1. The Appellant attended the hearing on 27 October 2022 with his authorised representative, Mr Ivan Murray-Smith. Mr Michael Rhimes appeared on behalf of the Respondent and also in attendance for the Respondent were its Head of Parking, Mr Pritesh Kalyan, its Acting Operating Manager, Mr Shaan Motaleb and its Appeals Officer, Mr Prabhakara Shetty.

2. Mr Shetty is a witness for the Respondent. He has made a witness statement dated 7 September 2022. That statement seeks to present in evidence before the Tribunal a video clip of an alleged contravention by the Appellant. It is alleged that the Appellant's vehicle was in a bus lane in Uxbridge Road, Ealing where restrictions are in force at all times.

3. The alleged contravention was captured by a CCTV camera which is a Zenco Systems Lane Watch camera unit.

4. Section 4(1) of The London Local Authorities Act 1996 ("the 1996 Act") empowers the Respondent to serve a PCN for a bus lane contravention on the basis of information provided by the use of a prescribed device. Section 3(1) of the 1996 Act defines a prescribed device as a device prescribed under Section 20(9) of The Road Traffic Offenders Act 1988 ("the 1988 Act") or a device of a description specified in regulations made for the purposes of Section 3(1). It is common ground that bus lane cameras are prescribed by The Road Traffic Offenders (Additional Offences and Prescribed Devices) Order 1997.

5. It is, therefore, not disputed by the Appellant that the PCN was correctly served on the basis of information provided by the use of a prescribed device.

6. The Appellant's case is that the evidence from the prescribed device is not admissible on the ground that the device has not been approved by the Secretary of State. The Appellant contends that, by virtue of Paragraph 7(2) of Schedule 1 to the 1996 Act, the camera clip is not admissible as evidence unless the device is of a type approved by the Secretary of State.

7. The Respondent's contention is that the requirement for type approval applies only to a case where the camera evidence is adduced under the certification procedure in Paragraph 7(1) of Schedule 1 and not to a case where the evidence is being produced by a live witness. The Respondent therefore submits that type approval is not required for Mr Shetty to produce the video clip in evidence. If, contrary to that submission, the Tribunal finds that type approval is required, the Respondent says that the device has the requisite approval.

8. The issue then is whether type approval by the Secretary of State is required in order for the camera clip evidence to be introduced by Mr Shetty. The answer to that question depends upon the proper interpretation of Paragraph 7 of Schedule 1 and, in particular, upon the interpretation to be given to Paragraph 7(2).

9. The relevant parts of Paragraph 7 are in the following terms:

> "(7)(1) Evidence of a fact relevant to proceedings under paragraph 6 above may be given by the production of—
>
> (a) a record produced by a prescribed device; and
>
> (b) (in the same or another document) a certificate as to the circumstances in which the record was produced signed by an authorised officer of the enforcing authority.
>
> (2) A record produced or measurement made by a prescribed device shall not be admissible as evidence of a fact relevant to proceedings under paragraph 6 above unless—

(a) the device is of a type approved by the Secretary of State, and

(b) any conditions subject to which the approval was given are satisfied.

(4) In proceedings under paragraph 6 above, evidence -

(a) of a measurement made by a device, or of the circumstances in which it was made; or

(b) that a device was of a type approved for the purposes of this paragraph, or that any conditions subject to which an approval was given were satisfied,

may be given by the production of a document which is signed as mentioned in sub-paragraph (1) above and which, as the case may be, gives particulars of the measurement or of the circumstances in which it was made, or states that the device was of such a type or that, to the best of the knowledge and belief of the person making the statement, all such conditions were satisfied.

(8) Nothing in sub-paragraph (1) or (4) above makes a document admissible as evidence in proceedings under paragraph 6 above unless a copy of it has, not less than 7 days before the hearing, been served on the appellant; and nothing in those paragraphs makes a document admissible as evidence of anything other than the matters shown on a record produced by a prescribed device if that person, not less than three days before the hearing or within such further time as the traffic adjudicator may in special circumstances allow, serves a notice on the enforcing authority requiring attendance at the hearing or trial of the person who signed the document."

10. The Respondent contends the Appellant is wrong to construe Paragraph 7 as imposing a general requirement that camera evidence is only admissible where the prescribed device has type approval. Mr Rhimes refers to High Court authorities on Section 20 of the 1988 Act and he says that they leave no doubt on this point. He says that it is these authorities which are binding on the Adjudicator.

11. One of the authorities to which Mr Rhimes refers is ***Connell v CPS*** [2011] EWHC 158 (Admin) and it is helpful to refer to the facts as set out in the Judgment of Mr Justice Wyn Williams.

12. The police officer in Connell was on duty in a marked police vehicle. The officer was observing traffic with a view to detecting speeding offences. The speed limit on the road was 70mph. The officer noted a motorcycle which was, in his opinion, exceeding the speed limit. From his experience, the officer estimated that the cycle was travelling faster than 90mph and he decided to follow the vehicle.

13. The officer positioned his police vehicle behind the cycle and followed it over some distance. The officer's police car was fitted with a device known as a Police Pilot Speed Detection device. The officer had checked that device prior to commencing his patrol and found the device to be in good working order. He decided to use the device to check the cycle's speed. Having operated the device, and having travelled for some distance, the officer checked the device. He ascertained that the motorcycle had travelled 2.583 miles in 92.12 seconds, giving an average speed over the distance of 97.25mph.

14. The magistrates found that this calculation corresponded with the officer's own assessment. They accepted opinion evidence from the officer that his assessment of the cycle's speed was similar to that shown by the device. The officer was equipped to make the assessment and to give opinion evidence. He had seven years' experience as a traffic officer.

15. The officer gave oral evidence before the magistrates. He gave the magistrates his own assessment of the cycle speed and he told them of his use of the device. The prosecution relied on the evidence of the officer's assessment of the speed and it also relied upon the measurement of speed obtained from the device. It did that so as to corroborate or confirm the evidence given by the officer based upon his own assessment.

16. The principal issue for the court in Connell was whether or not the evidence was properly admitted. The answer to that question depended upon the proper interpretation of section 20 of the 1988 Act and, in particular, upon the interpretation to be given to section 20(4) of that Act. The relevant parts of section 20 of the 1988 Act ("Section 20") are in the Judgment and are in the following terms:

"(20)(1) Evidence ... of a fact relevant to proceedings for an offence to which this section applies may be given by the production of—

(a) a record produced by a prescribed device, and

(b) (in the same or another document) a certificate as to the circumstances in which the record was produced signed by a constable or by a person authorised by or on behalf of the chief officer of police for the police area in which the offence is alleged to have been committed;

but subject to the following provisions of this section.

(2) This section applies to—

...

(d) an offence under section 89(1) of [the Road Traffic Regulations Act 1984] (speeding offences generally);

...

(4) A record produced or measurement made by a prescribed device shall not be admissible as evidence of a fact relevant to proceedings for an offence to which this section applies unless—

(a) the device is of a type approved by the Secretary of State, and

(b) any conditions subject to which the approval was given are satisfied.

...

(6) In proceedings for an offence to which this section applies, evidence ...-

(a) of a measurement made by a device, or of the circumstances in which it was made, or

(b) that a device was of a type approved for the purposes of this section, or that any conditions subject to which an approval was given were satisfied,

may be given by the production of a document which is signed as mentioned in subsection (1) above and which, as the case may be, gives particulars of the measurement or of the circumstances in which it was made, or states that the device was of such a type or that, to the best of the knowledge and belief of the person making the statement, all such conditions were satisfied.

(7) For the purposes of this section a document purporting to be a record of the kind mentioned in subsection (1) above, or to be a certificate or other document signed as mentioned in that subsection or in subsection (6) above, shall be deemed to be such a record, or to be so signed, unless the contrary is proved.

(8) Nothing in subsection (1) or (6) above makes a document admissible as evidence in proceedings for an offence unless a copy of it has, not less than seven days before the hearing or trial, been served on the person charged with the offence; and nothing in those subsections makes a document admissible as evidence of anything other than the matters shown on a record produced by a prescribed device if that person, not less than three days before the hearing or trial or within such further time as the court may in special circumstances allow, serves a notice on the prosecutor requiring attendance at the hearing or trial of the person who signed the document."

17. The appellant in Connell took the point that Section 20(4) of the 1988 Act, upon its proper interpretation, prohibited the admission in evidence of a measurement made by a prescribed device as evidence of a fact relevant to the proceedings, unless the device is of a type approved by the Secretary of State. That prohibition, submitted the appellant, applied to all offences of speeding contrary to section 89(1) of the 1984 Act. It was common ground in Connell that the device used by the officer was a prescribed device, but one which had not been approved by the Secretary of State at the material time. The appellant therefore submitted that the evidence adduced by the officer relating to the measurement of speed calculated by the device should not have been admitted in evidence. He further submitted that, had the evidence been excluded, there would have been no corroboration of the evidence of the police officer.

18. In support of his interpretation of section 20(4) of the 1988 Act, the appellant drew the attention of the Court to Section 20 in the form in which it was originally enacted before being amended in 1991. Before 1991, Section 20 read as follows:

"On the prosecution of a person for any speeding offence, evidence of the measurement of any speed by a device designed or adapted for measuring by radar the speed of motor vehicles shall not be admissible unless the device is of a type approved by the Secretary of State."

19. The appellant submitted in Connell that the wording of the current section 20(4) was equally unequivocal and that, in the absence of proof or acceptance that the device was approved, the evidence it produced was not admissible.

20. Mr Justice Wyn Williams did not accept that the words of the predecessor section were any guide to Section 20 in its current form. A simple comparison of the two sections showed, he said, that each had a very different purpose. He said that Section 20 in its current form essentially enacts a code whereby evidence can be admitted in a certain way. In his judgment, no support was to be derived from the interpretation of the predecessor section 20 by the Divisional Court in ***Roberts v Director of Public Prosecutions*** [1994] RTR 31. The Divisional

Court in Roberts held that the prosecution was required to prove that the Secretary of State had approved the use of a radar gun before the measurement of speed given by it could be admitted as part of the police officer's evidence.

21. The respondent in Connell submitted that Section 20 had no application to the admissibility of the evidence from the Police Pilot Speed Detection device. The respondent submitted that Section 20 was concerned only with a particular method of adducing evidence before the court. The respondent accepted that, if the procedure laid down in Section 20 was used by the prosecutor, subsection (4) would apply with the requirement for approval. The respondent submitted, however, that there was never a reliance upon the procedure enacted in Section 20 so that section 20(4) had no application.

22. The respondent in Connell relied upon two decisions, ***DPP v Thornley*** [2006] EWHC 312 (Admin) and ***Iaciofano v DPP*** [2010] EWHC 2357 (Admin) , both decisions of the Divisional Court.

23. In DPP v Thornley, the prosecution sought to rely on images produced by a system known as the Speed Violation Detection Deterrent system. Although this was a prescribed device approved by the Secretary of State, the record was sent to the driver less than seven days before the hearing so that the evidence was not admissible under the Section 20 procedure. The prosecution argued that it was open to them to rely on the evidence of the police officer which would include the officer's account of the record from the device. Mr Justice Owen held in Thornley that the Section 20 procedure was permissive and not exclusive. In other words, although there had not been compliance with the Section 20 procedure, this did not exclude the possibility of evidence of the record produced by the prescribed device being adduced in another way.

24. In Iaciofano v DPP, the Divisional Court quashed the conviction for a speeding offence. The evidence was derived from a Police Pilot Provida device which was not approved within Section 20 so that it was not admissible. However, the Divisional Court remitted the case to be considered afresh. In the judgment of Mr Justice Wyn Williams in Connell, there would have been no purpose in the Divisional Court remitting the case unless the court was prepared to accept the proposition that the speeding offence could be proved by the oral evidence of the police officer, corroborated or confirmed by the reading which had been obtained from the device.

25. Mr Justice Wyn Williams accepted the respondent's submissions in Connell, holding that section 20(4) is not of general application to every offence of speeding alleged under section 89(1) of the Road Traffic Regulation Act 1984. In his judgment, it applies only when the prosecution seeks to prove such an offence by the procedures permitted by sections 20(1) and 20(6) of the 1988 Act.

26. The decision in Connell was that the magistrates were entitled to admit the oral evidence of the police officer as to the results of his check using the Police Pilot device as corroboration of his opinion that the speed limit was exceeded.

27. The High Court decision in ***Seroka v Redhill Magistrates Court*** [2012] EWHC 3827 (Admin) confirmed again that Section 20 does not provide an exclusive procedure whereby evidence of the record from a prescribed device can be adduced. In that case, the record from a Gatso device in a speeding case was produced by a police officer who was a camera technician. The officer gave live evidence about the device and about his secondary check on images from the

device to confirm the speed of travel. Mr Justice Singh held that the records from the device were admissible without recourse to the certificate procedure laid out in Section 20.

28. Mr Rhimes says that the binding decisions on the interpretation of Section 20 should be applied in the interpretation of Paragraph 7 of Schedule 1 to the 1996 Act.

29. It is certainly the case that Paragraph 7 contains a virtually identical permissive procedure to the one contained in Section 20. I am in no doubt that the procedure in Paragraph 7 is permissive to the extent that it does not exclude the possibility of live evidence being adduced. A Council officer may properly attend at a hearing of an appeal under Paragraph 6 to give evidence about relevant matters such as the adequacy of signage and road markings to alert motorists to the bus lane restrictions. As Mr Rhimes has commented, the heading to Paragraph 7 is *Admissibility of Certain Evidence.*

30. Paragraph 7 governs the admissibility of certain evidence which is evidence of a relevant fact from a prescribed device. Paragraph 7(1) provides a mechanism for that evidence to be given by producing a record from a device with a signed certificate from an authorised officer as to the circumstances in which the record was produced. It obviates the requirement for the attendance of the officer but it does not preclude such an attendance so that, in the instant case, Mr Shetty can quite properly attend in person to give live evidence about relevant matters. The issue is whether or not Mr Shetty can introduce into evidence the camera clip from the prescribed device without the requirement for the device to be of a type approved by the Secretary of State.

31. The certificate procedure in section 20(1) of the 1988 Act ends with the words "but subject to the following provisions of this section". In other words, the permissive procedure can only operate subject to the provisions which follow and those provisions include the requirement for type approval under Section 20(4). These same words do not appear at the end of Paragraph 7(1) so that it is not necessarily apparent from the wording that the requirement for type approval under Paragraph 7(2) is specific to the production of evidence using the certificate procedure. Paragraph 7(2) provides that a record produced from a prescribed device shall not be admissible as evidence of a fact relevant to an appeal under Paragraph 6 unless there is type approval of the device. It does not provide that the requirement is of no application where the same record is produced by an attending witness. This omission of the words "but subject to the following provisions of this section" was not aired at the hearing and I issued a further direction for the parties to make submissions. I am grateful to both Mr Rhimes and Mr Murray-Smith for their further submissions and replies.

32. In his further submissions, Mr Rhimes attaches no importance to the omission of these words. He does attach importance to the heading of Paragraph 7 *Admissibility of Certain Evidence,* arguing that this makes it clear that Paragraph 7(2) governs only evidence adduced under the Paragraph 7(1) certificate procedure. He says that, to interpret Paragraph 7(2) as imposing a general requirement for type approval for any footage to be admissible in proceedings under Paragraph 6 would render the rest of Paragraph 7 nugatory. He refers, in particular, to Paragraph 7(6) which he says allows for the admissibility of evidence from a prescribed device without type approval in certain circumstances and argues that this would be deprived of any meaning. Mr Rhimes also submits that the effect of this interpretation would be to replace a permissive procedure which otherwise mirrors Section 20 with the restrictive scheme that was in the 1988 Act as enacted.

33. I do not agree that the heading of Paragraph 7 makes it clear that Paragraph 7(2) governs only evidence adduced under the Paragraph 7(1) certificate procedure. As I have said, Paragraph 7 governs the admissibility of certain evidence which is evidence of a relevant fact from a prescribed device. Paragraph 7(1) provides a mechanism for that evidence to be given

by producing a record from a device with a signed certificate from an authorised officer as to the circumstances in which the record was produced. It obviates the requirement for the attendance of the officer but it does not preclude such an attendance. Paragraph 7(6) contains a procedure allowing the appellant to serve a notice for the attendance at the hearing of the authorised officer who has produced a certificate under the Paragraph 7(1) procedure. Where a notice is served for attendance, nothing in the certificate procedure in Paragraph 7(1) makes a document admissible as evidence of anything other than the matters shown on a record produced by a prescribed device. Contrary to what Mr Rhimes suggests, I see nothing in the wording of Paragraph 7(6) which disapplies the requirement for type approval where a notice is served for the attendance of the authorised officer. I also cannot see why a requirement for type approval of the device should render without use or purpose the procedure for attendance.

34. As Mr Rhimes observes in his further submissions, statutory provisions are to be read in context and that context includes the sub-paragraphs that follow. Paragraph 7(2) must indeed not be read in isolation. However, as I have said, I see nothing in the other sub-paragraphs to suggest that the requirement for type approval falls away where the evidence is adduced through the attendance of the authorised officer. Mr Rhimes suggests that Paragraph 7(1) omitted the words "subject to the following provisions of this paragraph" because there would have been no need to include them. He says that it would have been taken to be obvious and that this reflects a difference in drafting style, not substance. I do not agree that the omission is without substance. Whilst it is a matter of plain reading that the certificate procedure in Paragraph 7(1) is subject to the provisions which follow, the inclusion of the words "subject to the following provisions" would have the important effect of making it clear that the provisions which follow are specific to the certificate procedure and are not intended to have any wider application on the attendance of an authorised officer whether under a Paragraph 7(6) notice or otherwise. In my judgement, a plain reading of Paragraph 7(2) is that any record produced by a prescribed device as evidence in appeal proceedings under Paragraph 6 will not be admissible unless it is type approved. I am strengthened in that reading by the distinction between bus lane enforcement and criminal proceedings for speed offences which is addressed below.

35. Mr Murray-Smith submits that there is a fundamental distinction between bus lane enforcement and the criminal authorities referred to by Mr Rhimes. The distinction is that enforcement of a bus lane contravention under the 1996 Act can only be on the basis of a record from a prescribed device. Section 4(1) of the Act only allows for the issue of a PCN on the basis of information provided by the use of a prescribed device. This is, in my judgement, a valid distinction between the two regimes. The record from the prescribed device is, effectively, the only evidence which can be used by the enforcing authority to prove that a motorist's vehicle has been in the bus lane. In a criminal case of a speeding offence, the contravention can be evidenced and proven by the live evidence of a police officer who can produce records from a device which may or not have type approval from the Secretary of State. The distinction was amply demonstrated in the Connell case where the prosecution relied on the evidence of the officer's assessment of the speed and also upon the measurement of speed obtained from the device.

36. Mr Rhimes referred in his submissions to the commentary on Section 20 of the 1988 Act in Wilkinson's Road Traffic Offences where it is stated that Section 20(4) is not of general application to every offence of speeding. It applies only when the prosecution seeks to prove such an offence by the procedures permitted by Section 20(1). It seems to me that this underlines the difference with bus lane enforcement where there is only one means of proving the contravention which is the record from the prescribed device.

37. To give the interpretation of Paragraph 7(2) called for by Mr Rhimes would produce an absurd result where the enforcing authority could by-pass the statutory protection given by

the requirement for type approval by simply having an officer attend to produce the same record from the device. In my judgement, it would be a nonsense to remove the protection of the requirement for type approval just because an authorised officer attends the hearing to produce the record whether under service of a Paragraph 7(6) notice or by election of the enforcing authority. I do not accept that such a consequence could have been intended by Parliament.

38. Mr Rhimes says that, when Parliament enacted the 1996 Act, it elected to adopt the wording of the 1988 Act as it was amended in 1991 to include the procedure for adducing certificated evidence under Section 20. He says that, had Parliament intended that the requirement for type approval should apply where evidence from the prescribed device is adduced outside of the Paragraph 7 procedure, then it would have adopted the wording of the 1988 Act as it was before the amendments in 1991 instead of copying and pasting the amended Section 20 procedure. As set out in paragraph 18, the original wording of Section 20 provided that evidence of the measurement of any speed by a device designed or adapted for measuring by radar the speed of motor vehicles shall not be admissible unless the device is of a type approved by the Secretary of State.

39. I am not persuaded by this argument, attractive as it might appear upon first consideration. This was not a simple copy and pasting exercise of the amended Section 20 because Paragraph 7(1) omits the words at the end of Section 20 making it clear that the certificate procedure can only operate subject to the provisions which follow. In my judgement, it is not apparent that the requirement for type approval under Paragraph 7(2) is applicable only to the production of evidence using the certificate procedure and I have explained what I see as compelling reasons for not giving the interpretation called for by Mr Rhimes.

40. I therefore read Paragraph 7(2) as making inadmissible in evidence any record produced or measurement made by a prescribed device which does not have type approval from the Secretary of State regardless of the manner in which the enforcing authority seeks to adduce the evidence. Paragraph 7 remains permissive to the extent that the procedure in Paragraph 7(1) does not exclude the possibility of live evidence being adduced. Paragraph 7(6) itself has a procedure for securing the attendance of the authorised officer.

41. I therefore find that type approval by the Secretary of State is required for the camera clip to be adduced in evidence by Mr Shetty. I must, therefore, decide whether the Zenco Lane Watch camera unit used by the Respondent was of a type approved by the Secretary of State for the purposes of the 1996 Act.

42. The Respondent relies upon the Certificate, a copy of which is included at page 31 of the documents.

43. The document at page 31 is a letter from the Vehicle Certification Agency (the VCA) addressed to the Respondent's CCTV & Technical Services Manager and dated 8 June 2011. The letter is headed in bold type and capital letters **TRANSPORT ACT 2000** and underneath **CERTIFICATION OF "APPROVED DEVICES" UNDER ARTICLE 2(b) OF THE BUS LANES (APPROVED DEVICES) (ENGLAND) ORDER 2005**. In brackets underneath the heading is explanatory wording which reads (*i.e. for a device that is not: of a description specified in an order made by the Secretary of State under Section 20(9) of The Road Traffic Offenders Act 1988 (prescribed devices for the purposes of speeding and other offences); nor a device of a type that was used prior to 1 November 2005 for the purpose of bus lane enforcement under Part II (bus lanes) of The London Local Authorities Act 1996.)*

44. The letter then has a section which sets out the camera details, the Respondent's name and the effective date which is 8 June 2011.

45. Following this section is the following paragraph: "*I am directed by the Secretary of State to refer to your declaration of compliance for use under a manufacturer's certification of an "approved device" dated 3rd June 2011."*

46. There then follows this final paragraph in the letter: "*After a review of the information provided in your submitted declaration form, the Secretary of State acknowledges that the device described therein is suitable for civil Bus Lane Enforcement in the London Borough of Ealing area."*

47. The letter is signed by Tony Stenning, Member of the Board, Technical & Quality Support. Beneath Mr Stenning's name and title are the words *Authorised by the Secretary of State*.

48. There is no dispute that the VCA is authorised by the Secretary of State to provide the Certificate.

49. Mr Murray-Smith submits that the Certificate has been issued under The Transport Act 2000 ("the 2000 Act") and The Bus Lanes (Approved Devices) (England) Order 2005 ("the 2005 Order").

50. Under Article 2(1) of the 2005 Order, a device is an approved device for the purposes of regulations under Section 144 of the 2000 Act (civil penalties for bus lane contraventions) if it is of a type falling within any of 3 descriptions. Those descriptions are (a) a device which is of a description specified in an order made by the Secretary of State under Section 20(9) of the Road Traffic Offenders Act 1988 (prescribed devices for the purposes of speeding and other offences); or (b) a device certified, by a person authorised in that behalf by the Secretary of State, as meeting the criteria set out in paragraphs 2 to 6 of the Schedule to the 2005 Order; or (iii) a device not meeting the criteria in (b) but which was used before the coming into force of the 2005 Order for the purpose of bus lane enforcement under Part II (bus lanes) of the London Local Authorities Act 1996.

51. It is not in dispute that the only regulations made under Section 144 of the 2000 Act are The Bus Lane Contraventions (Penalty Charges, Adjudication and Enforcement) (England) Regulations 2005 ("the 2005 Regulations"). Regulation 1(2) of the 2005 Regulations provides that "*These Regulations apply only to England exclusive of Greater London*".

52. Mr Murray-Smith submits that the VCA Certificate relied upon authorises the camera for the purposes of the 2005 Regulations which expressly exclude Greater London. He says that the legal framework is clear, that any camera not in use for bus lane enforcement under the 1996 Act before the 2005 Order came into force on 1 November 2005 must be approved under the 1996 Act for London and under the 2005 Order for the rest of England. Mr Murray-Smith submits that there are no provisions allowing an authorisation under the 2005 Order to be effective for the purposes of the 1996 Act.

53. To summarise, Mr Murray-Smith is saying that the VCA certificate approves the camera for the purposes of regulations which expressly do not apply to Greater London and that the authorisation cannot, therefore, be valid.

54. In reply, Mr Rhimes says that there are two schemes for enforcement of bus lane contraventions, a London scheme and an outside London scheme. He says that, in contrast with the criteria for approval of a prescribed device for use outside London which are as set out in the 2005 Order, the 1996 Act sets out no criteria for approval of a prescribed device by

the Secretary of State. Mr Rhimes says that the approval procedure may, therefore, take whatever form is decided upon by the Secretary of State subject to compliance with public law principles so that the procedure must be fair and rational.

55. Following on from this, Mr Rhimes says that it is open to the Secretary of State to apply the outside London criteria to London. In other words, faced with an application for approval for a device in London, the Secretary of State is permitted to apply the criteria in the 2005 Order. Mr Rhimes submits that the VCA certificate does just that.

56. Alternatively, Mr Rhimes submits that the reference in the header to the 2005 Order is a mistake, a purely formal defect which does not affect the substance of the approval because the wording of the letter shows a clear intention to approve the device for use in the London Borough of Ealing area.

57. I am minded to agree that, in the absence of any approval criteria in the 1996 Act, it would be open to the Secretary of State to adopt the same criteria that are set out in the 2005 Order. However, that is not, in my judgement, what has happened with the VCA Certificate. There is no adoption or cross application process evident in the letter.

58. The wording of the VCA letter is clear and unambiguous. I must give a plain reading to those words.

59. The heading to the VCA letter explains the substance of the document. It is a certificate issued under the 2005 Order, certifying that the prescribed device is approved for the purposes of regulations for bus lane enforcement and those regulations, which are the 2005 Regulations, expressly do not apply to Greater London. Whilst there can be no doubt that the VCA intended to approve the device as suitable for bus lane enforcement in Ealing, a certificate approving the device for the purpose of regulations which do not apply to Greater London cannot, in my judgement, be a valid approval. The heading to the letter is the essence of the document. I agree with Mr Rhimes that it was likely a mistake but I do not agree that it is, in any sense, a purely formal defect.

60. My decision is, therefore, that type approval by the Secretary of State is required for the camera clip to be adduced in evidence by Mr Shetty and that, on the evidence before me, there is no valid approval of the device for the purposes of the 1996 Act.

61. As there is no admissible evidence of the Appellant's vehicle being in a bus lane, the appeal is allowed.

62. My thanks to both Mr Rhimes and Mr Murray-Smith for their detailed and well-presented submissions.

Sean Stanton-Dunne
Adjudicator
24th November 2022
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