



## **EQUALITY COMMISSION FOR NORTHERN IRELAND**

### **Report of the Commission's Investigation of a complaint made under Paragraph 10 of Schedule 9 of the Northern Ireland Act 1998**

#### **Complainant & the Department for Infrastructure (the Department)**

**November 2019**

### **1. Introduction**

- 1.1. Section 75 of the Northern Ireland Act 1998 places a statutory duty on public authorities to pay due regard to the need to promote equality of opportunity between various categories of persons, including persons with dependents and persons without. Designated public authorities are required by Schedule 9(2) to submit an Equality Scheme to the Equality Commission (the Commission) for approval. Equality Schemes are both a statement of the public authority's commitment to fulfilling the Section 75 duties and a plan for their performance. The Department's Equality Scheme was approved on 09 August 2011, and updated on 20 August 2015.
- 1.2. Paragraph 10 of Schedule 9 of the Act allows the Commission to investigate complaints by persons who claim to have been directly affected by an alleged failure of a public authority to comply with its approved Equality Scheme.
- 1.3. On 13 February 2019, the Commission authorised a Paragraph 10 investigation to consider whether the Department for Infrastructure had complied with its Equality Scheme commitments in relation to the 'Experimental Traffic Control Scheme – Permitted Taxis in Bus Lanes 2018' (ETCS).

## 2. Background to the Complaint

- 2.1. The Department for Infrastructure's functions include the regulation of the roads network. One of its responsibilities relates to bus lanes which are lanes restricted to use by buses and any permitted exceptions such as cycles.
- 2.2. At the time that this complaint was made, in June 2018, it was the Department's policy that in addition to cycles and motorbikes, only 'permitted taxis' i.e. Class B and Class D, which comprised wheelchair accessible taxis and taxi buses, could lawfully use certain bus lanes in Belfast at specified times. A former minister had given a three stage commitment<sup>1</sup> to:
  - Allow permitted taxis to use bus lanes;
  - Consider the use of bus lanes by motorcycles; and,
  - Consider the use of bus lanes by other taxis.
- 2.3. The Department was considering whether to extend the definition of 'permitted taxis' to include Class A taxis, i.e. private vehicles that are generally not permitted to 'ply for hire' and 'Public Hire Outside Belfast'. Such extension would require a change to the relevant legislation
- 2.4. Previously a 12 week trial introduced by the Minister for Infrastructure had been run from 20 February 2017 to 14 May 2017. However, the Department took the view that that trial had merely provided a snapshot of the impact on traffic and that it would require more information in respect of the potential impact of such an extension than the 2017 trial had yielded, in order to enable a final decision on the 'permitted taxis' classifications to be taken.
- 2.5. The Department planned to gather further information by various means, including through an experimental traffic control scheme using its powers under the Road Traffic Regulation (Northern Ireland) Order 1997 (the 1997 Order). Article 5 of the 1997 Order permits an experimental traffic control scheme to be carried out for a period of up to 18 months' duration.

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<sup>1</sup> The commitment was made in 1999 by Lord Dubbs.

- 2.6. On 13 June 2018, the Department, in accordance with the 1997 Order, published a notification to carry out an experimental traffic control scheme in order to gather the further information. The published notification also incorporated a statutory consultation period of 21 days and invited representations and feedback from the public on the proposed Scheme. That consultation closed on 6 July 2018. On 29 August 2018, the Department published a report of responses to the proposal on its website entitled ‘Consideration of Representations to the Proposal’.
- 2.7. However, due to the scale of the public response to the notification, and to the effect of a Northern Ireland Court of Appeal ruling of 6 July 2018 concerning limitations upon civil servants’ authority to take decisions in the absence of Executive Ministers<sup>2</sup>, the Department decided to defer the decision to introduce the proposed ETCS until such time as a minister might again be in post. It has not subsequently been implemented.

### **3. The Complaint**

- 3.1. The Complainant had submitted his complaint to the Department on 28 June 2018, during the ETCS consultation period. He had explained that as a person with dependents he planned to use the new Belfast Rapid Transit bus (Glider) to bring his children to school before commuting to work and would therefore be reliant on a rapid bus service.
- 3.2. He described the adverse impact, which he viewed as major, and which he anticipated the proposed ETCS might have upon him as a person with dependents, as follows: *“I envisage that if the proposed scheme comes into [e]ffect it may not be feasible for me to use the bus in order to transport my children to school and get to work on time. I believe that the proposed Traffic Control Scheme will result in a significant increase in traffic in the bus lanes which will delay bus and Belfast Rapid Transport (Glider) services on the routes affected”*.

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<sup>2</sup> Buick, Re Judicial Review [2018] NICA 26 (6 July 2018), see page Paragraphs 7.2-7.5

- 3.3. The Complainant referred to the ETCS as “*the policy*” and alleged that in failing to equality assess the ETCS prior to same being introduced, the Department was in breach of paragraphs 1.1, 2.2, 4.1, 4.2, 4.3, 4.10, 4.11, 3.1, 3.2, 3.2.1, 3.2.2, and 3.2.6 of its Equality Scheme (also 4.5 of its Equality Scheme – see paragraph 3.10 below).

*Alleged Failure to fulfil the Due Regard Duty and failure to screen*

- 3.4. He alleged that the Department had breached its duty to have due regard to the need to promote equality of opportunity as set out at 1.1 of the Equality Scheme which states:

Paragraph 1.1

*“Section 75 of the Northern Ireland Act 1998 (the Act) requires the Department for Regional Development (DRD) to comply with two statutory duties:*

*Section 75 (1)*

*In carrying out our functions relating to Northern Ireland we are required to have due regard to the need to promote equality of opportunity between:*

- *persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation;*
- *men and women generally;*
- *persons with a disability and persons without; and persons with dependants and persons without”.*

- 3.5. Designated Public Authorities commit to equality screen their policies to identify likely impacts on any of nine equality groups. The Complainant considered the proposed ETCS met the broad definition in the Equality Scheme of ‘policy’ and asserted that it should therefore have been screened.

- 3.6. He stated that “[I]rrespective of the level of likely impact, screening should have been conducted on the Traffic Control Scheme and failure to screen is in breach of the relevant paragraphs 1.1, 2.2 and 4.1 – 4.3 of the [Department’s] Equality Scheme” which state:

*Paragraph 2.2*

*“We are committed to the fulfilment of our Section 75 obligations in all parts of our work”.*

*Paragraph 4.1*

*“In the context of Section 75, ‘policy’ is very broadly defined and it covers all the ways in which we carry out or propose to carry out our functions in relation to Northern Ireland. In respect of this Equality Scheme, the term policy is used for any (proposed/amended/existing) strategy, policy initiative or practice and/or decision, whether written or unwritten and irrespective of the label given to it, eg, ‘draft’, ‘pilot’, ‘high level’ or ‘sectoral’.”*

*Paragraph 4.2*

*“In making any decision with respect to a policy adopted or proposed to be adopted, we take into account any assessment and consultation carried out in relation to the policy, as required by Schedule 9 9. (2) of the Northern Ireland Act 1998.”*

*Paragraph 4.3*

*“DRD uses the tools of **screening** and **equality impact assessment** to assess the likely impact of a policy on the promotion of equality of opportunity and good relations. In carrying out these assessments, we will relate them to the intended outcomes of the policy in question and will also follow Equality Commission guidance:*

- the guidance on screening, including the screening template, as detailed in the Equality Commission’s guidance ‘Section 75 of the Northern Ireland Act 1998 – A Guide for Public Authorities (April 2010)’; and*
- on undertaking an equality impact assessment as detailed in the Equality Commission’s guidance ‘Practical guidance on equality impact assessment (February 2005)’.”*

3.7. The Complainant stated in his complaint to the Department that he was aware that it considered that the purpose of the ETCS was to gather data to help inform a decision on any potential future policy change, that the decision for any change would be taken by the Department’s Minister and that should a decision to make a policy change be made

as a result of the ETCS then a section 75 equality screening would be carried out.

- 3.8. By way of explanation of his view he stated *“It would appear that DOI is seeking to rely on the label that this is an ‘experimental’ scheme as a justification for not screening. First I would highlight that the ‘experimental’ scheme is scheduled to last for 6 months: during which time I will be significantly impacted”*.
- 3.9. The Complainant again referred to the ETCS as a “policy” and also as a “pilot” stating: *“Second, the fact that a policy is a ‘pilot’ or ‘experimental’ does not exclude it from the section 75 duty. In both its guidance and in investigation decisions the [E]quality Commission for Northern Ireland (ECNI) has made it clear that the section 75 duty applies to ‘pilot’ policies”*.
- 3.10. The Complainant quoted the Commission’s Lófa<sup>3</sup> Investigation in his complaint, stating that screening should have taken place as early as possible. Although paragraph 4.5 of the Equality Scheme which deals with the timing of screening was not quoted in the original complaint to the Public Authority, it was nonetheless raised there in general terms by the Complainant.

#### *Paragraph 4.5*

*“Screening is completed at the earliest opportunity in the policy development/review process. Policies which we propose to adopt will be subject to screening prior to implementation. For more detailed strategies or policies that are to be put in place through a series of stages, we will screen at various stages during implementation*

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<sup>3</sup> Investigation Report: *“Department for Communities: the application of Equality Scheme commitments for funding decisions on the Lófa Gaeltacht Bursary Scheme for 2017 and the Community Halls Pilot Programme”* (May 2018)

3.11. The Complainant summarized the other aspects of his complaint, identifying the relevant Equality Scheme paragraphs broadly, as set out below.

*Alleged failure to consider Equality Impact Assessment, Mitigation or Alternative Policies*

3.12. The Complainant alleged that “[A]s a result of the failure to screen the scheme, no consideration has been given to an EQIA, mitigation or alternative policies. This is in breach of paragraphs 4.10 and 4.11 of the DOI Equality Scheme”, which state as follows:

*Paragraphs 4.10*

*“If our screening concludes that the likely impact of a policy is ‘minor’ in respect of one, or more, of the equality of opportunity and/or good relations categories, we may on occasion decide to proceed with an equality impact assessment, depending on the policy. If an EQIA is not to be conducted we will nonetheless consider measures that might mitigate the policy impact as well as alternative policies that might better achieve the promotion of equality of opportunity and/or good relations.*

*Where we mitigate we will outline in our screening template the reasons to support this decision together with the proposed changes, amendments or alternative policy.*

*This screening decision will be ‘signed off’ by the appropriate policy lead within DRD.”*

*Paragraph 4.11*

*“If our screening concludes that the likely impact of a policy is ‘major’ in respect of one, or more, of the equality of opportunity and/or good relations categories, we will normally subject the policy to an equality impact assessment. This screening decision will be ‘signed off’ by the appropriate policy lead within DRD.”*

*Alleged failure to consult*

3.13. The Complainant also alleged that the consultation which the Department had conducted on the proposed ETCS and the

arrangements for it were in breach of paragraphs 3.1, 3.2, 3.2.1, 3.2.2 and 3.2.6 of its Equality Scheme. He stated “*The period allowed for consultation (just over 3 weeks) is also in breach of the*” Department’s “*Equality Scheme. No justification has been given for such a short consultation period and, in any event, I do not believe a shortened consultation [...] would be justified in this case*”.

3.14. Paragraphs 3.1, 3.2, 3.2.1, 3.2.2 and 3.2.6 state as follows:

*Paragraph 3.1*

*“We recognise the importance of consultation in all aspects of the implementation of our statutory equality duties. We will consult on our*

*Equality Scheme, action measures, equality impact assessments and other matters relevant to the Section 75 statutory duties.”*

*Paragraph 3.2*

*“We are committed to carrying out consultation in accordance with the following principles (as contained in the Equality Commission’s guidance ‘Section 75 of the Northern Ireland Act 1998 – A Guide for Public Authorities (April 2010)’):”*

*Paragraph 3.2.1*

*“All consultations will seek the views of those directly affected by the matter/policy, the Equality Commission, representative groups of Section 75 categories, other public authorities, voluntary and community groups, our staff and their trades unions and such other groups who have a legitimate interest in the matter, whether or not they have a direct economic or personal interest.*

*Initially all consultees, as a matter of course, will be notified (by email or post) of the matter/policy being consulted upon to ensure they are aware of all consultations. Thereafter, to ensure the most effective use of our and our consultees’ resources, we will take a targeted approach to consultation for those consultees that may have a particular interest in the matter/policy being consulted upon and to whom the matter/policy is of particular relevance. This may include for example regional or local consultations, sectoral or thematic consultation, etc.”*

### *Paragraph 3.2.2*

*“Consultation with all stakeholders will begin as early as possible. We will engage with affected individuals and representative groups to identify how best to consult or engage with them. We will ask our consultees what their preferred consultation methods are and will give consideration to these. Methods of consultation could include:*

- face-to-face meetings;*
- focus groups;*
- written documents with the opportunity to comment in writing;*
- questionnaires;*
- information/notification by email with an opportunity to opt in/opt out of the consultation;*
- internet discussions; or*
- telephone consultations.*

*This list is not exhaustive and we may develop other additional methods of consultation more appropriate to key stakeholders and the matter being consulted upon.”*

### *Paragraph 3.2.6*

*“The consultation period lasts for a minimum of twelve weeks to allow adequate time for groups to consult amongst themselves as part of the process of forming a view. However, in exceptional circumstances when this timescale is not feasible (for example implementing EU Directives or UK wide legislation, meeting Health and Safety requirements, addressing urgent public health matters or complying with Court judgements), we may shorten timescales to eight weeks or less before the policy is implemented. We may continue consultation thereafter and will review the policy as part of our monitoring commitments.*

*Where, under these exceptional circumstances, we must implement a policy immediately, as it is beyond our authority’s control, we may consult after implementation of the policy, in order to ensure that any impacts of the policy are considered.”*

3.15. In conclusion, the Complainant requested that the public authority undertake screening of the proposed Traffic Control Scheme immediately and “[i]n accordance with the Brown Principles<sup>4</sup>” stating

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<sup>4</sup> Case law (the *Brown Principles*) and the duty to have due regard

*“such screening should be conducted with rigour and an open mind and the conclusions should then inform a full twelve week consultation and consideration of an EQIA. These processes are to take place prior to any implementation”.*

#### **4. Department’s Response to the Complainant**

- 4.1. The Department responded to the Complainant in a letter, dated 30 July 2018, stating that the ETCS was an *“information gathering exercise, the purpose of which is to gather quantitative and qualitative information on any potential impact that permitting Class A taxis to use bus lanes might have and is a pre-consultation measure to gather evidence”*.
- 4.2. The Department also referred to the 12 week trial from 20 February until 14 May 2017 as *“the first research exercise”* which had allowed Class A taxis into some bus lanes in Belfast and stated that *“the results of that short trial did not provide sufficient substantive evidence in relation to the impacts of allowing Class A taxis in to the bus lanes”*.
- 4.3. It went on- *“The concerns you have raised in your complaint are the type of issues that we are seeking to gather such substantive evidence on and will be considered in detail as part of the Scheme. The primary purpose of the proposed Scheme is to gather the necessary evidence in relation to the issues any extension of permitted taxis in bus lanes would present. It should also be stressed that the results of this information gathering exercise will inform any policy decision on this matter by a future Department for Infrastructure minister”*.
- 4.4. In relation to the Complainant’s allegation that it failed to comply with its Equality Scheme commitments on screening, equality impact

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Case law has determined some principles (commonly known as the Brown principles from the case of R (Brown) v Secretary of State for Work & Pensions & others (2080 EWHC 3158 (Admin)) which courts in Great Britain take account of when assessing compliance with the public sector duties. These indicate inter alia that

- The duties must be fulfilled before and at the time that a particular decision is being considered, and not afterwards;
- The duties are continuing ones;
- It is good practice to keep adequate records that will show that the statutory goals have actually been considered and pondered and to promote transparency and discipline in the decision-making process.

assessment, and mitigation or alternative policies the Department stated:

*“In order to carry out Equality screening, which might potentially lead to a full EQIA including mitigation or alternative policies it is vital to have quantitative and/or qualitative evidence to support screening a policy in or out or making an amendment /change to a policy. Evidence gathering comes in many forms. The purpose of this research is to gather supporting evidence to measure the impact of the issues such as those you have highlighted. There is no substantive supporting evidence of this nature for Belfast specifically. As there is no evidence or data on the possible impact on S75 identities of allowing Class A taxis into bus lanes it would be impossible to conduct meaningful Equality Screening. This method of gathering research is regarded as a pre-consultative measure and will allow the Department to collate as much evidence as possible to analyse any potential impacts of allowing Class A taxis to use bus lanes”.*

4.5. The Department also stated:

*“The Equality Commission advise that ‘screening must be taken into account by policy makers before and at the time that a particular decision or policy is being considered, and not afterwards’. Whilst this exercise is a method of collecting data and evidence, therefore a pre-consultation measure, Equality Screening has not yet taken place. That said Equality Screening is being considered at the moment during the analysis of the responses to the notification of the proposed exercise. I can assure you that should a decision be taken in the future by a minister to permanently change the Classes of taxis permitted to use bus lanes this policy change will include S75 Equality Screening and consultation”.*

4.6. The Department also addressed the allegations on consultation in that it *“was conducted under the Road Traffic Regulation (Northern Ireland) Order 1997 and not the S75 Equality duties”.*

4.7. It concluded its response to the Complainant by stating that *“[A] decision on when and if the exercise will take place has yet to be made”.*

## **5. Written Complaint to Equality Commission**

- 5.1. Dissatisfied with the Department's response, the Complainant forwarded a copy of his complaint to the Commission. In his cover letter dated 21 August 2018 he stated to the Equality Commission - *"I am not satisfied with the DfI response as I believe that the department is simply seeking to relabel a pilot scheme as an 'information gathering exercise'. In their letter to me they also refer to a 'first research exercise'. I believe that it is inaccurate to seek to label the proposed scheme as either an information gathering exercise or a research exercise: these phrases connote a neutral exercise seeking to assess the status quo. What in fact is taking place is a pilot scheme which is going to significantly impact on the way that certain bus routes operate within Belfast"*.
- 5.2. The Complainant noted the Public Authority's commitment to screening and consultation *"should a decision be taken in the future by a minister to permanently change the Classes of taxis permitted to use bus lanes..."* but stated *"[W]hile I welcome the fact that [the Department] recognises its section 75 duties in regard to such decision, such a commitment does not absolve the department from its section 75 duties in respect of the pilot scheme"*.
- 5.3. The Complainant subsequently confirmed to the Commission on 30 August 2018 that, notwithstanding the Department's subsequent deferral of the implementation of the Scheme - announced publicly on 29 August 2018, the Complainant did not wish to withdraw his complaint *"as there are broader strategic and systemic issues raised that are not specifically tied to the policy proceeding at this moment"*.

## **6. The Department's Response to Equality Commission**

- 6.1. The Department provided a response on 26 October 2018 to the Commission's notification that it had received this Paragraph 10 complaint. The information it provided for the Commission's assessment of the complaint is also relevant for the purposes of the investigation.

- 6.2. In its response the Department made reference to several documents, which it provided to the Commission. These included:
- the ‘Experimental Traffic Control Scheme (Permitted Taxis in Bus Lanes) 2018 Consideration of Representations to the Proposal’ Report, as referred to at Paragraph 2.6 of this Investigation Report.
  - the ‘Class A Taxis In Bus Lanes Trial 2017 Data Assessment - Technical Report’.
- 6.3. It also included an email exchange from 27 July 2018 to 31 July 2018 of advice/guidance which it had sought and obtained from the Equality Commission in relation to whether it was necessary to subject the ETCS to the Section 75 duties. However, this occurred after the complaint was received.
- 6.4. In its response the Department stated *“From the responses received during the Road Traffic Regulations consultation it is clear that the purpose of the experimental traffic scheme has been misunderstood. It is not a policy change or a ‘pilot’. The experimental road traffic scheme is [a] method to survey traffic movement including impacts on traffic and road users”*.
- 6.5. The Department explained *that “[i]n essence the proposed experimental traffic scheme is the method that the Department uses to survey the scale and impact of traffic movements”*.
- 6.6. The response, referring to the two Bus Lanes Orders in force (which did not permit Class A taxis to use bus lanes), stated; *“[f]ollowing publication of the draft orders in December 2017, [the Department] received representations to include Class A taxis in the permitted category for access to the bus lanes. Although bus lanes are an integral part of the road networks in Belfast there is no qualitative and quantifiable evidence to determine the impact on bus performance, and the implications on road safety of Class A taxis using bus lanes. Therefore, to consider making any informative (sic) changes to this legislation the Department requires evidence. The most informative*

*process for [the Department] to gather verifiable data, including feedback from road users of all identities, is to conduct a road traffic survey such as that proposed with this experimental scheme”.*

- 6.7. The Department continued by stating that *“[t]his proposed experimental traffic scheme was to be the second trial to collate further data”*. Referring to the 12 week trial in 2017(referred to at 2.3 and 4.2 above) it stated that that trial had involved a limited number of bus lanes in Belfast and had been conducted at the request of the Minister for Infrastructure at that time. However, *“this short timeframe for the first [i.e. 2017] trial delivered a snapshot of the impact on traffic but did not provide sufficient data to fully inform any future potential and significant policy decisions with regards to bus lanes uses”*.
- 6.8. The Department pointed out that the 2017 trial’s resultant Technical Report *“most significantly...emphasised the need for further data collection. Based on this short trial report and the lack of specific and detailed information provided, combined with the fact that the data contained in that report is insufficient to assist making a fully informed decision on major policy change, the Department decided that a more comprehensive study was required”*.
- 6.9. The response to the Commission continued *“[t]o ensure a more thorough research trial it was considered important to extend the timescale from 12 weeks to an initial period of six months, with the likelihood that this would be extended by a further six months. The reason for this timeframe is to allow for seasonal variations of traffic. In view of these considerations the Department proposed to carry out the trial by way of an experimental traffic control scheme permitted under Article 5 of the Road Traffic Regulations (NI) Order 1997”*.
- 6.10. The Department pointed out that *“[t]he timescales for an experimental road scheme under Article 5 of the Road Traffic Order are strict, with a maximum of 18 months to carry out any road experiment”*. The Department also referred to Schedule 2 of The Road Traffic Regulations (NI) Order 1997 which outlines the process to be followed when introducing an ETCS. The Department stated *“[t]he Schedule states that the Department must notify, by advertisement, the intention*

*to introduce an experimental scheme and to allow a period of consultation (21 days). [The Schedule] states ‘objections and other representations may be made, and a statement that all objections or other representations must be in writing and must specify the grounds on which they are made’.*

6.11. The Department “*advertised this proposal in the Belfast Telegraph, the Irish News and the News Letter on 13 June 2018. The statutory consultation in accordance with Schedule 2 ended on 6th July 2018*”.

6.12. In its response to the Commission the Department made reference to the ‘Experimental Traffic Control Scheme (Permitted Taxis in Bus Lanes) 2018 Consideration of Representations to the Proposal Report’. This report indicated that it had received the following responses to the consultation:

- Objections to the proposed Scheme from 455 individuals, and a petition from Unite (approximately 200 letters) and a petition from Bikefast (approximately 2,000 signatures)
- Support for the proposed Scheme from 744 individuals, and 1 petition from West Belfast Private Taxi & Drivers Association (approximately 3,000 letters) and 2 petitions from an unnamed taxi organisation (3,500 postcards and 535 pro-forma letters)
- Neither wholly for nor wholly against the proposed Scheme: a petition from Translink and a petition from Disability Action

6.13. The Department also stated in its response to the Commission that it had received queries from an organization and four individual complaints of a failure to comply with its Equality Scheme. The Complainant’s was the first of the four complaints that were received by the Department in June 2018.

#### *Alleged failure to Screen*

6.14. The Department stated... “*[it] has always intended to carry out equality screening/impact assessment should a policy change to the inclusion of other vehicles using a bus lane be considered by a Minister. This would also include an equality consultation, should that be required. However, without quantifiable data it is difficult to carry out a meaningful and*

*informative equality consultation to allow consultees to respond comprehensively based on the evidence provided. To produce such data/information a traffic survey on the impacts on traffic and road users of all identities needs to be carried out. To measure and provide sufficient data on this type of issue a road traffic experiment is conducted which surveys the scale and impact of traffic movements. Hence the proposed temporary experimental road scheme – a road traffic survey over an initial six month period to collate data.*

*The Department took the view that as this was not a change to policy but a road traffic experiment to gather data that it does not hold, S75 Equality Screening was not required. The responses received as a result of the consultation conducted under the Road Traffic Regulations has been the first step in providing important data on the perceived impacts on traffic and road users should any permanent change take place. This is vital data in itself as it is informing further the type of information/evidence required from this type of survey”.*

6.15. The Department then stated *“Whilst [the Department’s] initial view was not to equality screen a road traffic experiment, following queries from [an organisation], Departmental officials contacted the Equality Commission to seek advice on the appropriateness of carrying out a screening on a road traffic survey” and “based on that advice equality screening was being considered which would incorporate the views of the Road Traffic Regulations consultation exercise”.*

6.16. Under the headings ‘[the Complainant’s] Complaint’ and ‘Screening, Equality Impact Assessment, Mitigation or Alternative Policies, Pilot Policies’, the Department continued:

*“[The Complainant] is of the opinion that this is a ‘pilot’ scheme and as such because there is no equality screening, impact assessment and/or mitigation this is in breach of the [Department’s] Equality Scheme. As stated throughout, this survey is not a policy change, nor is it a pilot. The proposed experimental traffic scheme is a traffic survey, the method of gathering the impact information for road traffic and road users including all S75 identities. There is no data/evidence/information specific to Belfast, hence the purpose of this scheme. Importantly from a Section 75 perspective there is no*

*evidence to support the perceived anecdotal issues [the Complainant] has raised and as such is the type of information and evidence the Department needs to gather.*

*With regards to the point of mitigation there is no other way to gather such material for this particular traffic issue. Whilst anecdotal evidence exists it is natural to provide evidence to support such, or not, as the case may be. Evidence to support change is crucial, it is also important when carrying out Equality Screening/Impact Assessment”.*

### *Consultation*

- 6.17. Referring to the Consultation mandated by the Road Traffic Regulation the Department stated *“This was not a statutory Section 75 Equality Consultation and as the statutory rules of the Road Traffic Regulations apply.[Had] [sic] the Department decided on a major policy change on this issue then a S75 Equality assessment and consultation would most certainly be progressed”.*

### *Deferral of Proposed Experimental Scheme*

- 6.18. The Department then stated *“[f]ollowing the scale and nature of the consultation representations report the Department considered whether it was appropriate to continue with this experimental road traffic survey without Ministerial approval. The Department also included in its deliberations the findings from the recent Appeal Court decision on the Arc21 Incinerator regarding civil servant decision making powers in the absence of Ministers.*
- 6.19. The Department concluded its response to the Commission as follows:  
*“In summary the notification published on 13 June 2018 notifying the public of an experimental road traffic scheme and accompanying consultation is a statutory requirement under the Road Traffic Regulations (NI) Order 1997. The purpose of this experimental scheme was to carry out a road traffic survey to measure the impact on traffic and road users of all identities of allowing additional taxi vehicles to use all bus lanes. The Department did not consider S75 screening on this traffic survey the basis of which is to gather*

*data/information/evidence to inform any future equality screening/impact assessment, as necessary. That said [the Department] is committed to carrying out S75 Screening and/or a full Equality Impact Assessment on any policy decisions. The proposed traffic survey, by way of the experimental traffic scheme, results are crucial to any future equality screening and/or impact assessments of potential future policy decisions regarding the users of bus lanes of Belfast”.*

## **7. Authorisation of Investigation**

- 7.1. On 13 February 2019, the Statutory Duty Investigations Committee (SDIC) decided to authorise a Paragraph 10 investigation into the complaint as set out in paragraph 3.3 - 3.10 above.
- 7.2. In particular, the Investigation aimed to examine the alleged failure to screen and conduct an equality impact assessment, as appropriate, and the associated commitments in relation to mitigation and consultation.

## **8. Investigation**

- 8.1. On 26 March 2019, Commission staff met with Departmental Officers to take evidence for the purposes of the investigation.
- 8.2. The Departmental Officers emphasized that consideration of which vehicles should be permitted to use bus lanes in Belfast has been ongoing since bus lanes were first introduced in 1992.
- 8.3. They outlined the history leading up to the proposal to initiate the ETCS in 2018 with reference to a three stage commitment given in 1999 by the Minister at the time to:
  - Allow permitted taxis to use bus lanes (public hire taxis)
  - Consider the use of bus lanes by motorcycles, and
  - Consider the use of bus lanes by other taxis.

- 8.4. At the end of 2005, following completion of an experimental traffic control scheme and a further two year operational review, motorcycles were permitted access to bus lanes. The Departmental Officers reported that that experimental traffic control scheme and the underlying policy had been equality screened.
- 8.5. In 2012 the Department envisaged an end to the two tier system of public and private hire taxis with taxis being either wheelchair accessible or not. As this change would require an amendment to bus lane Orders, the Department launched a consultation and completed equality screening. The screening concluded that the proposed changes should not be subject to full EQIA as the likely impact on equality of opportunity would be generally positive.
- 8.6. It is of note that the Departmental Officers did not communicate to the Complainant that over the years it had considered expanding the access arrangements to bus lanes to permit all taxis to use them.
- 8.7. Following the meeting, the Departmental Officers forwarded a number of documents to the Commission including a 'Taxis in Bus Lanes Consultation Document' (publicly available) in respect of consultation which ran from 25 June 2012 to 21 September 2012, with an appended draft screening form (dated 2011). The consultation had been undertaken because taxi licensing arrangements had been due to change towards the end of 2012 requiring amendment of the legislation which defined those taxis permitted to use bus lanes.
- 8.8. The 2011 screening form anticipated that the 'Taxis in Bus Lanes' policy, whose stated aim was to *"expand the access arrangements to bus lanes to allow all taxis to use them"*, would provide a *"minor benefit"* to all section 75 categories. The screening decision indicated that *"a consultation will be carried out on this legislative change and this screening form will form part of consultation document."*
- 8.9. The 2012 Consultation Document commenced: *"We are carrying out a consultation on a proposal to change access arrangements to bus lanes that will see all taxis being permitted access. The purpose of this consultation is to obtain: your views on the draft proposal; your views on*

*the attached equality of opportunity screening; and any further information which could be useful in our assessment process. When considering your response, the following questions may offer a useful guideline: 1. Do you have comments on the overall policy proposal, either about the concept or the detail? 2. Do you have any general comments on the equality issues covered in this draft assessment? etc”.*

- 8.10. The document set out relevant data and concluded with a recommendation that access be granted to all taxis. The document stated *“As with all new or revised policies a Section 75 Equality of Opportunity Screening analysis was undertaken and this concluded that the proposed changes should not be the subject of a full EQIA given that any impact on equality of opportunity will be generally positive”*. Under the heading ‘Policy Decision’, it stated: *“The Minister will decide on the outcome of the consultation following consideration of the comments made during the consultation process”*.
- 8.11. However, the Departmental Officers stated at the Investigation Meeting that a final decision on allowing all taxis to use bus lanes was never taken. By the time of this paragraph 10 complaint, the Department’s policy did not include Class A taxis in the ‘permitted’ categories for using the bus lanes and that is currently its stated policy.
- 8.12. The Departmental Officers also stated that the Complainant was not informed that an equality screening document already existed (albeit from 2011); the Department’s response to him sought to answer the questions he posed in his complaint. The Departmental Officers stated that the equality screening form remains a ‘live document’ and that the data obtained during the 2018 ETCS would have been used to update the existing screening document.
- 8.13. The Departmental Officers explained in the meeting that in 2017 a fundamental change in the way taxis operate was about to be introduced. Class A taxis required access to the kerbside in order to pick up/drop off passengers. The Minister at the time instructed the Department to run the 12 week trial to gather data which would help

determine the impact on bus performance and road safety of allowing Class A taxis into bus lanes.

- 8.14. Whilst the data collection process included an on-line survey seeking the public's views on the trial and bus lane usage in general, as referred to in the 'Class A Taxis In Bus Lanes Trial 2017 Data Assessment - Technical Report' it did not include any measures of equality or impact in relation to the Section 75 groups. The Commission also notes that during the Investigation meeting, the Departmental Officers stated that the data from this trial showed no impact but the trial period was too short to provide results robust enough to rely on.
- 8.15. On 26 January 2017, just before the start of the February 2017 trial, the Northern Ireland Assembly was dissolved. The Departmental Officers explained that, whilst the 2017 trial had been conducted under ministerial instruction, now in the absence of a Minister, Departmental Officers did not have authority to extend it. However, Article 5 of the Road Traffic Regulation (Northern Ireland) Order 1997 provided the Department Officers with authority to initiate an experimental traffic control scheme over a longer time period which would allow for seasonal data variances.
- 8.16. The Commission notes, from the 'Technical Report' as provided by the Departmental Officers on 26 October 2018, that it included reference to stakeholder concerns about an equality impact assessment being needed (page 20).
- 8.17. The Departmental Officers reflected their belief that had it gone ahead, the 2018 proposed ETCS would have been a useful exercise, yielding meaningful information for policy options. It would also have provided an opportunity for people to raise any concerns they might have.
- 8.18. The Departmental Officers stated the Scheme would have involved a traffic and public transport survey incorporating video recording of which vehicles would be using the bus lanes, in addition to passenger surveys. The Departmental Officers confirmed that it would have essentially collected the same type of data as the 2017 trial, in addition

to data on the Belfast Rapid Transport routes with the new Glider buses operating live for 12 hours a day, which had not been collected in 2017.

- 8.19. The Departmental Officers stated that a report assessing the technical impacts of allowing Class A taxis into bus lanes on public transport, cycling, taxis and general traffic would then have been prepared and the information used to inform equality screening and, if appropriate, a full equality impact assessment.
- 8.20. The Departmental Officers stated that *“[t]he report, associated data and impact screening/full impact assessments will be integral parts of the evidence based proposal put to an incoming Minister to allow a decision to be made regarding the future policy in relation to taxis in bus lanes”*.
- 8.21. The Departmental Officers stated that the decision not to equality screen was taken by the Departmental Engineering Team which had initially drafted the proposed ETCS from an engineering perspective and it was they who had deemed the ETCS a data gathering exercise.
- 8.22. The Departmental Officers remained of the view that this was not a ‘pilot’ nor a ‘policy’ change but rather a data collection exercise seeking quality information which would inform subsequent equality screening. The Departmental Officers said *“this was already in in terms of taxis in bus lanes, it was just introducing a different type of taxi”*. Officers also stressed at the Investigation meeting that as there is currently no Minister for Infrastructure they would not have the power to implement a change in policy.
- 8.23. There was some discussion at the Investigation Meeting about terminology in the Technical Report on the 2017 trial which stated for example *“normally, when a trial is considered necessary due to a lack of or conflicting data, the Department would undertake a pilot scheme to test the proposal”*.
- 8.24. Departmental Officers highlighted that differences in terminology exist between professional disciplines and this can be reflected in how information is expressed in the public domain. In relation to the use of the word ‘pilot’ they responded that this was a *“casual use of the term”*

and commented that *they “call a lot of [our] projects ‘schemes’”*. They acknowledged that outside the Department this casual use of terminology could result in a different understanding from that intended.

- 8.25. Departmental Officers also stated that the 21-day consultation launched in 2018 may not have been presented well to the general public and commented *“lack of understanding was reflected in response, if we had been explicit and straightforward instead of speaking as engineers the public would have had a better grasp that this was not policy to be implemented”*.
- 8.26. Officers stated that, where possible, data on Section 75 groups would have been collected during the ETCS but considered that any impacts of allowing Class A taxis into bus lanes would have been the same for every user group and confirmed that it would have been possible to have screened the ETCS and that there was precedent for doing so
- 8.27. Departmental Officers stated that they understand the need to screen and that this would have been taken forward following the collection of data if a change in policy was progressing. They confirmed that staff receive training in policy recognition, development and review and that this training is supported by guidance available to them on the Northern Ireland Civil Service Intranet.
- 8.28. On 8 May 2018 the Departmental Officers provided further clarification of matters arising from the investigation meeting and additional documentation which included a copy of the Northern Ireland Executive guidance entitled ‘A practical guide to Policy Making in Northern Ireland’ as the guidance referred to above.

## 9. Assessment and conclusions

- 9.1. The Complainant has alleged that the Department failed to screen, and/or EQIA, consult upon and or mitigate/develop alternative policies to the ETCS which he considered to be a 'pilot' and therefore a 'policy' which should have been subjected to equality assessment in accordance with the commitments set out in its Equality Scheme.
- 9.2. The Department contends that it did not carry out equality screening of the ETCS because it took the view that this was a data-gathering mechanism rather than a 'pilot' scheme or a 'policy' as alleged by the complainant.
- 9.3. It has stated that the ETCS was not the Department's policy with regard to traffic in bus lanes. Rather, its policy was that which permitted only certain types of vehicle in bus lanes and these did not include Class A taxis.

### *Paragraph 4.1 of the Department's Equality Scheme*

- 9.4. For the purposes of assessing whether the Department complied with paragraph 4.1 of its Equality Scheme, the issue is whether the ETCS constituted a policy as alleged by the Complainant.
- 9.5. The Commission's guidance provides an understanding, interpretation and definition of "policy" for the purposes of Equality Scheme arrangements, and as required by Schedule 9 of the Act.<sup>5</sup> This is reflected in the definition of policy committed to at paragraph 4.1 of the Department's Equality Scheme. The Commission's advice is that, regardless of labelling, the public authority should consider policies as covering "*all the ways an authority carries out or proposes to carry out its functions*".
- 9.6. In this case, the Department's existing policy in relation to permitted vehicles in bus lanes is as stated in the Consultation document from 2012, i.e. that Class A taxis were not permitted. The proposed ETCS

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<sup>5</sup> Section 75 – Guide for Public Authorities, ECNI (2010) page 31

would have changed this policy, as it was intended to allow access to Class A taxis for a defined, albeit temporary, period.

- 9.7. Therefore the proposed ETCS does fall within the definition of a policy as set out in paragraph 4.1 of the Department's Equality Scheme.

### *Terminology*

- 9.8. Through this assessment, it has been evident from the material provided to the Commission that a number of terms have been used by the parties to the Complaint when referring to the ETCS. These include 'pilot' and 'policy' by the complainant and 'pre-consultation measure' and 'road traffic survey on the impact.../a method to survey/a second trial/scheme/a more comprehensive study/a more thorough research trial' by the Department.
- 9.9. It is also the case that the 2017 trial bore many similarities to the proposed 2018 ETCS. That exercise, undertaken at the Minister's direction, was described at the time as a 'trial/concept'.
- 9.10. It is also notable that when expansion of the permitted classes of taxis in bus lanes was being considered in 2012, the proposal was described as a "*draft proposal*" and the "*overall policy proposal*", and was subjected to equality assessment by way of screening and equality consultation, although no final decision was taken in respect of it.
- 9.11. The Commission's Guide for Public Authorities states at page 31 "*Whatever status or label is accorded to an amended or new policy, for example, 'draft', 'pilot', high level strategy' or 'sectoral initiative' the equality .... implications must be considered in terms of assessing the likely impact of a policy and the Commission recommends applying the screening procedure .... and, if necessary, subjecting the policy to an equality impact assessment*".
- 9.12. On analysis, the ETCS was undoubtedly first and foremost what the Department considered it to be - a mechanism facilitating the collection of data. However, and as the Department accepted at the investigation meeting, the 2018 ETCS would have been temporarily changed the

status quo/existing policy i.e. Class A taxis would be granted access to bus lanes.

- 9.13. What the Department failed to consider at the time the ETCS was proposed was that it constituted a *proposed, albeit temporary*, change to the existing bus lanes policy which did not allow Class A taxis access. The Department referred to “*any policy change*” as being a matter to be decided at a later stage. However, the proposed ETCS was in fact envisaged as a time-bound change to the status quo and to that extent it would have constituted a temporary change from the existing policy which at the very least would have been a significant step in policy development.

#### *Paragraphs 4.2, 4.3 & 4.5 of the Department’s Equality Scheme*

- 9.14. As the proposed ETCS should have been considered to be a policy under paragraph 4.1 of the Equality Scheme, the commitments to screen (to assess the equality impacts of the policy in question) in paragraph 4.3, to undertake screening at the earliest opportunity in paragraph 4.5 and to take any assessment into account in subsequent decision making in paragraph 4.2 are engaged.
- 9.15. The Commission provides detailed guidance on screening, setting out its purpose and when it should be undertaken so that public authorities can fulfil their statutory duties through implementing their Equality Scheme commitments<sup>6</sup>.
- 9.16. As set out earlier in this report, the Department has on several occasions over the years sought to progress the former ministerial commitments (see paragraph 2.2 above) to consider extending the use of bus lanes to other vehicles. Also, as was made clear in the Brown case (see Paragraph 3.11 above), the s75 duties are continuing duties.
- 9.17. On two occasions, the evidence shows that the Department’s Equality Scheme commitments around screening and equality assessment were acted upon. First, when considering extending access to bicycles and

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<sup>6</sup> Section 75 – Guide for Public Authorities, ECNI (2010) pages 40-41 and Annex 1, see also how this is applied in other investigations such as: Complainant vs Lisburn City Council, 2017

motorcycles in 2005, the Department reported that it initiated a trial, held a consultation and equality screened the change of policy.

- 9.18. Second, the Department provided the consultation document from 2012. This not only set out the aims of the policy to allow taxis into the bus lanes over time, but also appended a completed equality screening document (labelled draft and dated 2011).
- 9.19. The Department described the screening document appended to the 2012 consultation as a 'live document'. However, there is no record of this screening document having been subsequently updated.
- 9.20. In addition, when similar changes to the policy status quo occurred through the trial in 2017, stakeholders at the time responded saying that the trial should have been subject to an EQIA.
- 9.21. None of the actions around applying paragraphs 4.2, 4.3 and 4.5 of the Department's Equality Scheme were taken into account in the identification of undertaking an ETCS or its development. This is despite it being part of a long process of changing and amending the policy framework in relation to permitting vehicles, including Class A Taxis, into bus lanes.
- 9.22. The Department should have undertaken equality assessment of the ETCS and could have done this by, for example, updating the screening form that was appended to the consultation document from 2012 and presented it as its equality assessment when it presented the proposed ETCS for consultation in June 2018.
- 9.23. It is noted that the Department, in the investigation meeting (see paragraph 8.26 above), said it was assumed that the potential equality impacts would be the same for different groups. However, the screening conducted in 2012 identified different evidence and experiences for a number of the equality groups in relation to use of taxis.

## Data

- 9.24. Lack of data was also a significant factor advanced by the Department for undertaking the ETCS in 2018, contending at several points that it did not have sufficient data to equality screen meaningfully.
- 9.25. On Page 3 of the ‘Experimental Traffic Control Scheme - Consideration of Representations to the Proposal Report’, following the consultation exercise in June 2018, the Department wrote at paragraph 2.4 *“In order to ensure that it was prepared to gather data, should a decision be taken to proceed with the Scheme, transport consultants were commissioned to gather and analyse data in advance of commencement, as well as during the period of any scheme. Attitudinal surveys to gain insight into more subjective matters were also included in the commission alongside historic data to provide baseline information on peak hour bus journey times and bus patronage along the corridors being analysed. The Department is content that the type of data and scope of information to be collected can be tailored to meet issues raised by the consultation”*.
- 9.26. It continued at paragraph 2.4 *“The department propose that the need for individual impact assessments will be determined by way of a screening process prior to commencement of any scheme and that information gathered would subsequently be used to inform any necessary full impact assessments that the Department would carry out”*.
- 9.27. The Department did not clearly specify in these two paragraphs precisely what type of screening or impact assessments it was referring to, but was doing so in the context of non–equality focused consultation and looking ahead to other types impact assessments.
- 9.28. It did however make its position clearer in later section 4.7 entitled ‘Equality issues’: *“As a result of representations received, the department proposes that an Equality of Opportunity Screening would be completed on the **principle** [author’s emphasis] of allowing Class A taxis into bus lanes and, if deemed necessary, a full Equality Impact*

*Assessment will draw upon data gathered during the Scheme to inform that assessment”.*

- 9.29. The Report went on: *“The Department proposes that data in relation to the use of taxis, buses and bicycles, together with attitudinal feedback, would be gathered as part of the proposed Scheme to complement historic data on bus lane usage”.*
- 9.30. The Department said at paragraph 5.2 *“Most of the grounds for objections to, and support for, extending the definition of ‘Permitted Taxis’ to include Class A taxis can only be substantiated or dismissed through the consideration of robust evidence. The department considers this evidence can only be gathered and assessed by a further experiment such as running the proposed Scheme. This evidence would then enable a future Minister for Infrastructure to determine future policy regarding the class of taxis permitted access to bus lanes in Belfast”.*
- 9.31. The Department stressed that the data gathered by way of the ETCS would have fed into equality screening at a later stage in the policy development process. However, there was already some data in existence and the Commission had advised the Department *“[w]hile there may not be statistical data available, an initial screening could include what you already know about the impact of the decision from consultation, engagement, complaints and feedback received etc”.*
- 9.32. The Commission advises generally that public authorities should ensure that screening decisions are based on relevant information, which may be qualitative and or quantitative. In the event of data not being available the Commission advises that a public authority considers undertaking a full Equality Impact Assessment of the policy as a way of further investigating its impact. Any appropriate action to address data gaps should also be identified and recorded in the monitoring section of the screening form. None of this general advice is reflected in the Department’s approach as recorded in the report following the proposed ETCS consultation period in July 2018.

*Paragraphs 4.10 and 4.11 of the Department's Equality Scheme*

- 9.33. The Complaint includes these paragraphs of the Department's Equality Scheme. They both relate to commitments in the event that the Department has undertaken screening. There are requirements on a public authority that it sets out its arrangements in its equality scheme on mitigation and alternative policies, when it publishes its equality assessments.
- 9.34. No screening was done on the matter subject to this investigation. Therefore these Equality Scheme commitments were not engaged on this occasion.

*Paragraphs 3.1, 3.2, 3.2.1 & 3.2.2 of the Department's Equality Scheme*

- 9.35. The Complaint includes these paragraphs of the Department's Equality Scheme. They all relate to how the Department will consult on matters relevant to its equality duties, in particular consult in accordance with its commitments at paragraph 4.3 of its equality scheme as an integral part of its equality impact assessment process.
- 9.36. There was no equality impact assessment process undertaken on the matter subject to this investigation, either by way of screening, or a full Equality Impact Assessment. Therefore these Equality Scheme commitments were not engaged on this occasion.

*Paragraphs 1.1 & 2.2 of the Department's Equality Scheme*

- 9.37. As referred to in paragraph 3.3 above, the Complainant referred to the absence of an equality assessment of the ETCS and this was a breach of paragraphs 1.1 and 2.2 of the Department's Equality Scheme.
- 9.38. These paragraphs in the Equality Scheme refer to the Department's duties in Section 75, and that it commits to fulfilling these obligations.
- 9.39. What is required to have "due regard" has been established in case law (see the principles set out at paragraph 3.11 above). In particular, the case of Brown established that;

- The duties must be exercised in substance, with rigour and an open mind, and not as a ‘tick boxing’ exercise

9.40. The Commission’s guidance recommends that public authorities implement their Equality Scheme commitments on Screening and Equality Impact Assessment, which will assist the public authority to demonstrate and evidence that it has had “due regard”.

9.41. On this occasion, the Department did not undertake any screening or equality impact assessment.

## 10. Findings

10.1. The Commission notes that the range of terminology used by the Department over the years has contributed to a somewhat confused picture. It has also been difficult to obtain a clearly delineated policy history in respect of this matter. All of this has contributed to a somewhat inconsistent and at times contradictory expression of the Department’s policy position.

10.2. **The Department failed to comply with Paragraph 4.1 of its Equality Scheme as it did not** apply the definition of policy to its planned activity in the ETCS, which would change the status quo of the current policy by allowing Class A taxis into bus lanes for the period of the ETCS.

10.3. **The Department failed to comply with Paragraphs 4.2, 4.3 and 4.5 of its Equality Scheme as it failed to screen the proposed policy in the ETCS.**

10.4. **Paragraphs 4.10 and 4.11 of the Department’s Equality Scheme.** It is not possible to make a finding in respect of these paragraphs; they are contingent on the outcome of screening, which did not occur, and were not engaged.

10.5. **Paragraphs 3.1, 3.2, 3.2.1, 3.2.2, 3.2.6 of the Department’s Equality Scheme.** It is not possible to make a finding in respect of these paragraphs; they are contingent on screening and any EQIA being conducted, which did not occur, and were not engaged.

10.6. **The Department failed to comply with Paragraphs 1.1 and 2.2 of its Equality Scheme**, as it did not undertake any equality assessment of the ETCS, which this investigation has found that it should.

## 11. Recommendations

11.1. The Commission recommends to the Department of Infrastructure:

- Future action on its policy framework of allowing vehicles access to bus lanes is developed and undertaken with due regard to the need to promote equality of opportunity and it applies its Equality Scheme arrangements to do so.
- Specifically, any further work to develop its policy to allow Class A taxis into bus lanes is considered as a policy change and appropriate and proportionate action is taken. This should be by way of screening and Equality Impact Assessment, in relation to equality assessing the aims of the change or effects of proposed changes and considering the evidence and experiences of the specified groups in Section 75 (as set out in the Commission's guidance). This should occur even for short term changes to the status quo and using the relevant equality data from the monitoring referred to above.
- Ensuring that all those in the Department, including the engineers, are aware of the Department's responsibilities to have due regard, and what that means in practice in relation to implementation of Equality Scheme commitments.
- Keeping records that will provide better evidence in the event of any future questions, but also ensure that any future complaints of failure to comply with its Equality Scheme are responded to in a holistic way.

- Any further ETCS proposed on this matter is presented for consultation with at least an updated screening form that sets out the Department's equality assessment of the potential impacts.

11.2. The Department should provide the Commission with a report on implementation of these recommendations within 6 months of the issue of this Investigation Report.

**November 2019**