

ORIGINAL ARTICLE

Vehicles for justice: buses and advancement

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Abstract

This article draws on the findings from *The Bus Project* (2018–2021) in Bristol, which found that children living in some of the most deprived streets in England cannot afford to visit the centre of their city. The article explains that the problem of children ‘not being on the buses’ is the consequence of a series of policy choices in bus governance. Empirically, the article demonstrates that the causes of bus immobility – cost, fear of the unknown, unfamiliarity, and unreliability – have clear detrimental effects on children’s ability to access leisure and civic opportunities, independent travel, and education of choice. Theoretically, it argues that discrimination and equality law – the dominant legal paradigms for addressing inequality – have limitations in this setting when they do not explicitly provide for socio-economic inequality. This article suggests that we could develop a concept of ‘advancement’, drawing on aspects of Section 1 of the Equality Act 2010 (still unimplemented in England, though in force in Scotland and Wales), moving beyond protected characteristics. As a policy, advancement could be implemented using administrative means, including existing data sets on free school meals or indices of deprivation. A concept of advancement could become a mechanism to enable us to address socio-economic inequality as a ‘vehicle for justice’, just

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as buses are vehicles capable of facilitating spatial justice in practical terms.

1 | INTRODUCTION

In October 2017, Mia, then aged 11, told the audience at a Festival of the Future City event about buses in her home city of Bristol in England:

My family don't own a car and the bus fares are so expensive. Lots of people can't get into Bristol to experience everything in the city centre. Some children have never been into Bristol, yet they only live a few miles away. So, I want to ask you: how can children grow up and enjoy their cities if they can't get around them? And is it fair that some children can't do this at all?¹

Mia highlighted a problem that is not new but is nevertheless shocking. There are children living four miles from the city centre who have never visited it. Children living in Hartcliffe and Withywood, one of the least affluent wards in Bristol, where over 40 per cent of households have no access to a car or van,² tell us that despite living close to one of the most reliable bus routes in the city, they cannot reach their city centre because they cannot afford the fare. Sometimes young people do not even know the names of museums or galleries because they have never visited, despite them being free to enter.³

Mia's observation provided the spark for what became *The Bus Project* (2018–2021), a collaborative research project between the child-led artist studio at Room 13 at Hareclive E-Act Academy primary school in Bristol and the University of Bristol. This article draws on the project's findings: that many of the causes of children 'not being on the buses', particularly the cost of fares, are the consequence of a series of policy choices, including the decision to deregulate bus provision in the 1980s, the grant of concessionary fares to older and disabled passengers but not children, and decisions by many local authorities to subsidize additional routes and 'add-ons', such as pre-9.30am concessions for existing passholders rather than concessions for young people.⁴ *The Bus Project* concluded that funding could be raised for free bus travel for children in Bristol through a workplace parking levy or redistribution of discretionary transport funds.

This debate is about buses and so much more; it is about buses, mobility, and life chances. Buses are the form of transport that caters for those with the fewest private resources and are used

¹ 'How Do We Create Child-Friendly Cities?' Festival of the Future City, 20 October 2017.

² Bristol City Council, *Hartcliffe & Withywood Statistical Ward Profile Report 2021* (2021), at <<https://www.bristol.gov.uk/documents/20182/436737/Hartcliffe+and+Withywood.pdf/49d31847-00da-471c-95c8-82630662e073>>. Figure taken from the 2011 Census.

³ H. Manchester and E. Pett, 'Teenage Kicks: Exploring Cultural Value from a Youth Perspective' (2015) 24 *Cultural Trends* 223.

⁴ A. Layard et al., *Not on the Buses* (2020), at <<http://www.bristol.ac.uk/media-library/sites/law/research/Layard%20et%20al%20BLRP%20No.%2020202020-merged.pdf>>. This report contains a broader discussion of bus governance, with many additional references.

particularly by women as well as by older and younger people.⁵ There is only limited research on the overlap between spatial and social mobility, yet studies have shown that free buses can be physical vehicles to improve children's opportunities and quality of life.⁶ Conversely, a lack of access to buses equates to a lack of access to mobility. While there has been no deliberate choice to keep some people, including the children at Room 13, immobile, a regulatory model lacking a requirement to provide affordable access or an effective bus network has this effect. Many people, including children, are able to move no further than their bodies can carry them. Buses could be physical 'vehicles for justice' facilitating mobility, connection, and life chances.

This article makes two contributions in the context of children not being on the buses. Empirically, the article explains how bus governance has evolved in England and sets out *The Bus Project's* key findings on the causes of bus immobility – cost, fear of the unknown, unfamiliarity, and unreliability – and its effects – limiting children's access to active leisure, civic opportunities, and independent travel. Theoretically, the article argues that discrimination and equality law – the dominant legal paradigms for addressing inequality – have limitations in this setting when they do not explicitly provide for socio-economic inequality. The article proposes a concept of 'advancement', building on insights from equality law, combining a call for advancement with existing data sets on free school meals or place-based indices of deprivation.

Buses may be the butt of jokes and unlikely catalysts of change. Yet as one mother told the project, the current system is not working:

[The cost of] bus travel affects children's activities and opportunities for activities, as in football clubs, dance classes ... swimming ... [T]he bus fare [takes] ... those opportunities ... away from children's experience ... [E]ven if there were free opportunities in Bristol for children, not all children have the advantage of having that opportunity because of bus fares.⁷

These words raise the question: how should law respond to the suggestion that the cost of bus travel is limiting children's opportunities and life chances? As transport writer Steven Higashide asks, if we had a technology that could hugely improve air quality, reduce climate change emissions, improve public health, and make cities and towns pleasanter places to live, would we not hail it as an undoubted success?⁸ Well, we do have such a technology: 'the humble bus'.⁹

⁵ Department for Transport, 'Mode of Travel Statistical Data Set NTS0702' Gov.uk, at <<https://www.gov.uk/government/statistical-data-sets/nts07-car-ownership-and-access#full-publication-update-history>>.

⁶ P. Edwards et al., 'Health Impacts of Free Bus Travel for Young People: Evaluation of a Natural Experiment in London' (2013) 67 *J. of Epidemiology and Community Health* 641; A. Goodman et al., "'We Can All Just Get on a Bus and Go": Rethinking Independent Mobility in the Context of the Universal Provision of Free Bus Travel to Young Londoners' (2014) 9 *Mobilities* 275; J. Green et al., 'More than A to B: The Role of Free Bus Travel for the Mobility and Wellbeing of Older Citizens in London' (2014) 34 *Ageing & Society* 472; J. Green et al., 'On the Buses: A Mixed-Method Evaluation of the Impact of Free Bus Travel for Young People on the Public Health' (2014) 2 *Public Health Research* 1.

⁷ Interview 13.

⁸ S. Higashide, *Better Buses, Better Cities: How to Plan, Run, and Win the Fight for Effective Transit* (2019).

⁹ E. FitzGerald, 'Missing the Bus' 99% Invisible, 4 February 2020, at <<https://99percentinvisible.org/episode/missing-the-bus/>>.

2 | GOVERNING BUSES

The modern system of bus governance has its roots in the early 1980s, when the Thatcher government liberalized buses, aiming to lift the ‘dead hand of regulation’, following the successful deregulation of coaches in 1980.¹⁰ Abolishing road service licensing in Britain outside of London, the Transport Act 1985 (‘the 1985 Act’) came into force in England in October 1986 as an act of conviction; only limited empirical evidence had justified the proposal.¹¹ Part III of the 1985 Act required the break-up and privatization of the National Bus Company, which was reorganized into 72 separate companies, with bus operations swiftly sold to companies, management, or employee buy-outs by April 1988.¹² Privatization was designed to increase competition between the operators but, while initially in the late 1980s there was diversity among bus owners, agglomeration escalated in later decades. By 2011, while there were still 1,245 different bus operators in England outside London, five large companies – First Group, Stagecoach, Arriva, National Express, and Go Ahead – dominated the market, and continue to do so today.¹³

Two regulatory strategies intertwined here – privatization and deregulation – though neither implied the other.¹⁴ In this liberalized system, bus operators select bus routes, usually on the basis of profitability, though additional ‘socially necessary’ routes can be negotiated with local or transport authorities if they are subsidized.¹⁵ Though the provision of bus services is deregulated, passenger fares conventionally (pre-pandemic) make up only 58 per cent of funding and are supplemented by the government’s 42 per cent subsidy, amounting to approximately £2 billion a year, of which just under half (in non-pandemic times) is spent on concessions for older and disabled people.¹⁶ Local or regional transport authorities fund about 20 per cent of routes as socially necessary, particularly to hospitals or linking employment and residential areas,¹⁷ though such spending is not ringfenced and fell by 46 per cent between 2010/2011 and 2017/2018.¹⁸ Many rural and urban bus services have been withdrawn as a result of such cuts.¹⁹

Deregulation entails that bus companies set their own prices, and there is no regulatory oversight of fares and no OFBUS or equivalent oversight body. Prices are highly variable, particularly in rural areas. Bus fare increases consistently outstrip inflation, rising by 42 per cent between 2009

¹⁰ Transport Act 1980.

¹¹ Northern Ireland was excluded from the reach of the Transport Act 1985 and bus policy is now devolved in Scotland and Wales. R. Fairhead and R. Balcombe, *Deregulation of Bus Services in the Trial Areas 1981–84* (1984); House of Commons Transport Committee, *Second Report from the Transport Committee: Session 1984–85: Report and Minutes of Proceedings* (1985) 203.

¹² D. Parker, *The Official History of Privatisation, Vol. 1: The Formative Years: 1970–1987* (2009) 222.

¹³ Competition Commission, *Local Bus Services Market Investigation: A Report on the Supply of Local Bus Services in the UK (Excluding Northern Ireland and London)* (2011), at <<https://webarchive.nationalarchives.gov.uk/ukgwa/20140402200211/http://www.competition-commission.org.uk/our-work/directory-of-all-inquiries/local-bus-services-market-investigation/final-report-and-appendices-glossary>>.

¹⁴ I owe this point to Tony Prosser.

¹⁵ Transport Act 1985, s. 93.

¹⁶ House of Commons Transport Committee, *Bus Services in England outside London* (2019) HC 1425, at <<https://publications.parliament.uk/pa/cm201719/cmselect/cmtrans/1425/1425.pdf>>.

¹⁷ Department for Transport, *Bus Back Better: National Bus Strategy for England* (2021) 28, at <<https://www.gov.uk/government/publications/bus-back-better>>.

¹⁸ House of Commons Transport Committee, op. cit., n. 16, p. 14.

¹⁹ Id.

and 2019²⁰ and a further 1.9 per cent between June 2019 and September 2020,²¹ significantly faster than regulated and unregulated rail fares or motoring costs.²² They have increased by a further 1.5 per cent during the pandemic.²³ Overall, it is difficult to speak of average fares or increases since there is such variability by operator and locality. Research struggles to find a clear relationship between fares and distance, local wages, or location, other than concluding that fares are generally lower in urban areas and that they have increased outside London more than within the capital.²⁴

Children are also affected by this variability, for while transport authorities can provide concessionary support for children and young people beyond the required support for school transport,²⁵ relatively few have done so and deregulation means that the availability and any level of discount vary considerably.²⁶ There is no assumption that children should automatically receive a 50 per cent discount until their 16th birthday (as in Bristol). In some places, there is no child fare at all, while elsewhere the age at which adult fares come into force ranges from 11 to 25.

In London, young people under 16 have travelled on buses for free since 2005 and young people under 18 since 2006. The subsidy has been maintained post-pandemic thanks in part to the #dontzapthezip campaign,²⁷ which saw off a central government attempt to restrict free bus fares for children and young people.²⁸ The capital was excluded from the 1985 Act,²⁹ having only recently been legislated for by the 1984 London Transport Act. This ensured that bus governance in London operates under a distinctive tendering model, transferring responsibility for the bus network first from the Greater London Council (GLC) to London Regional Transport (LRT), in the wake of the then mayor Ken Livingstone's 'Fares Fair' campaign,³⁰ and then to Transport for London (TfL).

TfL is far better funded than transport authorities elsewhere in the country, receiving funding both from central government and from the Greater London Authority, using income generated

²⁰ TAS Partnership Limited, *6th TAS National Bus Fares Survey: 2019* (2020), at <<https://taspartnership.co.uk/wp-content/uploads/2018/02/30281-REP-TAS-National-Fares-Survey-2019.pdf>>.

²¹ Department for Transport, *Quarterly Bus Statistics: England, April to June 2020* (2020), at <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/920172/quarterly-bus-statistics-april-to-june-2020.pdf>.

²² Campaign for Better Transport, *The Future of the Bus: Policy and Fiscal Interventions as Part of a National Bus Strategy* (2019), at <<https://bettertransport.org.uk/sites/default/files/research-files/The-future-of-the-bus-August-2019.pdf>>.

²³ Department for Transport, 'Quarterly Bus Statistics: England, April to June 2021' *Gov.uk*, at <<https://www.gov.uk/government/statistics/quarterly-bus-statistics-april-to-june-2021/quarterly-bus-statistics-april-to-june-2021>>.

²⁴ TAS Partnership Limited, *op. cit.*, n. 20.

²⁵ Transport Act 1985, s. 93(7). All children are eligible for free school transport if their nearest school is more than two miles away for those under eight and three miles away for older pupils. Bus passes cannot be used to get to a school of choice if any school is closer to the student's home. These criteria are relaxed slightly for children in receipt of free school meals. *Gov.uk*, 'Free School Transport' *Gov.uk*, at <<https://www.gov.uk/free-school-transport>>.

²⁶ TAS Partnership Limited, *Review of Reduced and Concessionary Fares in England outside London* (2019), at <<https://www.parliament.uk/globalassets/documents/commons-committees/transport/tas-partnership-review-of-reduced-and-concessionary-fares-in-england-outside-london-021019.pdf>>.

²⁷ Child Poverty Action Group, *Don't Zap the Zip Campaign Briefing* (2020), at <<https://cpag.org.uk/sites/default/files/files/policy/post/cpDon%27t%20Zap%20the%20Zip%20campaign%20briefing%20061020.pdf>>.

²⁸ Transport for London, 'TfL Statement: TfL Funding Update' *Transport for London*, 1 June 2021, at <<https://tfl.gov.uk/info-for/media/press-releases/2021/june/tfl-statement—tfl-funding-update>>.

²⁹ Northern Ireland was also excluded.

³⁰ See also *Bromley LBC v. GLC* [1983] 1 AC 768.

from congestion charging, retained business rates, and passenger revenue as well as accessing the Local Government Prudential Borrowing Regime. In London, transport investment is two and a half times higher than the national average, at £653 per head, compared to £260 per head in the rest of the United Kingdom (UK).³¹ Similarly, investment in transport infrastructure is also almost twice as generous in London as the national average and almost three times as generous as in the South-West of England, where Bristol is located.³² As one of the project's expert interviewees told us, 'London has a budget that is way in excess of anything that a provincial city could ... imagine in their wildest dreams'.³³ Similarly, Greater Manchester introduced free travel for 16–18 year olds in 2019, funded in part through a council tax precept,³⁴ while in Scotland free bus travel has been granted to all of those under 22 from January 2022.³⁵ Though Bristol City Council made a commitment to make free bus travel for 16–18 year olds a 'priority action' as part of its post-16 education strategy,³⁶ no change has come yet.

This absence of child concessions contrasts markedly with the concessions for older and disabled people, itself a policy choice. The concessionary scheme was New Labour's most enduring intervention in bus policy, introduced in 2001 with a half-price concession for an 'elderly person'.³⁷ Initially the subject of sex discrimination litigation,³⁸ the age of receipt was raised for women to equalize entitlement from 2002 onwards³⁹ and is now linked to pensionable age. From 1 April 2006, the concession was also geographically extended to cover all local bus services throughout England, regardless of where people live.⁴⁰ Today, the scheme is implemented by the English National Concessionary Travel Scheme (ENCTS)⁴¹ and provides free travel for people over state pension age and those with an eligible disability on all eligible local bus services anywhere in

³¹ Institute for Fiscal Studies, 'Levelling Up: What Might It Mean for Public Spending?' *Institute for Fiscal Studies*, 9 March 2020, at <<https://ifs.org.uk/publications/14747>>.

³² Office for Statistics Regulation, *Statistics on Government Spending: Country and Regional Analysis* (2019), at <<https://osr.statisticsauthority.gov.uk/wp-content/uploads/2019/05/Assessment-Report-CRA.pdf>>.

³³ Interview 1.

³⁴ Greater Manchester Combined Authority, '2022/23 Mayoral General Precept (including Fire Services)' *Greater Manchester Combined Authority*, at <<https://www.greatermanchester-ca.gov.uk/who-we-are/accounts-transparency-and-governance/council-tax/mayoral-general-precept-including-fire-services/>>. Combined authorities have individual agreements, and the West of England Combined Authority (WECA), where Bristol is located, has no power to implement a council tax precept.

³⁵ Transport Scotland, *Fairer Scotland Duty Summary Template: The National Bus Travel Concession Scheme for Young Persons (Scotland) Order 2021* (2021), at <<https://www.transport.gov.scot/media/48997/free-bus-travel-for-under-19-fairer-scotland-duty-assessment-results.pdf>>.

³⁶ Bristol City Council, *Improving Bristol Post-16 Education, Skills and Career Pathways: Be Inspired Strategy 2019–24* (2019), at <<https://www.bristollearningcity.com/wp-content/uploads/2019/09/Post-16-Strategy-2019-24.pdf>>.

³⁷ Under Sections 145 to 150 of the Transport Act 2000, as amended, in England the scheme is administered by travel concession authorities (TCAs). In England outside London, these are county, unitary, and metropolitan authorities.

³⁸ See *Atkins v. Wrekin Borough Council* [1997] ICR 75 (where the European Court of Justice found no breach); *Matthews v. United Kingdom* [2000] ECHR 3 (where the European Court of Human Rights held the application admissible).

³⁹ Travel Concessions (Eligible Services) Order 2002 (SI 2002/1016).

⁴⁰ Travel Concessions (Extension of Entitlement) (England) Order 2005 (SI 2005/3224); Concessionary Bus Travel Act 2007.

⁴¹ Concessionary Bus Travel Act 2007, with some limited changes introduced by Travel Concessions (Eligible Services) (Amendment) Order 2009 (SI 2009/575). Concessionary travel is a devolved policy area.

England from 9.30am until 11pm on weekdays and all day at weekends and on Bank Holidays.⁴² London has a significantly more generous scheme, the Freedom Pass.

While politically popular, particularly with older voters, the concessionary bus scheme is administratively contentious and often labelled ‘a mess’.⁴³ The scheme is relatively cheap to run, costing an average £83 per pass in England outside London and £184 in London in 2018/2019, pre-pandemic, with £879 million reimbursed to local authorities in England by the government, around 25 per cent of which went to authorities in London.⁴⁴ In 2018/2019, there were 9.1 million concessionary travel passes (8.2 million older passes and 900,000 disabled passes) issued across England and 884 million concessionary bus journeys taken.⁴⁵ Justifications for concessionary travel for older and disabled people have, as with proposals for deregulation in 1984, been relatively informal, referring to wellbeing and social exclusion,⁴⁶ albeit supplemented by more rigorous academic research.⁴⁷

While the Transport Committee has noted the ‘good case to be made for concessionary travel to be extended to other groups’,⁴⁸ such recommendations have not been taken up. The 2021 *National Bus Strategy* notes that the government will continue to pay for school transport where the entitlement applies⁴⁹ but confirms that concessions for children and young people are not on the political agenda.⁵⁰ In the past, the Labour Party has indicated that a government might use vehicle excise duty or local investment building on municipalization to fund free travel, but these proposals have faded.⁵¹ This lack of political appetite comes despite consistent suggestions for reform.⁵² One often implicit argument is that young people on buses are noisy or undisciplined, so that the back of the bus ‘is like Beirut’ according to one Member of Parliament.⁵³ However, travelling is a learned art, with behavioural norms that can be taught through public campaigns.

⁴² Transport Act 2000, ss 145–159, in force since 1 June 2001 outside London. There are seven categories of disabled people who are entitled to the statutory minimum concession, set out in Section 146 of the Transport Act 2000 and Section 240(5) of the Greater London Authority Act 1999 (in relation to London).

⁴³ House of Commons Transport Committee, op. cit., n. 16, p. 40.

⁴⁴ House of Commons Library, *Concessionary Bus Travel* (2020) CBP 1499, at <<https://researchbriefings.files.parliament.uk/documents/SN01499/SN01499.pdf>>. These figures are difficult to assess definitively, with both bus operators and local authorities complaining of shortfalls.

⁴⁵ Id.

⁴⁶ Department for Transport, *Evaluation of Concessionary Bus Travel: The Impacts of the Free Bus Pass* (2016) 9, at <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/876395/evaluation-of-concessionary-bus-travel.pdf>; R. Mackett, ‘Has the Policy of Concessionary Bus Travel for Older People in Britain Been Successful?’ (2014) 2 *Case Studies in Transport Policy* 81.

⁴⁷ E. Webb et al., ‘Free Bus Passes, Use of Public Transport and Obesity among Older People in England’ (2012) 66 *J. of Epidemiology and Community Health* 176; E. Webb et al., ‘Free Bus Travel and Physical Activity, Gait Speed, and Adiposity in the English Longitudinal Study of Ageing’ (2016) 106 *Am. J. of Public Health* 136.

⁴⁸ House of Commons Transport Committee, *Ticketing and Concessionary Travel on Public Transport* (2007–2008) HC 84, 129, at <<https://publications.parliament.uk/pa/cm200708/cmselect/cmtran/84/84.pdf>>.

⁴⁹ Department for Transport, op. cit., n. 17.

⁵⁰ Id., p. 59. The words ‘disadvantaged’ and ‘blanket’ suggest that some provision might be made for the poorest children, but there have been no concrete proposals of such a change.

⁵¹ Shadow Transport Minister Matt Rodda set out some of the details of this proposed policy during a Westminster Hall debate on 8 May 2018. See however Labour Party, *It's Time for Real Change: The Labour Party Manifesto 2019* (2019) 19, at <<https://labour.org.uk/wp-content/uploads/2019/11/Real-Change-Labour-Manifesto-2019.pdf>>.

⁵² House of Commons Transport Committee, op. cit., n. 16, para. 26.

⁵³ S. Moore, ‘Buses from Beirut: Young People, Bus Travel and Anti-Social Behaviour’ (2012) 108 *Youth & Policy* 20.

Bus governance consists of a series of policy choices, including deregulation, prioritizing networks over new concessions, providing ‘add-ons’ for older and disabled concessionary passengers, as well as New Labour’s decision to leave the deregulatory framework in place, focusing on ‘quality contracts’ (as yet unused) and partnership working instead.⁵⁴ Despite acknowledging consistent increases in bus fares, the Competition Commission, the Competition and Markets Authority, and successive governments have not intervened.⁵⁵ There are a few remaining publicly owned bus companies whose fares are often lower,⁵⁶ as well as the (effectively) franchised system in London and franchising underway in Greater Manchester.⁵⁷ While publicly owned buses might be cheaper,⁵⁸ without a concession similar to that for older and disabled people, children and young people are often still priced out. *The Bus Project* did not take a view on privatization or franchising, preferring instead to recognize the experiences of children today, since concessionary funding would be needed whatever the governance model.⁵⁹

3 | THE BUS PROJECT

Prompted by Mia’s statement, *The Bus Project* was convened in Bristol from 2018 to 2021. This was a collaborative project between academics and Room 13, a creative collective of children and adult artist-educators at Hareclive E-Act Academy. The project received funding from the University of Bristol to use arts-led research coupled with a school-wide survey (n = 364). Paper copies were printed and delivered by the University of Bristol to Hareclive, who sent the survey home in children’s bookbags after holding a school assembly on buses and the scope of the research. The survey was also posted online (via onlinesurveys.ac.uk), with the link uploaded to the school’s Facebook page by Hareclive’s head teacher. The survey data was supplemented with qualitative interviews to enable the research team to begin to understand the children’s experiences.

This co-produced research had its limits, revealing a tension between activism and research as well as a less than 10 per cent return rate for the survey (though Room 13 adults believed this to be a representative level of engagement). The project could not come to reliable, definitive conclusions as to whether, or to what extent, economic deprivation causes transport poverty or immobility. Nevertheless, the voices from Room 13 children, parents, and carers came across loud and clear: buses cost too much and they are often unreliable and unfamiliar to children, with the consequence that children’s mobility is limited.

⁵⁴ Layard et al., op. cit., n. 4.

⁵⁵ Department of Business Innovation & Skills, *Government Response to the Competition Commission’s Report ‘Local Bus Services Market Investigation’* (2012) 6–7, at <<https://www.gov.uk/government/publications/government-response-to-the-competition-commissions-report-local-bus-services-market-investigation>>; Competition and Markets Authority, ‘Bus Services Bill: Retaining the Benefits of Competition’ *Competition and Markets Authority*, 5 July 2016, at <<https://competitionandmarkets.blog.gov.uk/2016/07/05/bus-services-bill-retaining-the-benefits-of-competition/>>.

⁵⁶ TAS Partnership Limited, op. cit., n. 20.

⁵⁷ Transport for Greater Manchester, ‘Our Buses’ *Transport for Greater Manchester*, at <<https://tfgm.com/our-buses>>.

⁵⁸ TAS Partnership Limited, op. cit., n. 20.

⁵⁹ Layard et al., op. cit., n. 4.

3.1 | Methodology and methods

The Bus Project used arts-led methodologies, which proceed on a working assumption that creative methods can retrieve perspectives and sensations that otherwise might be ignored. Arts-led inquiry enables researchers to tap into some of the emotional resonance of the research question, over and above 'objective' data responses. Expression can make the invisible visible, bringing into the foreground that which has been suppressed and silenced.⁶⁰ Arts, it is said, create a sense of knowing through the creative process and the experiencing of it, allowing researchers to draw on 'tacit' knowledge that opens up 'undiscovered avenues of understanding'.⁶¹ This supports Steve Taylor and Donna Ladkin's argument that arts-based methods can enable those involved to apprehend the essence of a concept, a situation, or tacit knowledge in a particular way, revealing depths and connections that more propositional and linear developmental orientations cannot.⁶² Empathy also becomes possible through the multiple perspectives, which 'allow for recognition of the otherness of the other'.⁶³ In *The Bus Project*, the main artistic research output – the film *Now's the Time*, directed, produced, and made at Room 13⁶⁴ – enabled the children to express their experience of mobility as well as empathy for parents, who cannot afford to do the best for their children, or bus drivers, who need steady employment.⁶⁵

The research also included semi-structured interviews with ten experts on bus policy, selected purposively with snowballing sampling, and one group discussion with the children at Room 13, in which they reflected on the difficulties of bus use in their neighbourhood. Ethical approval was obtained from the University of Bristol Law School Research Ethics committee, with all of the research carried out in line with the Socio-Legal Studies Association's *Statement of Principles of Ethical Research Practice*.⁶⁶ This qualitative research was supplemented by doctrinal legal and law-in-context analysis. Legal research investigated the statutory and case-law basis for bus regulation, identifying the overarching legal structure and how it informs bus use today. Drawing on this project, this article has added a further method: concept generation – proposing the concept of advancement.

3.2 | Findings

The Bus Project found evidence of difficulties with bus transport, best represented in the film *Now's the Time*, made by Room 13 to disseminate their findings, which identified four reasons why children in the studio do not use buses: cost, fear of the unknown, unfamiliarity, and unreliability. According to respondents, the primary reason for not using buses is cost. It is too expensive, says

⁶⁰ S. Taylor, 'Overcoming Aesthetic Muteness: Researching Organizational Members' Aesthetic Experience' (2002) 55 *Human Relations* 821.

⁶¹ K. Estrella and M. Forinash, 'Narrative Inquiry and Arts-Based Inquiry: Multinarrative Perspectives' (2007) 47 *J. of Humanistic Psychology* 376, at 381.

⁶² S. Taylor and D. Ladkin, 'Understanding Arts-Based Methods in Managerial Development' (2009) 8 *Academy of Management Learning & Education* 55.

⁶³ Estrella and Forinash, op. cit., n. 61, pp. 381–382.

⁶⁴ Room 13, *Now's the Time* (2019), at <<https://vimeo.com/325299656>>.

⁶⁵ For more details on the project's arts-led methodology and methods, see Layard et al., op. cit., n. 4.

⁶⁶ Socio-Legal Studies Association, *Statement of Principles of Ethical Research Practice* (2021), at <https://www.slsa.ac.uk/images/2019summer/SLSA_Ethics_Statement_-_September_2021.pdf>.

one mother: 'I'm a single parent and it costs too much for one adult with two kids.' Another parent outlines her choices:

If I take my children to the dentist, it's four stops away, but I have to pay £1 each there and back again with the £4 I have to pay for myself – that's £8, which is a week of electricity for us at home.

The project found that a second, related reason for bus immobility is fear of the unknown, since in contrast to London, children in Bristol and other parts of England cannot just 'get on a bus and go'.⁶⁷ A third finding highlighted children's unfamiliarity when they get off the bus. As many so rarely leave their neighbourhood unaccompanied, they are not familiar with city streets at their destination. This again chimes with existing research, as this navigation, like travel socialization, is a learned practice. A fourth finding was a repeated concern for bus reliability, which made accessing hospital and dental appointments difficult, resulting in children missing more school. These four reasons for children not being on the buses – cost, fear of the unknown, unfamiliarity, and unreliability – are not conclusive; the study was small scale and illustrative rather than causal, but it gives a good indication of the challenges that children face in accessing transport, mobility, and buses.

The Bus Project also explored the effects of not using the buses – how it constrains children's leisure activities, active hobbies, socialization, independent mobility, and sense of belonging to their city. This is particularly evident in the studio's film *Now's the Time*:

Hi, I'm a twelve year old and if there was free bus travel for children ... well ... [kids playing] ... With free bus travel, I can get to the skate park ... I can go to football ... I can get to dance classes ... Now that there's free bus travel, me and my mates can go to the park. I love my free bus pass – it means I can go to netball, meet my friends, go to things in town. I feel part of my city.

This imaginary statement echoes the findings from research conducted in London where children benefitted from free bus fares and used buses to undertake active hobbies and independent leisure travel. The account also emulates the findings from a Merseyside study where over a third of the bus trips taken in one week for leisure would not have taken place had the older people not had their free concessionary pass.⁶⁸ There is good evidence that free bus travel encourages discretionary travel, particularly for active hobbies and leisure.

A further impact of expensive, unreliable, and unfamiliar bus services is the impact on children's independent travel. This is an under-studied area, with only limited research on children's mobility that is not 'school-bound, car-dependent, adult-determined and highly localized'.⁶⁹ Children and young people's independent mobility can be linked to having the disposable income to

⁶⁷ Goodman et al., op. cit., n. 6.

⁶⁸ F. Dunkerley et al., 'The Benefits of the Liverpool City Region Concessionary Travel Scheme for Elderly and Disabled Travellers' (2016) European Transport Conference, at <https://discovery.ucl.ac.uk/id/eprint/1520991/1/C257%20ETC_2016_paper_Dunkerley_Rohr_Mackett.pdf>.

⁶⁹ A. Hurni, 'Moving On: The Role of Transport in the Everyday Mobilities of Children and Young People in Urban Australia' (2015) PhD thesis, Western Sydney University, p. 21, at <<https://researchdirect.westernsydney.edu.au/islandora/object/uws%3A34543/>>.

pay for buses.⁷⁰ Research in London has found that children with free bus travel can and do set their own travel agendas:

During the teenage years, young people may have permission to travel by themselves in theory, but may not be able to do so in practice if they cannot afford to pay for travel and if their parents are unwilling or unable to give them money.⁷¹

In *Now's the Time*, the video's dream sequence depicts children imagining being able to go where they would like to, when they would like to. One 12 year old muses: 'If the buses were cheaper, I'd be allowed out somewhere different every weekend.'

A final finding from *The Bus Project* connects buses with children's sense of belonging to their city, linking to Mia's question: 'how can children grow up and enjoy their cities if they can't get around them?' One consistent finding from research with recipients of concessionary fares, be they young people in London or older passengers elsewhere in the UK, is that free bus travel facilitates a sense of belonging to their city.⁷² In legal terms, we might start to see a connection between mobility and citizenship.

4 | MOBILITY AND TRANSPORT

Mobility, writes Tim Cresswell, is 'central to what it is to be human', proving 'a fundamental geographical facet of existence'.⁷³ Mobility operates in relationship with immobility; people fluctuate between being mobile and being immobile, even if this is not by choice. To date, transport mobility has rarely been understood as an aspect of equality or human rights provision, though recognition is growing.⁷⁴ Philip Alston, the former United Nations (UN) Special Rapporteur on Extreme Poverty and Human Rights, noted in his UK report that rural dwellers are particularly impacted by cuts to public transport, risking loneliness and isolation. In Bristol, Alston was told: 'People can't afford the bus and the bus doesn't go where you need it to anyways.'⁷⁵

In England, while passengers should be able to board a bus without discrimination,⁷⁶ there is no right to mobility, despite growing recognition of the link between immobility and poverty.⁷⁷ Some

⁷⁰ Q. Chen et al., *Generation Next: The Changing Travel Habits of Pre-Driving Age Young People in Britain* (2014), at <https://www.racfoundation.org/wp-content/uploads/2017/11/Generation_Next_Teenage_Travel_Behaviour_LeVine_Chen_Oct2014.pdf>.

⁷¹ Goodman et al., op. cit., n. 6, p. 288.

⁷² G. Andrews et al., 'The Grey Escape: Investigating Older People's Use of the Free Bus Pass' (2012) 35 *Transportation Planning and Technology* 3; G. P. Andrews, 'Just the Ticket? Exploring the Contribution of Free Bus Fares Policy to Quality of Later Life' (2012) PhD thesis, University of the West of England, at <https://www2.uwe.ac.uk/faculties/FET/Research/cts/projects/reports/andrews_2012_thesis.pdf>.

⁷³ T. Cresswell, *On the Move: Mobility in the Modern Western World* (2006) 3.

⁷⁴ There are occasional legal limits to immobility, such as restrictions on the extent to which people in prison can be denied access to recreation, while the concept of free movement in migration raises questions of access to countries, citizenship, and opportunities.

⁷⁵ P. Alston, *Statement on Visit to the United Kingdom* (2018) 20, at <https://www.ohchr.org/sites/default/files/Documents/Issues/Poverty/EOM_GB_16Nov2018.pdf>.

⁷⁶ *First Group Plc v. Pauley* [2017] UKSC 4.

⁷⁷ P. Alston et al., *Public Transport, Private Profit: The Human Cost of Privatizing Buses in the United Kingdom* (2021), at <<https://chrgj.org/wp-content/uploads/2021/07/Report-Public-Transport-Private-Profit.pdf>>.

constitutional law scholars have noted this gap, reading South African constitutional provisions such as the right to education or equal treatment spatially and inferring a right to transport from provisions in the Bill of Rights ‘viewed conglomeratively’.⁷⁸ Scholars suggest that while transport is typically depicted as an area of exclusive, executive decision making, it could be argued that it has a constitutional component when read across rights to education and work, health care, and social assistance, if people cannot physically access them.⁷⁹ Alternatively, arguments have been made that inclusive mobility should be grounded on the right to equal treatment, particularly for people with disabilities.⁸⁰

In Italy, Article 16(1) of the Constitution provides a rare exception of a ‘right to move’, stating:

Every citizen has the right to reside and travel freely in any part of the metropolitan territory, save for such limitations as the laws may prescribe in a general way for reasons of health or security. No restrictions may be prescribed for political reasons.

This has been interpreted as a right to mobility, requiring provision of a minimum level of public transport at an affordable rate.⁸¹ Similarly, geographers have proposed a ‘mobility bill of rights’, focusing not only on individual rights to access transport but also on how opportunities are spatially distributed.⁸² As scholars note, mobility and immobility are inherently political, often dependent on age, (dis)ability, citizenship, gender, and sexuality. Mobility is a resource ‘to which not everyone has an equal relationship’.⁸³

Almost in parallel to this work on mobility, research in transport studies has explicitly focused on poverty and social exclusion. If mobility can be understood as movement, transport can be understood as the way in which movement is achieved – by walking, cycling, driving, buses, and so on. Scholars have studied transport poverty and transport exclusion for some time, particularly alongside New Labour’s 1990s–2000s New Deal policies where academic researchers framed transport exclusion as ‘a spectrum of deprivation’ rather than a binary distinction between being excluded or included.⁸⁴

Research in transport studies has recognized a lack of accessibility to employment and educational or leisure activities as ‘accessibility poverty’,⁸⁵ defining accessibility as ‘the ability to get to essential services: education, employment, health and others, and to food shops, as well as to sporting, leisure and cultural activities’.⁸⁶ Yet the word ‘accessibility’ often raises issues of

⁷⁸ T. Coggin and M. Pieterse, ‘A Right to Transport? Moving Towards a Rights-Based Approach to Mobility in the City’ (2015) 31 *South African J. on Human Rights* 294, at 300.

⁷⁹ F. Tonkiss, ‘City Government and Urban Inequalities’ (2020) 24 *City* 286, at 295.

⁸⁰ S. Ranchordas, ‘Smart Mobility, Transport Poverty, and the Right to Inclusive Mobility’ [2020] *SSRN Electronic Journal* 4, at <<https://www.ssrn.com/abstract=3520525>>.

⁸¹ T. Prosser and L. Butler, ‘Rail Franchises, Competition and Public Service’ (2018) 81 *Modern Law Rev.* 23.

⁸² E. Soja, *Seeking Spatial Justice* (2013); M. Sheller, *Mobility Justice: The Politics of Movement in an Age of Extremes* (2018).

⁸³ B. Skeggs, *Class, Self, Culture* (2004) 49.

⁸⁴ G. Lyons, ‘The Introduction of Social Exclusion into the Field of Travel Behaviour’ (2003) 10 *Transport Policy* 339, at 340.

⁸⁵ J. Shaw and J. Sidaway, ‘Making Links: On (Re)Engaging with Transport and Transport Geography’ (2011) 35 *Progress in Human Geography* 502; Hurni, op. cit., n. 69; K. Lucas, ‘Providing Transport for Social Inclusion within a Framework for Environmental Justice in the UK’ (2006) 40 *Transportation Research Part A: Policy and Practice* 801; P. Jones and K. Lucas, ‘The Social Consequences of Transport Decision-Making: Clarifying Concepts, Synthesising Knowledge and Assessing Implications’ (2012) 21 *J. of Transport Geography* 4.

⁸⁶ J. Stanley and J. Lucas, ‘Social Exclusion: What Can Public Transport Offer?’ (2008) 22 *Research in Transportation Economics* 36.

physical inaccessibility, aiming to facilitate public transport for people with disabilities.⁸⁷ While such access is clearly critical, the term ‘accessibility’ has lost its emphasis on poverty,⁸⁸ often ignoring the difficulties of economically vulnerable people who are neither disabled nor older and removing a policy concept from the toolkit of transport exclusion. This conceptual narrowing has arisen despite an acknowledged worsening of accessibility for those who cannot afford the fares.⁸⁹

This specific use of the concept of accessibility, focusing on disability rather than poverty, has obscured questions of inclusion. While research and strategies try to increase ridership, policies rarely focus on those who cannot afford to use the bus. The 2021 *National Bus Strategy* explicitly rules out ‘blanket free travel for unaccompanied children’, despite aiming to increase long-term patronage.⁹⁰ Even the £220 million promised for buses and networks in 2020/2021⁹¹ is only around 8 per cent of the £27 billion promised for roads, which will primarily benefit drivers making longer journeys on motorways and A roads. For comparison, Phase 1 of the HS2 rail infrastructure is anticipated to cost £44.6 billion.⁹²

These alternative funding streams, prioritizing road and rail over buses, have consequences for equality since both the mode of travel and the distance travelled are linked to wealth. People in the lowest income quintile are three and a half times more likely to use a bus than those in the highest income quintile and walk nearly half as much again as those in the highest quintile,⁹³ while people in the highest quintile are three and a half times more likely to use a train than those in the lowest. Even simply measuring distances travelled within the UK (excluding holidays or business travel abroad), wealthier people are far more mobile.⁹⁴ In 2019, people in the highest quintile used surface transport to travel almost twice as far within the UK (let alone beyond it) as those in the poorest quintile.⁹⁵

Equity in transport matters, connecting people to social opportunities and wellbeing, as one of *The Bus Project’s* councillor interviewees concluded:

[I]f you see transport as an isolated, operational, geeky thing, then I think it will always be low down on the list. If you see it as a massively important enabler to people being able to gain access to all sorts of things, leading fulfilled, productive lives, staying healthy both physically and mentally, it’s probably number two on the list

⁸⁷ See for example Department for Transport, *Accessibility Action Plan Consultation* (2017), at <<https://www.gov.uk/government/consultations/draft-transport-accessibility-action-plan>>; Department for Transport, *The Inclusive Transport Strategy: Achieving Equal Access for Disabled People* (2018), at <<https://www.gov.uk/government/publications/inclusive-transport-strategy>>.

⁸⁸ Environment Audit Committee, *Transport and Accessibility to Public Services* (2013) HC 201.

⁸⁹ *Id.*

⁹⁰ Department for Transport, *op. cit.*, n. 17, p. 59.

⁹¹ Department for Transport, ‘A Better Deal for Bus Users’ *Gov.uk*, 6 February 2020, at <<https://www.gov.uk/government/publications/a-better-deal-for-bus-users/a-better-deal-for-bus-users>>.

⁹² Department for Transport, ‘HS2 6-Monthly Report to Parliament: March 2021’ *Gov.uk*, 23 March 2021, at <<https://www.gov.uk/government/speeches/hs2-6-monthly-report-to-parliament-march-2021>>.

⁹³ Department for Transport, ‘NTS0705: Travel by Household Income Quintile and Main Mode or Mode: England’ *Gov.uk*, 22 September 2021, at <<https://www.gov.uk/government/statistical-data-sets/nts03-modal-comparisons#mode-by-age-and-gender>>.

⁹⁴ Wealthier people cycle more, though this is in relatively low numbers, with cycling accounting for 1.7 per cent of trips in the sample. *Id.*

⁹⁵ Department for Transport, *op. cit.*, n. 17.

behind housing. That's where I would put it. Sadly, while you see it as a geeky, techie, transporty only thing, it gets left out and it's a real shame.⁹⁶

Given the importance of mobility, the academic legal gap on immobility is striking.⁹⁷ If mobility is part of being human, then what is immobility? How should we, as lawyers, understand it and respond if people lack it? We agitate for homes for the homeless and food for the hungry – what should we give the immobile? The allocation of transport funding, even for safe places to walk, rests on political choices. The Bristol children who cannot afford to catch the bus into town may be able to move at home and in neighbouring streets (even though these are significantly more dangerous than wealthier streets⁹⁸). Yet without access to transport, they may effectively be compelled to stay within the range of their individual physical abilities. To repurpose the words of geographer Jennifer Hyndman, one's 'mobility is an expression of power relations',⁹⁹ and children in Hartcliffe have remarkably little power.

5 | ADVANCEMENT, EQUALITY, AND EQUITY

5.1 | The limits of equality and discrimination law

It is hard to imagine a bus pass as a constitutional entitlement. Yet the concession facilitates a fundamental human need, enabling mobility and addressing transport poverty. The provision raises questions of equity: if older people have free bus travel – regardless of their financial position – while children and young people do not, is this unequal treatment deserving of legal concern? This is unlikely to constitute illegal discrimination for five reasons:

1. Children have fewer protections than adults under existing English equality law.
2. Unequal access to concessions is unlikely to breach the public sector equality duty (PSED).
3. Transport concessions for older and disabled people can be justified as differential beneficial treatment.
4. There is unlikely to be a successful review of this spending decision.
5. Children's rights remain largely rhetorical.

This section will consider each reason in turn.

While the Equality Act 2010 prohibits discrimination based on age, children are exempt from this protection in relation to services and public functions¹⁰⁰ and direct discrimination.¹⁰¹ There

⁹⁶ Interview 2.

⁹⁷ Note the exceptions in ns 74–80.

⁹⁸ M. Hillman et al., *One False Move: A Study of Children's Independent Mobility* (1990); Bristol City Council, *A Safe Systems Approach to Road Safety in Bristol: A 21st Century Approach: A Ten-Year Plan 2015–2024* (2015), at <<https://www.bristol.gov.uk/documents/20182/34140/A+Safe+System+Approach+to+Road+Safety+in+Bristol.pdf>>.

⁹⁹ J. Hyndman, 'The (Geo)Politics of Mobility' in *Mapping Women, Making Politics: Feminist Perspectives on Political Geography*, eds L. Staeheli et al. (2004) 169, at 170.

¹⁰⁰ Equality Act 2010, s. 28.

¹⁰¹ Id., s. 13. See the Explanatory Memorandum to the Equality Act 2010: '[F]or age, different treatment that is justified as a proportionate means of meeting a legitimate aim is not direct discrimination'. *Legislation.gov.uk*, 'Equality Act 2010' *Legislation.gov.uk*, at <<https://www.legislation.gov.uk/ukpga/2010/15/notes/contents>>.

are some areas where children are covered, notably in relation to employment,¹⁰² and as a category age is a protected characteristic without exceptions. Yet these major exclusions are justified on the basis that different ages implied different treatment:

[T]he basic principle of age discrimination legislation – that people should be treated the same regardless of their age – is rarely appropriate to the treatment of children ... because a child's age is closely related to his or her levels of development and need.¹⁰³

The exclusion of children in this context has attracted relatively little concern,¹⁰⁴ even though it appears to violate provisions of the UN Convention on the Rights of the Child (CRC) 2010 in relation to unequal treatment and discrimination.¹⁰⁵

The decision to grant concessions to all older people but not poorer children is also unlikely to be in breach of the PSED, which builds on protected characteristics. Introduced by Section 149 of the Equality Act 2010, the PSED consolidates earlier judicial developments, requiring public authorities to have 'due regard' to the need to eliminate discrimination, harassment, and victimization as well as to 'advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it'.¹⁰⁶ The eight protected characteristics are age (with no exception made for young age), disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.¹⁰⁷ The PSED requires that while opportunities should be advanced for all, some people may be treated more favourably than others,¹⁰⁸ particularly if they are disabled, so that older bus users can be preferred.¹⁰⁹

In line with the 'due regard' formulation, however, case law provides that the PSED is 'not a duty to achieve a result' but a duty 'to have regard to the need' to achieve the goals identified in Paragraphs (a) to (c) of Section 149(1) of the Equality Act 2010.¹¹⁰ While the extent of the 'regard' that must be had to the six aspects of the duty should be what is 'appropriate in all the circumstances', exercised in 'substance, with rigour and with an open mind',¹¹¹ making decisions with 'a proper and conscientious focus on the statutory criteria',¹¹² it is for the decision maker to determine how much weight to give to the duty; the court simply has to be satisfied that 'there has been a rigorous consideration of the duty'.¹¹³ While not legally required, in practice the PSED often involves relatively systematic and evidence-based equality impact assessments, enabling decision makers to consider the likely impact of policy decisions on different groups of people. The PSED does not,

¹⁰² There is no exclusion of people under 18 in Part 5 of the Equality Act 2010, dealing with work.

¹⁰³ Government Office for Equalities, *Equality Act 2010: Banning Age Discrimination in Services, Public Functions and Associations – A Consultation on Proposed Exceptions to the Ban* (2011) 5.

¹⁰⁴ S. Flacks, 'Is Childhood a "Disability"? Exploring the Exclusion of Children from Age Discrimination Provisions in the Equality Act 2010' (2014) 26 *Child and Family Law Q.* 421.

¹⁰⁵ B. Hepple, 'The New Single Equality Act in Britain' (2011) 40 *Industrial Law J.* 14.

¹⁰⁶ Equality Act 2010, s. 149(1).

¹⁰⁷ *Id.*, s. 5.

¹⁰⁸ *Id.*, s. 149(6).

¹⁰⁹ *Id.*, s. 149(4).

¹¹⁰ *Hotak v. London Borough of Southwark* [2015] UKSC 30.

¹¹¹ *Bracking v. Secretary of State for Work and Pensions* [2013] EWCA Civ 1345 (Admin) 26.

¹¹² *Hurley v. Secretary of State for Business and Innovation* [2012] EWHC 201 (Admin) 77.

¹¹³ *Id.*

however, require equality to be achieved and is particularly hard to apply to a policy absence, such as the decision not to offer concessionary bus travel to poor children and young people.

Granting bus concessions to wealthy pensioners but not poor children can also be justified as distinct beneficial treatment. The Equality Act 2010 was not intended to prohibit differentiation¹¹⁴ and incorporated three justifications to support differential treatment: objective justification, positive action, and statutory provisions (with the latter justification explicitly mentioning older and disabled people's bus passes, which were already in operation).¹¹⁵ It is clearly legally possible (particularly under the provisions for positive action¹¹⁶), and desirable, to support bus concessions for older and disabled people to promote inclusion and active health, limiting loneliness and isolation. Maintaining support for such (politically popular) concessions is also important, not least because there are already some in government asking whether we should not instead withdraw concessions for children in London rather than extend them countrywide.¹¹⁷

One further option, also likely to be unsuccessful, is to challenge the decision not to grant concessionary travel to children and young people by way of judicial review. It might, for instance, be said to be irrational that a local authority offers 'add-ons' such as free travel before 9.30am to older passengers regardless of income, rather than making any provision for children living in poverty. Such a claim would, however, be extremely unlikely to succeed, not least as this is a widespread practice, but also because even though public law has moved towards greater value-based reasoning, judicial review's primary focus is still on corrective, rather than social or distributive, justice, ensuring in particular that all are treated equally before the law.¹¹⁸ Courts have proved reluctant to review substantive decisions of resource allocation, so if sufficient information is taken into account in spending decisions, including limits on budgets, spending decisions are highly unlikely to be found to be irrational and vulnerable to judicial review.¹¹⁹ While there are plausible reasons for such judicial reluctance, concerns are growing about the inability to review spending decisions that have significant effects on the most vulnerable in society.¹²⁰ Nevertheless, as the law stands, the preferential resource allocation to all older people, excluding poor children, would be highly likely to withstand judicial review.

This general point about administrative law is particularly relevant to a largely deregulated system, which has ensured that if passengers have concerns, they have only limited avenues for complaint.¹²¹ While concerns can be litigated, as in *First Group UK v. Pauley*, where the Supreme Court held that First Group had breached the Equality Act 2010 on disability grounds by refusing to allow a disabled passenger to get onto a bus,¹²² such disputes start after a passenger begins their journey. There is no mechanism for people who cannot afford to catch the bus in the first place.

¹¹⁴ Government Office for Equalities, op. cit., n. 103, p. 20.

¹¹⁵ Id.

¹¹⁶ Under the Equality Act 2010, s. 158, *R v. Hackney London Borough Council (Hackney) & Agudas Israel Housing Association* [2019] EWCA Civ 1099.

¹¹⁷ G. Shapps, *Transport Committee Oral Evidence: Coronavirus: Implications for Transport* (2020) HC 268, Q380, at <<https://committees.parliament.uk/oralevidence/566/pdf/>>.

¹¹⁸ C. O'Cinneide, 'Legal Accountability and Social Justice' in *Accountability in the Contemporary Constitution*, eds N. Bamforth and P. Leyland (2013) 389. See also J. King, 'The Justiciability of Resource Allocation' (2007) 70 *Modern Law Rev.* 197.

¹¹⁹ *Simone v. Chancellor of the Exchequer* [2019] EWHC 2609 (Admin).

¹²⁰ O'Cinneide, op. cit., n. 118.

¹²¹ Transport Focus is the national statutory representative body for bus passengers. Local Transport Act 2008, ss 73–74; Passengers' Council (Non-Railway Functions) Order 2010 (SI 2010/439).

¹²² *First Group Plc v. Pauley*, op. cit., n. 76.

Finally, children's rights law is underdeveloped. While children have a right to an adequate standard of living (according to Article 27 of the CRC), and to have their best interests as a primary consideration in all decisions affecting them (according to Article 3 of the CRC), the CRC is ratified but not incorporated into English law,¹²³ a position criticized by the Joint Committee on Human Rights.¹²⁴ Even then, the CRC does not include the right to transport, mobility, or travel, while Article 31 on children's participation and play is often not considered a 'key' article.¹²⁵ Renaming New Labour's Child Poverty Act 2010 as the Life Chances Act 2016, the Conservative government abolished the legislative targets for poverty reduction,¹²⁶ promising to focus on social mobility instead. While Section 7 of the Children's Act 2008 still imposes a duty on the Secretary of State to promote the wellbeing of children in England, this has been said 'not [to be] intended to give rise to an obligation owed to an individual, and enforceable in the courts, to take specific steps' and does not require specific allocations of funding.¹²⁷

As the law stands, the lack of provision for children's mobility is highly unlikely to be justiciable in the absence of other factors such as disability or in relation to school transport. Yet the unequal treatment – funding concessions for wealthy pensioners but not for the poorest children – does not appear to breach English equality law. To address these limits in discrimination and equality law, the next section develops a concept of advancement, considering how it could be implemented to support poor children's access to buses.

5.2 | Substantive equality and Section 1 of the Equality Act 2010

Conventionally, distributive inequalities are regarded as the domain of the political sphere, to be addressed by the welfare system, while different treatment attributable to status is dealt with by a discrimination regime. Increasingly, however, scholars, activists, and policymakers have developed broader conceptions of equality, noting, as Eithne McLaughlin wrote, that a country's equality regime should be understood holistically as '[its] equality law together with the total redistributive or equalising impact of its social welfare system'.¹²⁸ Lawyers have also increasingly developed a concept of substantive equality, a version of which was formulated in the opening section of the Equality Act 2010. This requires that authorities making 'decisions of a strategic nature' are to 'have due regard to the desirability of exercising them in a way that is designed to reduce the

¹²³ The CRC was to be partially incorporated in Scotland. United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill 2020 (approved by MSPs in March 2021), though see *REFERENCE by the Attorney General and the Advocate General for Scotland – United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill*; *REFERENCE by the Attorney General and Advocate General for Scotland – European Charter of Local Self Government (Incorporation) (Scotland) Bill* [2021] UKSC 42.

¹²⁴ House of Commons Joint Committee on Human Rights, *The UK's Compliance with the UN Convention on the Rights of the Child* (2015) HC 1016, at <<https://publications.parliament.uk/pa/jt201415/jtselect/jtrights/144/144.pdf>>.

¹²⁵ *Id.*, p. 6.

¹²⁶ Sections 3 to 7 of the Child Poverty Act 2010 had targets for four specific measures of poverty: (1) relatively low income, (2) combined low income and material deprivation, (3) absolute low income, and (4) persistent poverty.

¹²⁷ *Simone v. Chancellor of the Exchequer*, op. cit., n. 119, para. 81.

¹²⁸ E. McLaughlin, 'From Negative to Positive Equality Duties: The Development and Constitutionalisation of Equality Provisions in the UK' (2007) 6 *Social Policy and Society* 111, at 111.

inequalities of outcome which result from socio-economic disadvantage'.¹²⁹ The section has not been implemented in England,¹³⁰ though it is in force in both Scotland¹³¹ and Wales.¹³²

Many have called for the implementation of Section 1 in England, with a large and expert literature engaging with questions of equality and justifying intervention on the basis of substantive equality, capabilities, or vulnerability.¹³³ When enacted, the section places a legal responsibility on bodies to pay 'due regard' to how decision makers might reduce inequalities of outcome caused by socio-economic disadvantage when making strategic decisions. While this 'due regard' duty is weaker than might be desired, advocates have welcomed the 'statutory foundation to values'¹³⁴ to which public bodies could be required to adhere, at the very least demonstrating that they have paid attention to the impact of strategic decisions on socio-economic inequalities as well as justifying decisions that worsen those inequalities. Administratively, Section 1 could be implemented in parallel to the PSED, supplementing the 'broad aim' of the PSED to integrate 'consideration of advancement of equality into the day-to-day business of all bodies subject to the duty'.¹³⁵ Equality impact assessments are now relatively routine and provide valuable thinking space in which to interrogate the (in)equalities of decision making by key public bodies. If allied to PSED managerially, Section 1 could become a form of self- or responsive regulation.¹³⁶

Socio-economic equality is also critical given the overlaps between procedural and substantive inequality. It is widely understood that intersectionality co-exists with poverty, particularly race, disability, and sex (especially for single mothers), and that the more protected characteristics a person has, the more risk they bear.¹³⁷ Elegant and persuasive arguments have been developed integrating the right to equality with discrimination law, including 'fourth-generation' models of equality, which include positive duties,¹³⁸ by understanding poverty as contextual for discrimination claims or as a matter of substantive equality in adjudging violations.¹³⁹ Analogously,

¹²⁹ For Scottish guidance on this, see Scottish Government, 'Fairer Scotland Duty: Guidance for Public Bodies' *Scottish Government*, 4 October 2021, at <<https://www.gov.scot/publications/fairer-scotland-duty-guidance-public-bodies/>>.

¹³⁰ Several English local authorities, notably Newcastle City Council and the North Tyne Combined Authority, have voluntarily decided to take decisions as if Section 1 were in force. Equality and Human Rights Commission, *Evaluating the Socio-Economic Duty in Scotland and Wales* (2021), at <<https://www.equalityhumanrights.com/en/publication-download/evaluating-socio-economic-duty-scotland-and-wales>>.

¹³¹ Equality Act 2010 (Authorities Subject to the Socio-Economic Inequality Duty) (Scotland) Regulations 2018/101 (Scottish SI) Reg. 2(2).

¹³² Section 45 of the Wales Act 2017 amended Part 1 of the Equality Act 2010.

¹³³ S. Fredman, 'Positive Duties and Socio-Economic Disadvantage: Bringing Disadvantage onto the Equality Agenda' (2010) 3 *European Human Rights Law Rev.* 290.

¹³⁴ *Id.*, p. 291.

¹³⁵ Equality and Human Rights Commission, *Technical Guidance on the Public Sector Equality Duty: England* (2014) para. 2.10, at <<https://www.equalityhumanrights.com/en/publication-download/technical-guidance-public-sector-equality-duty-england>>.

¹³⁶ B. Hepple, 'Enforcing Equality Law: Two Steps Forward and Two Steps Backwards for Reflexive Regulation' (2011) 40 *Industrial Law J.* 21.

¹³⁷ D. Collings and S. Davies, *The Inequality of Poverty: Exploring the Link between the Poverty Premium and Protected Characteristics* (2021), at <<https://fairbydesign.com/wp-content/uploads/2021/02/The-Inequality-of-Poverty-Full-Report.pdf>>.

¹³⁸ S. Fredman, 'The Potential and Limits of an Equal Rights Paradigm in Addressing Poverty' (2011) 22 *Stellenbosch Law Rev.* 566.

¹³⁹ S. Atrey, 'The Intersectional Case of Poverty in Discrimination Law' (2018) 18 *Human Rights Law Rev.* 411.

arguments ‘advancing equality’ under the PSED could produce a substantive equality duty,¹⁴⁰ particularly if used ‘as a sword’.¹⁴¹ There are also clear connections between advancement as a concept with a substantive equality approach, empowering specific categories of people in meaningful ways.¹⁴² These concepts move beyond formal guarantees of equality to target specific obstacles, for instance focusing on social exclusion, community cohesion, or anti-poverty initiatives.

If Section 1 were to be implemented in England, this might provide an explicit mechanism to address the inequality that poor children face. Early research in Scotland and Wales indicated that many – though not all – administrators believe that ‘inequalities of outcome resulting from socio-economic disadvantage are considered in strategic decision-making’.¹⁴³ Interviewees believed that implementing the socio-economic duty ‘would ensure that inequalities of outcome resulting from socio-economic disadvantage were taken into consideration for strategic decision-making’.¹⁴⁴ However, critically, respondents still awaited ‘changes to people’s lives’.¹⁴⁵ Without funding, which was explicitly excluded when the Equality Bill passed through the legislative process,¹⁴⁶ Section 1 is unlikely to be transformative in and of itself. If allied with funding, as in Scotland, where one early act of the Fairer Scotland Duty has been to introduce free bus travel for those under 22, tangible changes will be felt. Such intervention could, however, already be justified under the Equality Act 2010 regime (as it is for older and disabled people), yet so far no funding or proposal for change has come.

5.3 | Advancement and substantive equality

Advancement – understood as improvement, making something better or more successful – commits to progress the interests of socio-economically deprived people and groups. As developed here, the concept aims to advance the interests of a group, whether based on identity, such as age or disability, or by reference to a place, such as by drawing on indices of deprivation. The term is relatively well understood; the ‘advancement of social wellbeing’ is, for example, a common charitable objective, while the term is central to the National Advancement of American Colored People (NAACP), a long-standing, hugely effective organization campaigning to ensure that ‘Black lives are a priority in all spaces’.¹⁴⁷ We might see advancement as a form of ‘reasonable accommodation’ for people whose socio-economic or personal vulnerability merits intervention¹⁴⁸ or as a form of positive action. There is some precedent for the concept in employment policy (the foundation of much discrimination law), with calls for an ‘advancement agency’ providing ‘ladders of opportunity’¹⁴⁹ for those in entry-level jobs.

¹⁴⁰ S. Ashtiany, ‘The Equality Act 2010: Main Concepts’ (2011) 11 *International J. of Discrimination and the Law* 29.

¹⁴¹ J. Sigafoos, ‘Using Equality Legislation as a Sword’ (2016) 16 *International J. of Discrimination and the Law* 66.

¹⁴² S. Fredman, *Human Rights Transformed* (2008); Fredman, op. cit., n. 133; C. O’Cinneide, ‘Taking Equal Opportunities Seriously’ (2003) *Equality and Diversity Forum* 124.

¹⁴³ Equality and Human Rights Commission, op. cit., n. 130, p. 59.

¹⁴⁴ Id.

¹⁴⁵ Id.

¹⁴⁶ Fredman, op. cit., n. 133.

¹⁴⁷ NAACP, ‘Homepage’ NAACP, at <<https://naacp.org/>>.

¹⁴⁸ Alston, op. cit., n. 75.

¹⁴⁹ J. Denham, ‘Making Work Work, a Lecture Given by John Denham MP at the Royal Commonwealth Society in London on 17th May 2004’ (2004), cited by D. Finn, ‘Getting Jobs and Moving On: Lessons from Britain’s “Employment First”

Advancement offers a way to justify positive action independently of protected characteristics and is closely linked to social mobility. Like positive action under the Equality Act 2010, advancement is focused on preferential treatment for those who need it. Unlike positive action, however, a new concept of advancement could be broadly conceived, independent of employment law roots, producing less fear of ‘reverse discrimination’, which currently hampers use of the provision.¹⁵⁰ As a concept, advancement could be allied to arguments for ‘levelling up’ following the long-awaited White Paper.¹⁵¹

Like mobility, advancement promotes ideas of change for people and places, drawing on a sense of transformation. Politically, much of the language of positive or substantive equality has been transformed into the language of social mobility, particularly since the 2010 abolition of the Child Poverty Commission with the creation of what is now the Social Mobility Commission, now in the Cabinet Office, which aims to consider child poverty within the broader context of children’s life chances. This focus on social mobility was one justification for not implementing Section 1 in 2010.¹⁵²

Evidence demonstrates, however, that social mobility is declining, with an increasing number of children growing up in relative poverty,¹⁵³ as greater attention is being paid to place and greater recognition of the fact that there is ‘a patchwork of “hot” and “cold” areas for social mobility’.¹⁵⁴ Nevertheless, we know relatively little about how social mobility operates in practice, and even less about how spatial mobility is linked to social mobility,¹⁵⁵ and whether free transport for children and young people is linked to better life chances including greater choice of schools and post-16 settings and getting to work experience or part-time work.

While scholars have long argued for the significance of transport in these debates,¹⁵⁶ it is only recently that the Social Mobility Commission has expressed a growing understanding that transport policy is ‘a key means to support upward social mobility’.¹⁵⁷ In its 2020 report, the Commission has identified the significance of bus travel and its relative underinvestment to children’s life

Welfare State’ (2005) Transitions and Risk: New Directions in Social Policy Conference, 12, at <<https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.1084.8826&rep=rep1&type=pdf>>.

¹⁵⁰ C. Davies and M. Robison, ‘Bridging the Gap: An Exploration of the Use and Impact of Positive Action in the United Kingdom’ (2016) 16 *International J. of Discrimination and the Law* 83.

¹⁵¹ HM Government, *Levelling Up: Levelling Up the United Kingdom* (2022) CP 604, at <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1052706/Levelling_Up_WP_HRES.pdf>.

¹⁵² T. May, ‘Theresa May’s Equality Strategy Speech’ *Gov.uk*, 17 November 2010, at <<https://www.gov.uk/government/speeches/theresa-mays-equality-strategy-speech>>.

¹⁵³ Social Mobility Commission, *Monitoring Social Mobility 2013–2020: Is the Government Delivering on Our Recommendations?* (2020) 6, at <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/891155/Monitoring_report_2013-2020_Web_version.pdf>.

¹⁵⁴ *Id.*, p. 9.

¹⁵⁵ See however M. Savage, ‘The Missing Link? The Relationship between Spatial Mobility and Social Mobility’ (1988) 39 *Brit. J. of Sociology* 554; J. Goodwin-White, ‘Is Social Mobility Spatial? Characteristics of Immigrant Metros and Second-Generation Outcomes: 1940–1970 and 1970–2000’ (2016) 22 *Population, Space and Place* 807; S. Nutley and C. Thomas, ‘Spatial Mobility and Social Change: The Mobile and the Immobile’ (1995) 35 *Sociologia Ruralis* 24.

¹⁵⁶ M. Marmot, ‘Health Equity in England: The Marmot Review 10 Years On’ (2020) 368 *BMJ* m693; K. Lucas et al., *The Value of New Transport in Deprived Areas: Who Benefits, How and Why?* (2008); M. Marmot et al., *Fair Society Healthy Lives (The Marmot Review)* (2010), at <<http://www.instituteoftheequity.org/resources-reports/fair-society-healthy-lives-the-marmot-review>>.

¹⁵⁷ Social Mobility Commission, *op. cit.*, n. 153, p. 81.

chances.¹⁵⁸ Citing the findings from the Commission for Rural Communities that lack of access to bus travel inhibits extracurricular activities for children, the Commission reports that ‘over a third of young people in rural areas say they would have continued their education after age 16 if they had received more financial support to cover the cost of transport’.¹⁵⁹

How might a concept of advancement work in practice? One administratively straightforward possibility for children is to bundle together benefits, including concessionary bus travel, for the 1.7 million children (20.8 per cent of the school population) in receipt of free school meals,¹⁶⁰ a data point that is already used as a proxy for disadvantage in relation to school transport.¹⁶¹ If all children on free school meals received a bus pass, we could improve opportunities for mobility for children wherever they live in the country, particularly those living in neighbourhoods of persistent poverty in urban areas with otherwise reasonable bus provision. As free school meal and educational data is tracked, this would also provide a mobility data set by which any improvement could be monitored.

An alternative is to take a place-based approach regardless of individual income, combining equality policy with long-standing work on deprivation. Deprivation indices have been collected since the 1970s, demonstrating disadvantage in local areas (at a scale of around 650 households per lower layer super output area¹⁶²). They show how deprivation is dispersed across England, with 61 per cent of local authority districts containing at least one of the most deprived neighbourhoods in England, and Middlesbrough and Blackpool ranking as the most deprived districts for income deprivation among children.¹⁶³ The deprivation index does not include access to transport or mobility,¹⁶⁴ though extensive research has been undertaken highlighting the interactions between deprivation and transport.¹⁶⁵ By granting free bus travel to children living in areas of persistent deprivation and disadvantage, a lack of economic resources and mobility could both be addressed. Deprivation indices can be mapped using geographic information software (GIS) data and almost every local authority has done so, making any entitlement administratively relatively straightforward to implement.

¹⁵⁸ Id.

¹⁵⁹ Id., p. 82. The Conservative–Liberal Democrat coalition government abolished the Educational Maintenance Allowance (EMA) previously paid to poorer 16–18 year olds in England (the provision continues in similar forms in Scotland, Wales, and Northern Ireland). The EMA has been replaced by a bursary scheme paid to the educational establishment, which makes discretionary awards rather than payments directly to students.

¹⁶⁰ Gov.uk, ‘Schools, Pupils and Their Characteristics’ Gov.uk, 17 June 2021, at <<https://explore-education-statistics.service.gov.uk/find-statistics/school-pupils-and-their-characteristics>>. These numbers increased pre-pandemic but have risen even further due to transitional ‘off-rolling’ provisions during 2020/2021.

¹⁶¹ See n. 25.

¹⁶² Ministry of Housing, Communities & Local Government, ‘Lower Layer Super Output Areas’ Data.gov.uk, 3 May 2022, at <<https://data.gov.uk/dataset/c481f2d3-91fc-4767-ae10-2efdf6d58996/lower-layer-super-output-areas-lsoas>>.

¹⁶³ Ministry of Housing, Communities & Local Government, *English Indices of Deprivation 2019* (2019), at <<https://www.gov.uk/government/statistics/english-indices-of-deprivation-2019>>.

¹⁶⁴ Ministry of Housing, Communities & Local Government, *English Indices of Deprivation 2019: Research Report* (2019), at <<https://www.gov.uk/government/publications/english-indices-of-deprivation-2019-research-report>>.

¹⁶⁵ H. Titheridge et al., *Transport and Poverty: A Review of the Evidence* (2014), at <<https://www.ucl.ac.uk/transport/sites/transport/files/transport-poverty.pdf>>; Lucas et al., op. cit., n. 156; Government Office for Science, *Inequalities in Mobility and Access in the UK Transport System* (2019), at <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/784685/future_of_mobility_access.pdf>.

While legal scholarship has more often focused on individuals than on places,¹⁶⁶ the question of finding the right unit of analysis is a long-standing issue in community economic development, where there have been debates about the relative merits of ‘place-based’ and ‘people-based’ approaches to combating poverty and disadvantage.¹⁶⁷ Equality law has conventionally prioritized individuals, yet the rhetoric of the ‘levelling-up’ agenda demonstrates the political force of alternative measures, whether based on groups of people (such as all disabled people) or places (such as the most deprived).

In Scotland, the Section 1 guidance refers to ‘communities of place’ and ‘communities of interest’, with inequalities of outcome understood as ‘measurable differences between those who have experienced socio-economic disadvantage and the rest of the population’, such as with regard to life expectancy and educational attainment.¹⁶⁸ Strategic decisions, such as those granting free concessionary bus travel to children and young people in Scotland, are high level, affecting ‘how the public body fulfils its intended purpose, over a significant period of time’.¹⁶⁹ Such assessments of socio-economic equality could be combined with either free school meal data or deprivation maps, in the absence of a political decision to provide a concession for free bus travel for all children and young people.

Using either free school meal data or deprivation indices would help many of the children at Room 13. These young people live in the Hartcliffe and Withywood ward, ranked in the 100 most deprived neighbourhoods in England,¹⁷⁰ with over 70 per cent of the children at Hareclive E-Act Academy receiving free school meals,¹⁷¹ a figure well above Bristol’s average of 20.3 per cent¹⁷² and the national average of 15.4 per cent.¹⁷³ The school is located between Bishport Avenue and Hareclive Road, the two most deprived streets in Bristol, with index of multiple deprivation (IMD) scores of 65 and 67 respectively.¹⁷⁴ Bristol is by no means unique in having such pockets of persistent deprivation. Wealth disparities can be found in many cities and towns throughout England. Relative deprivation levels are rising in local authority areas covering towns and coastal communities where we know that public transport is also often sparse and expensive.¹⁷⁵ Clearly, free bus travel would not help all children in all locations; many places, particularly rural areas,

¹⁶⁶ Even migration law, which addresses formulations of place-based disadvantage (particularly restrictions and discrimination due to place of origin), prioritizes analysing the treatment of persons and their categorization individually, rather than by place of origin. While immigration rules undoubtedly produce community effects, the legal point of entry in migration law is conventionally the individual and their rights.

¹⁶⁷ R. Crane and M. Manville, *People or Place? Revisiting the Who versus the Where of Urban Development* (2008) 6, at <<https://community-wealth.org/content/people-or-place-revisiting-who-versus-where-urban-development>>.

¹⁶⁸ Scottish Government, *op. cit.*, n. 129.

¹⁶⁹ *Id.*

¹⁷⁰ Bristol City Council, *Deprivation in Bristol 2019: Summary Findings of the 2019 English Indices of Deprivation within Bristol Local Authority Area* (2019), at <<https://www.bristol.gov.uk/documents/20182/32951/Deprivation+in+Bristol+2019.pdf/ff3e5492-9849-6300-b227-1bdf2779f80>>.

¹⁷¹ Figure provided by Hareclive E-Act Academy. Email on file with the authors.

¹⁷² Bristol City Council, *op. cit.*, n. 2.

¹⁷³ *Id.*, p. 6. The average figure for primary schools is slightly higher at 15.8 per cent (and 14.1 per cent for secondary schools, 37.5 per cent for special schools, and 42.5 per cent for pupil referral units), but the Bristol figures appear to combine schools.

¹⁷⁴ *Id.*

¹⁷⁵ Ministry of Housing, Communities & Local Government, *op. cit.*, n. 163.

lack a reliable network. Yet there is often some bus provision and, as with adult bus passes, concessionary travel can boost demand for services, particularly off-peak.¹⁷⁶

Both buses and the concept of advancement could be ‘vehicles for justice’, providing a tangible sense of why and how we might change the lives of some of the most vulnerable children. Positive action can be justified and can be entirely desirable, yet the concept is still dependent on voluntary action rather than a requirement to ‘advance’ children living in poverty. In order to recognize disadvantage and alleviate it as best we can, we need a stronger legal framework. Enacting Section 1 of the Equality Act 2010 in England would undoubtedly be a start, while a concept of advancement, particularly alongside free school meal data or deprivation maps, could underpin levelling up, especially for economically deprived children.

6 | CONCLUSION

One parent interviewed for *The Bus Project* was convinced that free bus fares, even only at off-peak times or over the summer, would be life changing for many:

I’m more than aware of people around me that their child has never been on a day trip to Bedminster¹⁷⁷ ... because the parents can’t afford the bus fare. So I think as in times as well, surrounding different discounts, I think, half terms and summer holidays I think will give families and children, a great a great opportunity to go out and explore their city, even if it’s just taking a trip to the city centre and seeing the fountains. I mean to, to some families, not just in this area but surrounding areas to those children that would be, that would be greater than anything that they’ve ever done.¹⁷⁸

We know that immobility is prevalent in many places – even in London, where social constraints can inhibit children from accessing their free public transport entitlement. Bristol has some areas of deprivation, but it is far from the worst affected place.

Buses can be ‘vehicles for justice’, promoting both spatial and social mobility. A concept of advancement could also provide a legal and policy underpinning for change. The empirical example of bus travel has been analysed as a way in which to consider the limits of anti-discrimination legislation in breaking down deep-rooted structural obstacles to equality. Such legislation is designed to combat identifiable acts of discrimination, rather than requiring a shift in emphasis towards the proactive advancement of equality.¹⁷⁹ Disadvantage occurs through institutional discrimination or neglect in distinctive ways, so a concept of advancement, which justifies change for people living with disadvantage, could be allied with existing data sets, such as free school meal data or indices of deprivation, to require intervention rather than just permit positive action. To be successful, a concept should be easily intelligible, with a clearly understood single message. Advancement could be just that.

¹⁷⁶ However, it should be noted that the subsidy in concessionary transport is to the passenger, not the customer, and bus companies routinely make a loss on these fares. Interview 2.

¹⁷⁷ Bedminster is a part of Bristol between Hartcliffe and the centre of the city.

¹⁷⁸ Interview 13.

¹⁷⁹ O’Cinneide, op. cit., n. 142.

The research on transport exclusion demonstrates that immobility is not simply an interesting quirk in lifestyle but fundamentally limits access opportunities for work, education, and civic engagement. Both London and Scotland, and to a lesser extent Greater Manchester, have recognized the impact of these effects on children, funding concessions unavailable elsewhere in England. Phillip Alston, the former UN Special Rapporteur on Extreme Poverty and Human Rights, observed that ‘poverty is a political choice’.¹⁸⁰ It could cost remarkably little per child for a bus concession (the current costs for adults are £83 per pass in England outside London and £184 in London,¹⁸¹ with many children already receiving partial commercial concessions).¹⁸² Immobility is the consequence of a series of political decisions, and while mobility is rarely recognized as central to life opportunities and human dignity, advancement – both conceptual and physical (on the bus) – is possible, with ‘vehicles of justice’ providing a way forward for some of the most vulnerable in society. As the children of Room 13 say in their video, ‘Now’s the Time’.¹⁸³

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¹⁸⁰ Alston, op. cit., n. 75, p. 1.

¹⁸¹ House of Commons Library, op. cit., n. 44.

¹⁸² The Scottish Government is adopting a reimbursement rate of 43.6 per cent of the adult single fare for journeys made by under 16s and 81.2 per cent of the adult single fare for journeys made by 16–21 year olds. Transport Scotland, *The National Bus Travel Concession Scheme for Young Persons (Scotland) Amendment Order 2021: Policy Note* (2021) SSI 2021/381, at <<https://www.transport.gov.scot/publication/the-national-bus-travel-concession-scheme-for-young-persons-scotland-amendment-order-2021/>>.

¹⁸³ Room 13, op. cit., n. 64.