxi vehicles to have this feature before they are licensed is reasonable in all the circumstances.

Other issues with NV200

171. The respondent's submission is that in addition to the NV 200 not being wheelchair accessible, it also did not comply with the CF document as it did not have grab rails, an induction loop, and a larger passenger compartment to assist disabled, elderly, or injured passengers. The Tribunal find that the NV200 also did not have a partition between the passenger and driver as referred to in the CF document as an additional safety measure for passengers and accept Mr Robinson's oral evidence that the NV 200 did not have an intermediate step to enter the cab from the passenger doors and the ramp is put away which would affect any passenger who was unstable.

172. Ms Crew refers the Tribunal to 6.27 of the EHRC code and asserts that health and safety of the public including the disabled and elderly is a relevant factor in deciding whether it was reasonable for the adjustment to be made.

173. The Tribunal accept that the features set out in paragraph 162 should be in place to ensure passenger safety and it was therefore objectively reasonable for the respondent to include these in the CF document and seek for all taxi vehicles to have these features before they are licensed.

174. In addition to this, the respondent submits that the NV200 did not have the appropriate turning circle which was a key feature for a taxi to navigate London's streets and pick up passengers easily on the other side of the road when being hailed without having to do a three-point turn. Mr Robinson's evidence at paragraph 22 of his statement explains how the turning circle also ensures passengers pay the lowest fares for their taxi journeys.

175. The claimant argues that the turning circle is not a necessary feature of taxis as it is no longer as useful as it used to be since certain London streets are narrower due to the introduction of cycle lanes and power steering helps turn vehicles. He considers that a three-point turn can achieve the same result.

176. The claimant's evidence was that if the respondent had allowed him to use an NV-200 Taxi, he would have worked with the respondent to ensure the NV-200 looked like the Nissan Dynamo taxi externally by fitting a hire light. He does not in his application of 27 June 2021 set out what modifications he intends to make to the NV 200 to explain how this would comply with the CF document. He did not include the modifications he suggested in his letter of 23 April 2020 (see paragraph 85) of affixing a yellow taxi "for hire" sign, a calibrated TfL taxi meter and printer inside the taxi, a fix credit card payment machine, and all signage as on display in other taxi models. However the Tribunal have found that the claimant intended to make these modifications (see paragraph 101).

177. The Tribunal find the claimant was aware from his previous application on 23 April 2020 that the respondent had referred to the requirements of a grab rail, induction loop and passenger compartment specifications and he did not set out that these modifications would be made (see paragraph 118).

178. Neither the respondent nor claimant have set out the costs to modify the NV200 to comply with different requirements in the CF document (see paragraphs 119/120). The claimant accepted under cross examination that it would cost around £12,000 to modify the NV 200

to have the appropriate turning circle. His evidence was that he would have asked Access to Work to fund the modifications. However there is no evidence before the Tribunal that they would do so.

179. The Tribunal do not have the evidence before them to show that the claimant's application to modify the NV 200 was a viable one in terms of costs which was his sole reason for seeking the reasonable adjustment. The claimant has not set out how much the vehicle would need to cost in total to make buying the NV 200 and making adjustments to comply with the CF document, financially viable for him due to his inability to work more than 20 hours. The claimant has not set out the list of the modifications that he would intend to carry out to the NV 200 and the total costs of these modifications.

180. In the claimant's application dated 27 June 2021, he set out the cost of the NV 200 was £22,999 but the Nissan Dynamo cost £48,995, a difference of £25,996. Paying to modify the turning circle (£12,000) would leave a saving of £13,996 but this would not account for the other modifications required to comply with the CF document including affixing a yellow taxi "for hire" sign, a calibrated TfL taxi meter and printer inside the taxi, a fix credit card payment machine, signage as on display in other taxi models, grab rails, induction loop, a partition between the passenger and driver, intermediate step to enter the cab from the passenger doors and an accessible ramp.

181. Mr Robinson set out at paragraph 87 that in his view the claimant has overlooked the difficulty of installing a taxi for hire sign and the taximeter and sourcing these. The claimant disputed this and considered this would be relatively simple. The Tribunal prefer Mr Robinsons evidence as his team has previous experience of converting the NV-200 to the Nissan Dynamo model which was licensed by the respondent and so had a working knowledge of the issues they faced when doing so.

182. The respondent also argues that they would bear the costs on carrying out a bespoke inspection the modifications to the NV200 to ensure that the work carried out was of the industry standard and the vehicle was safe for the public. No details of these costs have been provided to the Tribunal. In the absence of any details, the Tribunal do not accept that this would be a reasonable bar to refusing the allow the claimant to carry out modifications on a proposed vehicle.

183. The onus is on the respondent to show that no reasonable adjustment should be made. The respondent's submission is that modifying a vehicle as the claimant suggests is unlikely to remove or reduce the financial disadvantage that the claimant would face compared to buying a new Nissan Dynamo as a result of the potential costs of modifying the NV 200 and the claimant may not get money to carry out the modification from Access to Work as he envisages.

184. The Tribunal have set out that they do not have evidence from either party of the extent of modification likely to be carried out or the details of likely costs for these modifications and whether this will therefore be a financially viable option for the claimant. There may therefore be little, or no cost saving for the claimant to buy an NV 200 and seek to modify this to comply with the CF document in all respects except making this wheelchair accessible. The Tribunal are unable to conclude whether there is a good or real prospect that by making modifications to the vehicle it would result in removing the financial disadvantage but find that this may have the prospect of alleviating some of the financial disadvantage. The Tribunal had a lack

of clear detail of costs and evidence that this would make the difference in income considered sufficient to compensate for working reduced hours due to disability.

Third application

185. The claimant sought a reasonable adjustment again on 11 August 2021 from the respondent to license a Nissan E-Nv200 Evalia Electric Estate YC66TNO as a taxi. The claimant accepted in oral evidence that this vehicle had the same limitations and did not comply with the CF document in the same way as his previous request to licence the NV 200 on 27 June 2021. The Tribunal do not repeat the points discussed above here but note the same issues apply.

Consideration of the applications.

186. The Tribunal do not accept Mr Tom's submission that the respondent did not consider the claimant's second application, as the respondent's response on 9 July 2021 is practically identical to the response given to the Claimant on 15 June 2020 in respect of his first application.

187. As set out in paragraph 107, the Tribunal accept Mr Robinson's evidence that each application was considered within the different teams but, as both vehicles proposed failed to comply with many of what the respondent considered as the core requirements in the CF document, namely wheelchair accessibility and access for the elderly and disabled, it was appropriate that the response sent to the claimant was near identical.

188. The Tribunal do not accept Mr Tom's submissions that the respondent's responses on 15 June 2020 and 9 July 2021 only referred to issues with the vehicles not being wheelchair accessible and that reference to the large interior passenger compartment and a doorway not less than 1.2 metres high are examples of additional issues related to carrying wheelchair users to justify their refusal to agree to licence the vehicle.

189. The Tribunal find that both the respondent's letters refer to the vehicles proposed also failing to comply with the CF document generally and specifically referred to the lack of visible grab handles, intermediate steps and induction loops which are not specifically for wheelchair users. The Tribunal finds that the respondents response emphasised the wheelchair accessibility issue as this is what they consider to be a core requirement in the CF document and also specifically to respond to both the claimant's applications in which he suggests that as he has a wheelchair exemption, he does not need to drive a wheelchair accessible vehicle as set out in paragraph 81-83 above. Both responses referred the claimant to the fact that his driver exemption did not prevent passengers who require mobility assistance from benefiting from the accessibility features provided by London Taxi.

190. The claimant argues that the respondent could have worked collaboratively with him to analyse what different types of vehicles could be used as taxis and / or had a meeting with him to consider possible modifications or any other steps to assist hm. The claimant argues that the fact that this did not take place demonstrates that the claimant's proposal was rejected out of hand based on the respondent's policy and there was no individual consideration of the claimant's application as a disabled person.

191. The respondent accepted that they could have met with the claimant to discuss his applications but that as the claimant's suggestions for licensing vehicles went to removing core requirements from the CF document the issue could not been remedied by negotiation.

192. As set out above (paragraph 17), the Tribunal is not concerned with the processes by which the employer (or in this case, licensing authority) reached its decision to make or not make adjustments and carrying out an assessment or consulting an employee (or in this case, licensee) as to what adjustments might be required is not of itself a reasonable adjustment:

193. However, by way of comment, the Tribunal finds that when the claimant made his first application on 23 April 2020 this was at the start of a national lockdown due to the Covid pandemic. The respondent wrote to the claimant on 15 May 2020 (see paragraph 89) explaining that the pandemic was affecting their workforce and ability to respond and that they were only considering vehicles for licensing in exceptional circumstances where the applicant would be carrying out critical work and is able to provide evidence that this is the case. The letter offered to put the claimant in contact with the vehicle licensing team. The Tribunal accepts that it was reasonable in the circumstances that the respondent did not have a discussion with the claimant at that time due to the national pandemic measures in place.

194. However, circumstances had changed by 27 June 2021 and the Tribunal find that the respondent could have instituted a discussion with the claimant. Certainly, upon receipt of the claimant's letter dated 12 July 2021 (see paragraph 109) and upon receipt of the claimant's third application on 11 August 2021, the Tribunal finds that the respondent should have had a discussion with the claimant. By this stage the claimant had made repeated applications and numerous emails and the fact that he was seeking permission for a license for a vehicle very similar to his application on 27 June 2021 should have alerted the respondent that they needed to engage with the claimant more fully to explain their reasons for refusing the license. Mr Robinson accepted this could have taken place. The claimant had previously provided his telephone number to discuss any issues.

195. The respondent set out in correspondence on 15 May 2020 (paragraph 89 above) that the process of modifying a vehicle is normally undertaken by a manufacturer, rather than a licensee but they could have set out in their experience the difficulties, time and costs that are involved in doing so.

196. Further in correspondence the respondent could have signposted avenues of assistance or other options available to the claimant as they have done so for the purposes of this claim, including details of the grants available and the fact that some vehicles are shared by drivers to name some examples.

197. The respondent accepted they did not have a disability policy in place for taxi drivers and as a result there is no structure in place that the respondent has identified to date that they should follow when licensing disabled taxi drivers including taking positive steps to ensure that disabled taxi drivers can access and retain their licence. The Tribunal find that this played a part in the respondent's failure to have a meeting with the claimant and /or provide clear signposting of options and assistance available. The Tribunal consider that the respondent should develop a clear policy for disabled licensed taxi drivers.

198. However, the Tribunal finds that in this particular case, the respondent taking such steps would not have been reasonable adjustments in themselves or likely, on the balance of probabilities, to have led to reasonable adjustments being made. The Tribunal set out the reasons for this below.

The respondent's discretion

199. As set out in paragraphs 38-41 the respondent drafted the CF document, and it is not in dispute that the respondent has a general discretion to grant exemptions to the requirements in the CF document in other circumstances where it considers it reasonable to do so. The respondent noted examples of modifications they had granted exemptions for, such as different steering wheels.

200. The claimant's case is that the requirement to drive a taxi that was wheelchair accessible was therefore not mandatory and the respondent could have made a reasonable adjustment for the claimant and licence the NV 200. The claimant refers in paragraph 28 of his statement to other licensing authorities that take a far more flexible approach and licence a mixture of wheelchair accessible vehicles and non-wheelchair accessible vehicles. The claimant avers the respondent has applied a blanket policy decision without considering his individual circumstances.

201. The respondent's position is that all taxis have been accessible since 2000 and are listed in accordance with section 167 of the Equality Act 20210 as being so. This is a this is a key part of the transport strategy set out by the Mayor of London (as set out in paragraphs 30-33 above) and they consider this to be a core requirement of a London taxi and the NV200 was not wheelchair accessible. The respondent avers this goes to the heart of the London taxi and Mr Robinson described this in oral evidence as the USP (unique selling point) of a London taxi.

202. As set out in paragraph 31, the Tribunal find that the respondent is different from other licencing authorities referred to by the claimant, as we accept the respondent's position that it has to implement the Mayor's Transport for London strategy and that as a capital city it caters to a large number of people from a diverse background. The Tribunal therefore do not find any assistance in comparing other licensing authorities outside of London with London as they are not directly comparable.

203. There is no dispute between the parties that there is no modification sought by the respondent to the taxi vehicle he wishes to licence to assist him with physical limitations relating to his disability and therefore no reasonable adjustments are being sought to assist him with driving a taxi vehicle or to drive a taxi vehicle for longer and more comfortably. The claimant seeks a reasonable adjustment to solely assist him to afford a vehicle approved for licensing by the respondent.

204. The question for the Tribunal is whether it was objectively reasonable for the respondent to refuse to use their discretion to agree to licence the NV200 which was not wheelchair accessible and did not comply with the respondent's Condition of Fitness which have been discussed above. In so doing, the Tribunal have considered the factors which might be taken into account as set out in the Code of Practice referred to above in paragraphs 13-14. The burden of proof is on the respondent to show that the proposed adjustment was not a reasonable one.

205. The thrust of his claim is that the claimant could buy a cheaper vehicle than those currently approved for licensing and modify this to use as a taxi to comply with most of the requirements in the CF document, save for being wheelchair accessible. It is unclear to the Tribunal whether the claimant's case is also that the respondent should use their discretion

to not enforce the CF document requirements of an appropriate turning point. Irrespective of whether this is the case or not the Tribunal has found that making modifications to an NV 200 had the prospect of removing some of the financial disadvantage that the claimant suffers (paragraph 174).

206. The Tribunal having considered all the evidence as discussed above find that it was objectively reasonable for the respondent to refuse to license the NV 200 as even if all the other modifications were carried out to comply with the CF document (and it was unclear to the Tribunal what modifications the claimant was proposing he would carry out, including whether he would modify the turning circle), the vehicle the claimant proposed would not have been wheelchair accessible. The Tribunal accept the respondent's evidence that these are core requirements in the CF document and go to the heart of what the public expect the London taxi to provide and are necessary to implement the Mayor of London's transport strategy which the respondent is under an obligation to deliver.

207. The Tribunal find (discussed above at paragraphs 159,160) that this is not a case where the claimant could not carry wheelchair users. We do not accept the claimant's case that wheelchair users could rely on the huge number of other taxis that are wheelchair accessible to get around London or that this is a case where only one license would be granted to the claimant and there is no floodgates argument. Whilst the evidence was not before the Tribunal on this point, the Tribunal accepts Mr Robinson's evidence that approximately 200 other taxi drivers have wheelchair exemption certificates and thus could well seek the same adjustments as the claimant. The Tribunal also accept Mr Robinson's evidence that no vehicles have been licensed to date that are not wheelchair accessible and note that their website sets out all taxis are wheelchair accessible, and the Tribunal accept that this something on which the public can rely.

208. The Tribunal accept that the respondent in using their discretion would have had to balance the accessibility needs of the public and delivering the Mayor of London's strategy with the need to take positive steps to ensure that some disabled taxi drivers can access and retain their licence.

(b) providing the claimant with finance so he could comply with their policy to have a wheelchair accessible taxi through,

(i) the provision of a grant to enable him to buy a permitted vehicle;

(ii) the provision of a conditional grant (for example, restricting him from selling the vehicle for a period and/or requiring him to pay the respondent any profit made on the sale if made within a certain period, or

(iii) a loan arrangement with set repayment.

209. The reasonable adjustments set out above were not put to the respondent in correspondence prior to the commencement of the claim and were first raised in response to the respondent's request for further information on the ET3 on 20 December 2022.

210. The claimant submits that if the respondent insists on every taxi, no matter what the circumstances, being wheelchair accessible, then they should bear the costs and not disabled taxi drivers who need purchase / rent wheelchair accessible vehicles. The proposals above set out options which the claimant asserts will enable him to remain working as a taxi driver.

211. The claimant submits they are reasonable options given the size and resources of the respondent and that they could have diverted some of the funds of the £48 million grant given

to them by the Government to help London taxi vehicle owners dispose of more polluting diesel taxis or used the financial aid for taxi vehicle owners to convert their Euro 5 taxis to liquid petroleum gas.

212. The Tribunal accept Mr Robinson's evidence at paragraph 94 of his statement and his oral evidence that the respondent could not use these funds that the Government gave them for any other purpose, and it would be inappropriate to do so. Further there is no fund upon which the respondent could draw upon to financially assist the claimant. As set out in paragraph 44, the Tribunal do not find that it was objectively reasonable for the respondent to use allocated funds given to them by the Government in a way that was not for the purpose it was allocated.

213. Mr Robinson's evidence was that in their capacity as a regulator of taxi drivers and vehicles they do not provide financial assistance to licensees. Ms Crew submits that the adjustments are very close to requiring the respondent to purchase the vehicle as an auxiliary aid for the claimant and that providing a grant or finance for the vehicle is not within respondent's role as a regulator and would not be reasonable. Further Access to Work also do not provide taxis for taxi drivers.

214. The Tribunal have considered all the evidence before us and considered the relevant factors set out in the ECHR Code of Practice when making our decision. We note that the ECHR Code of Practice is drafted with the employer/ employee relationship in mind but that here the relationship is more particular as one of licenser/ licensee. We have set out at paragraphs 53-59 the nature of the relationship that the claimant and respondent have and have found that in real terms the respondent has no control over the claimant once the license is granted. The respondent cannot control the time, duration or even if the claimant works and exerts no financial control over the claimant by way of paying wages as an employer does.

215. The Tribunal note it is not unusual for an employer to provide a financial aid to their employee as a reasonable adjustment or even as a benefit and examples include payment for a yearly train ticket or for the cycle to work scheme. The Tribunal note that in these circumstances if the employee was to default on payment, the employer would be able to have some sort of protection as the employer is in control of the claimant's wages and the fact they are in work. The respondent would not be afforded the same protection as a licenser.

216. We accept Mr Robinson's evidence at paragraph 96 that if the respondent were to provide financial assistance, then the respondent would need to set up a mechanism to identify the claimant's income and work patterns. The Tribunal also find the respondent would need to have a regularly updated minimum and maximum threshold of income for when assistance is granted and set up a system of what would happen if the claimant defaulted on a loan if given. The Tribunal therefore identify significant practical issues for the respondent in setting up and monitoring any grants or loans given. The respondent would need to increase their contact and involvement with licensees currently not part of their remit and would lead to an increase in administrative and management costs. The respondent would also need to ensure that they have the funds to source any grants / loans requested and the Tribunal note they do not currently have an identified fund to draw from.

217. Mr Robinson's evidence is that from his limited research, he has not been able to identify comparable situations in England where a regulator has provided financial support to enable a person they license to work. The Tribunal have considered this and in our collective experience we could not identify a situation when this has taken place. No comparable examples were provided by the claimant save for arrangements provided by Transport for Scotland, but no specific details were provided of this.

218. The Tribunal find in all the circumstances and for the reasons given above, it was objectively reasonable for the respondent not to provide the claimant with finance so he could comply with their policy to have a wheelchair accessible taxi through the three mechanisms suggested above.

Private Hire vehicle

219. The respondent has raised that one option open to the claimant was to obtain a licence as a private hire driver which would enable the claimant to purchase a less expensive vehicle which would not have to be wheelchair accessible and that would help to address his financial difficulties. The respondent accepts that this is a different role as the claimant would not be able to be hailed on street or from a rank, but this may be a reasonable alternative that allows him to continue to earn a living undertaking a similar role.

220. The respondent could assist with the claimant's application, or he could apply to his local council, East Hertfordshire, which have different licensing regulations and his vehicle would not have to be wheelchair accessible. He would be closer to home and not need to travel into London if he did not wish to do so.

221. The Tribunal accepts the claimant's submissions that he wishes to continue in his role as a London taxi driver as he is proud to be a taxi driver, has built up friendships with his colleagues and has worked hard to pass the Knowledge. He also stated that taxi work is not so readily available in his local area. The Tribunal also accept that the reasonable adjustments provision is in place to try and assist disabled people like the claimant to remain in their role/ trade as far as it is reasonable to accommodate them.

Did the respondent discriminate against the claimant by failing to comply with their duty to make reasonable adjustments; see Sections 20, 21 and 53(6) Equality Act.

222. For the reasons set out above the Tribunal do not find that the respondent discriminated against the claimant by failing to comply with their duty to make reasonable adjustments and this claim fails.

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Employment Judge Sekhon

Date: **14 June 2023**

JUDGMENT SENT TO THE PARTIES ON
Date: **22 June 2023**

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FOR THE TRIBUNAL OFFICE

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