

LONDON TRIBUNALS

ENVIRONMENT AND TRAFFIC ADJUDICATORS

2230060716 Commercial Plant Services Ltd

2230177189 Commercial Plant Services Ltd

2230154456 Mr. Krzyztof Burger

2230173982 Mr. Richard Jackson

2230087392 Mitchell Perry

2230006834 Mr. Raja Miah

2230149387 Mr. Muhammad Asif

2220794881 Mr. Muhammad Aslam

Appellants

v.

Transport for London

Respondent

INTRODUCTION

1. Paragraph 14 of Part 2 of Schedule 1 to the Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) (England) Regulations 2022 permits the consolidation of two or more appeals where some common question of law or fact arises in both or all appeals or, for some other reason, it is desirable that all of the appeals, or those specified, are considered together. None of the parties has objected to the consolidation of these appeals and so these eight cases have been consolidated as each case raises a common issue of law that has a wider impact.
2. The question before this specially-convened panel concerns the circumstances in which the relevant enforcement authority, Transport for London (TfL), is permitted by Regulations 9 to 11 of the Civil Enforcement of Road Traffic Contraventions (Approved Devices, Charging Guidelines and General Provisions) (England) Regulations 2022 ("the 2022 Regulations") to serve a penalty charge notice (PCN) by

post, on the basis of a record produced by an approved device, namely a CCTV camera, rather than by a civil enforcement officer (CEO). In particular, we are asked to determine whether a PCN may be so served in circumstances in which the contravening vehicle is stationary on part of a road that is a 'red route', in its general sense, but which is not marked with double or single red line markings on the carriageway. The cases before the panel principally concern PCNs served by post in circumstances in which, based on evidence from an approved device, a vehicle was in contravention whilst stationary on a red route, as defined in the applicable traffic management order (TMO) and the Traffic Signs Regulations and General Directions 2016 (TSRGD 2016), but on that part of the carriageway only marked so as to indicate bays in which a vehicle may stop subject to conditions.

3. Mr. Murray-Smith, who appears as the lay representative for many of the appellants whose cases are before this panel, contends that the definition of a red route for the purposes of Regulations 9 to 11 is narrower than the definition of a red route provided by either the relevant TMO or the TSRGD 2016 and is limited by the terms of Regulation 11(2), read literally, to those parts of the red route that are marked with double or single red lines. Thus, whilst the PCNs in this case might have been lawfully served on the basis of evidence from a CEO, it was a procedural impropriety within the meaning of Regulation 2 of the Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) (England) Regulations 2022, for the PCNs to have been served by post on the basis of evidence obtained from a CCTV camera.
4. Mr. Byass, counsel for TfL, argues that the literal interpretation contended for by Mr. Murray-Smith produces absurdity and that the meaning of Regulation 11(2), in context and properly understood, is that its definition of 'red route' for the purposes of Regulations 9 to 11 of the 2022 Regulations is materially the same as that in the TMO and the TSRGD 2016. Thus, TfL was permitted to serve the PCNs in these appeals, based on evidence from the CCTV cameras, and no procedural impropriety arises.
5. There are additional issues in the individual cases, to which we will return. If, however, we find that the PCN in any given case was issued unlawfully on the basis of what might be described as the core issue in the cases before the panel, we would be bound to allow the appeal in that case on the basis that a procedural impropriety had occurred.

#### THE APPROACH OF THE PANEL

6. In respect of the core issue, the panel has taken into account all the points made by Mr. Murray-Smith and Mr. Byass, both in their submissions at the hearing and their respective skeleton arguments. We have also had regard to the 'Supplemental Representations' provided by TfL and to the additional materials referred to in the

parties' skeleton arguments and representations. We also heard, in respect of certain aspects of TfL's approach to red route enforcement, from Mr. Garrett of TfL.

7. We were referred to the decision, relevant to the core issue before the panel, of the Chief Adjudicator Mr. Chan in *Commercial Plant Services Ltd v Transport for London* (2220896928, 2 March 2023). Mr. Chan's decision was, inevitably, relied upon by Mr. Murray-Smith because it supported the interpretation of Regulation 11(2) for which he argued. As will be well known to the parties, in this tribunal the decisions of other adjudicators, whilst capable of being persuasive, are not binding. In this case, unlike Mr. Chan, we had the benefit of very full argument, not least from Mr. Byass on behalf of TfL, for whose assistance the panel is particularly grateful. The panel took time to consider its decision, conscious of its potentially wide-reaching effect.
8. Mr. Byass referred us to a recent Supreme Court decision concerning the correct approach to statutory construction, *R (O) v. Secretary of State for the Home Department* [2022] UKSC 3 and, in particular, to paragraphs [28] to [31] of the judgment of Lord Hodge DPSC. At [29] Lord Hodge said (with our underlining):

*““29. The courts in conducting statutory interpretation are “seeking the meaning of the words which Parliament used”: Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg AG [1975] AC 591, 613 per Lord Reid. More recently, Lord Nicholls of Birkenhead stated: “Statutory interpretation is an exercise which requires the court to identify the meaning borne by the words in question in the particular context.” (R v Secretary of State for the Environment, Transport and the Regions, Ex p Spath Holme Ltd [2001] AC 349, 396.) Words and passages in a statute derive their meaning from their context...”*

9. Lord Hodge's judgment, with which Lord Briggs, Lord Stephens and Lady Rose JJSC agreed, emphasises the objective nature of the exercise of statutory interpretation. We approach the exercise on the basis that the starting point (and possibly the end point) is the natural and ordinary meaning of the words used by Parliament or, in this case, the drafters of the 2022 Regulations. Lord Hodge's judgment makes plain that external aids to interpretation must play a secondary role; they do not *“displace the meanings conveyed by the words of a statute that, after consideration of that context, are clear and unambiguous and which do not produce absurdity...”* [30].
10. Lady Arden, who concurred in the result of the appeal, and who stated that she agreed with Lord Hodge DPSC, in her judgment specifically addressed the role in statutory interpretation of 'pre-legislative material'; that is to say material created before a Bill is passed. At [64] she too quoted from *R v Secretary of State for the Environment, Transport and the Regions, Ex p Spath Holme Ltd* at p.397 in which Lord Nicholls held:

*“Nowadays the courts look at external aids for more than merely identifying the mischief the statute is intended to cure. In adopting a purposive approach to the interpretation of statutory language, courts seek to identify and give effect to the purpose of the legislation. To the extent that extraneous material assists in identifying the purpose of the legislation, it is a useful tool.”*

11. In this case we have sought to interpret the 2022 Regulations in and of themselves and in the context of their predecessor regulations (as successively amended) all made under the Traffic Management Act 2004 and also in the context of the TSRGD 2016, made under the Road Traffic Regulation Act 1984, and related regulations. We have been referred by both representatives to what might be described as ‘external aids’ in the form of explanatory memoranda to the various regulations made under the 2004 Act, the Traffic Signs Manual issued pursuant to both the 2004 and 1984 Acts, and to the Department for Transport’s statutory guidance to local authorities on the civil enforcement of parking contraventions (issued in 2008 but subsequently amended due to changes introduced by the TSRGD 2016 and 2022 Regulations).

#### THE TRAFFIC MANAGEMENT ORDER

12. There are different TMOs for each of the red route bays that are subject to this appeal. They all follow the same format. In each TMO, the definition of a red route is as follows:

*“2. Interpretation*

*(1) In this Order-*

*...(s) “red route” means those roads, or lengths of roads, that are specified in Schedule 1; comprising the whole width of public highway except where only one side of a road or length of road is specified, wherein it shall comprise the public highway from its edge to the centre of the carriageway”*

13. Self-evidently, the very broad definition of a red route above applies only for the purposes of the TMO; it is an ‘internal’ description or label for the roads specified in their Schedule 1 that are subject to the restrictions imposed by the terms of the TMO.
14. Each TMO creates, at Article 3, a general prohibition on stopping on the red route during the ‘restricted hours’ or, in the case of length of red route specified in Schedule 4, at all times.
15. Each TMO also creates, however, exemptions from the prohibition in respect of specified lengths of red route. These exemptions apply, to provide some examples from Article 5, to permit parking for a limited period and to certain types of motor vehicles such as taxis, buses and motor cycles. Article 6 provides an exemption where it is necessary for a vehicle to load or unload. Article 7 provides an exemption for

vehicles displaying, in the “relevant position”, a disabled person’s blue badge and, in some circumstances, a parking disc. The concept of “relevant position” is relevant, in our view, to the core issue in this appeal.

16. By virtue of Article 2(1)(i) of the TMO: *““disabled person’s badge” and “parking disc” have the same meaning as in regulation 3(1) of the Local Authorities’ Traffic Orders (Exemptions for Disabled Persons) (England) Regulations 2000, and “relevant position” has the same meaning as in regulation 4 of those Regulations.”*

17. Regulation 4(1) of those Regulations refers in turn, for the purposes of the meaning of the ‘relevant position’ of the badge itself to the Disabled Persons (Badges for Motor Vehicles) (England) Regulations 2000 which, by Regulation 12, specifies:

*“12. Manner in which a badge is to be displayed*

*For the purposes of section 21(4A) of the 1970 Act a disabled person’s badge is displayed on a vehicle in the prescribed manner if*

*(a) the badge is exhibited on the dashboard or fascia of the vehicle, or*

*(b) where the vehicle is not fitted with a dashboard or fascia, the badge is exhibited in a conspicuous position on the vehicle,*

*so that the front of the badge is clearly legible from the outside of the vehicle.”*

18. Regulation 4(2) provides, in respect of a parking disc:

*“(2) A vehicle displays a parking disc in the relevant position if–*

*(a) the disc is exhibited on the dashboard or fascia of the vehicle; or*

*(b) where the vehicle does not have a dashboard or fascia, the disc is exhibited in a conspicuous position on the vehicle,*

*so that, when marked to show the quarter-hour period during which a period of waiting began, that period is clearly legible from the outside of the vehicle.*

#### THE TSRGD 2016

19. Prior to the coming into force of the TSRGD 2016, under the predecessor TSRGD 2002 there were no prescribed signs or markings for red routes. Rather, authorisation for such signs and markings had to be obtained from the Secretary of State.

20. For the purposes of the signs and markings that the TSRGD 2016 prescribe, Schedule 1 to the TSRGD 2016 defines a red route as:

*“a road in respect of which the prohibition indicated by single or double red lines has been imposed by an order or notice under the 1984 Act (subject to such exceptions as are provided for by such an order or notice).”*

21. Schedule 6 to the TSRGD 2016 prescribes the upright signs that may be used for red routes. Part 1 of that Schedule provides a diagram of the permitted ‘red route’ sign. Paragraph 2 of Part 1 states that the top panel of the sign must include the ‘no stopping’ roundel and the words ‘red route’. A middle panel must be included, stating the words ‘no stopping’. The middle panel may be varied to include a time period, which would, of course, be necessary if the prohibition did not apply at all times and only applied during restricted hours. The middle panel may also be varied to include certain exemptions, such as for buses, taxis, ambulances and police vehicles, or for parking in signed bays. There is no provision to permit the middle panel to be varied to refer to an exemption for loading or unloading, or for vehicles displaying a disabled person’s blue badge.
22. Part 1 provides also that the sign may include a bottom panel in accordance with Part 2 of Schedule 6. Part 2 provides the various symbols and legends that may appear, where applicable, in the bottom panel of a Schedule 6 sign. Part 2 provides for bottom panels that are applicable for exemptions to the prohibition on stopping that apply to, inter alia, parking places, loading/unloading bays and bays for the parking of vehicles displaying a disabled person’s blue badge.
23. Schedule 7, Part 4 includes road markings that are applicable to red routes and Part 5 of that Schedule provides their permitted variants.
24. The diagram 1018.2 at item 11 in Part 4 of Schedule 7 to the TSRGD 2016 provides the double red line markings that are universally recognised to indicate a prohibition on stopping at all times on the stretch of road so marked.
25. The diagram 1017.1 at item 12 in Part 4 refers to the single red line markings that are recognised to indicate a prohibition on stopping at times that are not continuous throughout the year on the stretch of road so marked. The TSRGD 2016 do not themselves require the single red line markings only to be placed in conjunction with a sign. However, in order to comply with the duty on an enforcement authority, under Regulation 18 of the Local Authorities’ Traffic Orders (Procedure) (England and Wales) Regulations 1996, to ensure that roads users are adequately informed of the effect of a TMO, in the case of a single red line marking there would inevitably have to be an upright sign of a prescribed kind stating the restricted hours.
26. The type of parking bays on a red route with which we are concerned in this case are prescribed in the TSRGD 2016 at item 6 (diagram 1028.4) of Part 4 of Schedule 7. The prescribed markings may be varied on a red route in the circumstances described in

paragraph 5 of Part 5 of that Schedule. In those circumstances the marks forming the boundary of the bay must be coloured red, but only where the bay is not available for parking or loading during part of, or all of, the times of operation of the red route. This means that if the bay is available for parking or loading during all of the times of operation of the red route then the boundary of the bay is marked in white in accordance with diagram 1028.4. We shall refer to this type of bay marking as an 'item 6 bay marking'.

27. Although it was not suggested by any party, for the avoidance of doubt we make clear that the red line markings at items 11 and 12 in Part 4 of Schedule 7 may not be varied to include a break in the double or red line marking to include an item 6 bay marking. So, it cannot be argued that items 11 and 12 include, by implication, red route bay markings. They are separate markings.
28. We also mention for completeness that the bays at items 7, 8 and (in the circumstances described in paragraph 13 of Part 5) 9 of Part 4 do not give rise to the issue in this case because the continuous line that forms part of those bays is required by paragraph 8 or, in the case of item 9, by paragraph 13, of Part 5 to be varied on a red route to the double or single red line at item 11 or 12 of Part 4.
29. The very fact, however, that paragraph 5 of Part 5 provides that an item 6 bay marking may be varied 'on a red route' shows that, for the purposes of the TSRGD 2016, a length of road may still be 'a red route' in the absence of the double or single red line markings at item 11 or 12 of Part 4. That is consistent with the definition of a red route for the purposes of the TSRGD 2016 at Schedule 1; the red route for those purposes comprises a length of road marked with double or single red line markings, save where there is an exemption requiring an item 6 bay marking instead of such line markings.

#### REGULATIONS 9 TO 11 OF THE 2022 REGULATIONS

30. The above Regulations, which apply to all these appeals, provide, as far as is relevant (and with our underlining):

*"9.— Penalty charge notices for parking contraventions: service by civil enforcement officers*

*(1) This regulation applies in relation to the notification, by a civil enforcement officer, of a penalty charge payable in respect of a parking contravention.*

*...(3) Except as provided for in paragraphs (4) to (6) and regulation 10, notification of a penalty charge in respect of a parking contravention on a road may only be given by a civil enforcement officer by fixing a penalty charge notice to the vehicle.*

*(4) The requirement in paragraph (3) that notification be given by the fixing of a penalty charge notice to the vehicle does not apply—*

*...(b) in the circumstances specified in regulation 11.*

*...“10.— Penalty charge notices for relevant road traffic contraventions: enforcement authority*

*(1) This regulation applies in relation to the notification, by an enforcement authority, of a penalty charge payable in respect of a relevant road traffic contravention.*

*(2) An enforcement authority may give notification of the penalty charge by serving a penalty charge notice by post where—*

*(a) on the basis of a record produced by an approved device, the authority has reason to believe that a penalty charge is payable with respect to—*

*(i) a regulation 11 parking contravention,...*

*(3) For the purposes of this regulation "regulation 11 parking contravention" means a parking contravention—*

*(a) otherwise than on a road, or*

*(b) on a road in the circumstances specified in regulation 11...*

*11.— Circumstances in which notification of a penalty charge for a parking contravention on a road in a civil enforcement area may be given otherwise than by fixing a notice to the vehicle*

*(1) The circumstances specified for the purposes of regulations 9(4)(b) and 10(3)(b) are circumstances where the relevant vehicle is stationary on—*

*(a) a bus lane,*

*(b) a bus stop clearway or bus stand clearway,*

*(c) a carriageway outside a school entrance which is marked in accordance with diagram 1027.1 at item 10 in Part 4 of Schedule 7 to the Traffic Signs Regulations and indicated by the upright sign at item 10 in Part 3 of Schedule 4 to those Regulations,*

*(d) a red route, or*



*(e) a mandatory cycle lane which is additionally marked in accordance with any of the following diagrams referred to in Part 4 of Schedule 7 to the Traffic Signs Regulations—*

*...(2) In this regulation—*

*..."red route" means a road marked in accordance with—*

*(a) diagram 1018.2 at item 11 or diagram 1017.1 at item 12 in Part 4 of Schedule 7 to the Traffic Signs Regulations, and*

*(b) the upright sign at Part 1 of Schedule 6 to those Regulations;*

*"the Traffic Signs Regulations" means the Traffic Signs Regulations and General Directions 2016"*

31. The definition of a red route in Regulation 11(2) makes no mention of parking bays as defined in paragraph 25 above. That gives rise to the core issue in these appeals.
32. The panel did not believe it to be controversial that:
- a. Save for that part of Regulation 9(4) quoted above, paragraphs (4) to (6) of that Regulation are not relevant, given that they concern the circumstances in which a PCN may be served by post in circumstances in which a CEO was unable to serve it at the scene of an alleged contravention; and
  - b. Regulation 9 establishes the default position that, except in the particular circumstances specified in that Regulation, a PCN must be served by a CEO at the scene of an alleged contravention.

#### THE RIVAL INTERPRETATIONS OF REGULATION 11(2)

33. Mr. Murray-Smith's argument as to the proper construction of Regulation 11(2) is straightforward. He argues, in effect, that there is no ambiguity in the words used and that the natural and ordinary interpretation of 'red route' for the purposes of Regulation 11(2) means that either of the preconditions in limb a) must be satisfied and, if and only if either of those preconditions is satisfied, limb b) must then also be satisfied. That is to say, the parking contravention must be on a road marked with double or single red lines and, if and only if so marked, accompanied with an upright sign in accordance with Part 1 of Schedule 6 to the TSRGD 2016.
34. Thus, if a vehicle is not stationary on a road marked with either double or single red lines, then the first precondition is not met and that is the end of the matter; it is irrelevant whether the vehicle is parked on a road marked in accordance the requisite upright sign.

35. We are not certain, however, that that very literal interpretation is necessarily the correct or only one. Although (as Mr. Byass recognised, see paragraph 25 of his skeleton argument) an upright sign may be used in conjunction with a double red line, there is no requirement for such a sign in those circumstances. In the considerable collective experience of this panel, it has never been suggested that for a contravention of a prohibition of a red route indicated by double red lines to be enforceable by way of a record produced by an approved device there requires to be evidence of an accompanying upright sign. On Mr. Murray-Smith's strict construction of Regulation 11(2) such a requirement would exist.
36. By contrast, when one distils Mr. Byass's submissions and TfL's 'Supplemental Representations' down to their logical conclusion, they appear to amount to this: the two limbs of Regulation 11(2) are alternatives. That is to say, camera enforcement is possible where a vehicle is stationary on a red route either marked with double or single red lines or marked with an upright sign, including the sign that accompanies an item 6 bay marking. That construction corresponds with the definition of a red route for the purposes of the TSRGD 2016. Indeed, that alignment of the two definitions is a point made by TfL.
37. The principal difficulty with that interpretation is that Regulation does not use the word 'or'. It uses the word 'and' between the two limbs. The latter word lends itself naturally and ordinarily to a conjunctive construction of Regulation 11(2) rather than a disjunctive one.
38. Given, however, that both parties have referred us to the legislative history behind this Regulation and to other materials, and that a literal interpretation of it is unsatisfactory we take the view that reference to 'external aids' might, in this case, assist in establishing the objective meaning of it.

#### THE GENESIS OF THE DEFINITION OF 'RED ROUTE' FOR THE PURPOSES OF CAMERA ENFORCEMENT

39. The first experimental red route was created in Islington by order in 1990. Section 50 of the Road Traffic Act 1991 permitted the designation of red routes. Yet, until the TSRGD 2016, there were no prescribed signs relating to red routes. Instead, there was a comprehensive authorisation covering all TfL's signage.
40. In the original iteration of the predecessor regulations to the 2022 Regulations, The Civil Enforcement of Parking Contraventions (England) General Regulations 2007 (the "2007 General Regulations"), Regulation 10 of those Regulations provided that:

*"10. — Penalty charge notices — service by post*

*(1) An enforcement authority may serve a penalty charge notice by post where—*

*(a) on the basis of a record produced by an approved device, the authority has reason to believe that a penalty charge is payable with respect to a vehicle which is stationary in a civil enforcement area;...*

41. There was no restriction on the types of parking contraventions that could be subject to camera enforcement. That changed with the amendment of the 2007 General Regulations by the Civil Enforcement of Parking Contraventions (England) General (Amendment No. 2) Regulations 2015 (“the 2015 Amendment Regulations”). From 31 March 2015, Regulation 10 of the 2007 General Regulations read, as far as is relevant:

*“(1) Subject to paragraph (1A) an enforcement authority may serve a penalty charge notice by post where—*

*(a) on the basis of a record produced by an approved device, the authority has reason to believe that a penalty charge is payable with respect to a vehicle which is stationary in a civil enforcement area;...*

*...(1A) Paragraph (1)(a) does not apply in relation to a penalty charge payable in respect of a parking contravention on a road in a civil enforcement area except in the circumstances specified in regulation 9A(6)....”*

42. The new Regulation 9A(6) (and (7), which provides definitions) read, as far as is relevant:

*“(6) The circumstances referred to in regulation 9A(3)(c) are that a vehicle is stationary in a civil enforcement area on—*

*...(d) a red route.*

*(7) In paragraph (6)—*

*... “red route” means a road conveying such red route road markings and signs as authorised or directed by the Secretary of State in the exercise of powers conferred on him by sections 64(1) and (2) and 65(2) of the Road Traffic Regulation Act 1984....”*

43. The definition of a ‘red route’ could not refer to any set of prescribed signs for red routes because, of course, no such prescription at that time existed.

44. The circumstances in which parking contraventions could be subject to camera enforcement was narrowed by the 2015 Amendment Regulations. Certainly, the explanatory memorandum to the 2015 Amendment Regulations referred to the virtue of using CCTV cameras in some circumstances, including for red route enforcement,

but the overall tenor of the document does not suggest an expansive use of CCTV cameras. The explanatory memorandum to the 2015 Amendment Regulations stated, notably:

*“2. Purpose of the instrument*

*2.1 These Regulations amend the Civil Enforcement of Parking Contraventions (England) General Regulations 2007 to require that a penalty charge notice in respect of a parking contravention on a road be served by fixing it to the vehicle, except in certain cases...*

*4.2 These Regulations are made following amendment of the powers in the Traffic Management Act 2004 by the Deregulation Act 2015 (see section 53 of that Act). The 2004 Act was amended to allow for regulations to be made which tighten the circumstances in which CCTV may be used as the sole evidence for issuing a parking contravention notice ....*

*7.2 Parking issues and in particular over zealous enforcement by local authorities are a matter of significant public concern and have been a priority for Ministers. The independent adjudication services have also had concerns that local authorities are not using their powers in accordance with the guidance [the Department for Transport’s statutory guidance to local authorities on the civil enforcement of parking contraventions]...*

*7.3 Ministers are concerned that this overuse of CCTV has unfair consequences on the public. An individual accused via CCTV misses an initial opportunity to receive discretion; an opportunity that is available to someone who is observed by a Civil Enforcement Officer (CEO). It is also unfair because drivers receive penalty notices in the post weeks later, with no opportunity to examine the parking location as it was at the time of the alleged contravention. Signs may have been obscured or fallen down, and lines could have been hidden – which could change before the driver can return to inspect the location.*

*7.4 The Government believes that powers are not being used as originally intended. Statutory Guidance requires that “approved devices are used only where enforcement is difficult or sensitive and CEO enforcement is not practical...”*

45. The Department for Transport guidance to which the above explanatory memorandum referred is quoted in Mr. Chan’s decision in *Commercial Plant Services Ltd v Transport for London* (2220896928, 2 March 2023). The guidance (likely to be in its original version) stated:

*“The Secretary of State recommends that approved devices (i.e. CCTV/ANPR systems etc) are used only where enforcement is difficult or sensitive and enforcement by a Civil Enforcement Officer is not practical. Approved devices should not be used where permits or exemptions (such as residents' permits or Blue Badges) not visible to the equipment may apply.”*

46. The weight to be attached to the explanatory memorandum to the 2015 Amendment Regulations in respect of a subsequent amendment in 2020 and then to the 2022 Regulations is, in itself, limited. However, the panel takes the view that the government in 2015 was conscious that the circumstances in which CCTV enforcement may be used, albeit permissible on red routes, should be limited, for the reasons given in the explanatory memorandum and the Department for Transport guidance referred to. This is consistent with the ‘default’ position being that PCNs must, wherever possible, be served by a CEO. The explanatory memorandum to the 2015, although not directly concerned with the 2020 Amendment Regulations, might be described as ‘pre-legislative material’ that illustrates, to some extent, the general legislative background and direction.

47. It is, in that regard, notable that the explanatory memorandum to the Civil Enforcement of Parking Contraventions (England) General (Amendment) Regulations 2020 (“the 2020 Amendment Regulations”), which further amended the 2007 Regulations, says nothing about expanding the circumstances in which CCTV enforcement on red routes may be used beyond those envisaged in 2015. Rather, the explanatory memorandum to the 2020 Amendment Regulations focused, instead, on camera enforcement of parking in cycle lanes. The 2020 Amendment Regulations are important because it is TfL’s case that:

*“...regulation 11(2) of the [2022 Regulations] simply carried forward the existing definition of a “red route” from the previously in force regulations, namely the [2007 Regulations]”* (paragraph 10 of the skeleton argument); and

*“As in force between 22 June 2020 and 30 May 2022 (whereafter the [2022 Regulations] came into force), the definition of “red route” in the [2007 Regulations] was in materially identical terms to the current definition...”* (paragraph 14 of the skeleton argument).

48. The definition of ‘red route’ that was introduced by the 2020 Amendment Regulations, and which TfL argues was simply carried over to the 2022 Regulations, is as follows, and replaces the previous definition in Regulation 9A(7) of the 2007 Regulations:

*““red route” means a road marked in accordance with diagram 1018.2 at item 11 or diagram 1017.1 at item 12 of Part 4 of Schedule 7 to the Traffic Signs Regulations and the upright sign at Part 1 of Schedule 6 to those Regulations;”*

49. By the time of the 2020 Amendment Regulations, the TSRGD 2016, with their definition of 'red route', had come into force. The 2020 Amendment Regulations could simply have adopted the 'ready-made' definition of 'red route' from the TSRGD 2016 but the drafters chose not to do so. That the drafters chose a different, and specifically-worded, definition of 'red route' for the purposes of camera enforcement of red route contraventions is significant. If the drafters of the 2020 Amendment Regulations had intended all parts of the red route to be subject to camera enforcement, then, in choosing the wording that they did, they chose an unnecessarily convoluted way of expressing it. It is inherently unlikely that they did so. The choice of words used and, conversely, not used, undermines TfL's argument that that definition, carried over (as it argues) to the 2022 Regulations is materially indistinguishable from that in the TSRGD 2016.

50. It can be seen, however, that there is a distinction, at least in form, between the definition in Regulation 9A(7) of the 2007 Regulations, as amended by the 2020 Amendment Regulations, and the definition in regulation 11(2) of the 2022 Regulations. In the former, there is no division into 'limbs' (a) and (b) as there is in the latter.

51. Without the express division into limbs (a) and (b) as is seen in Regulation 11(2) of the 2022 Regulations, one logical reading of the definition in Regulation 9A(7) is as follows:

*"red route" means a road marked in accordance with:*

*[diagram 1018.2 at item 11 of Part 4 of Schedule 7 to the Traffic Signs Regulations]*

*or*

*[diagram 1017.1 at item 12 of Part 4 of Schedule 7 to the Traffic Signs Regulations and the upright sign at Part 1 of Schedule 6 to those Regulations]*

52. That is to say, with the parentheses inserted as above, CCTV enforcement is available where the vehicle is stationary on a red route marked either with double red lines (in which case no upright sign is required) or with a single red line (in which case an upright sign is also required, to state the restricted hours). That construction of Regulation 9A(7) avoids the unsatisfactory consequences of Mr. Murray-Smith's literal interpretation. It is also, in the panel's view, consistent with a 'purposive' and common-sense construction. It would follow that, if that was the correct interpretation of Regulation 9A(7), and if TfL is correct that the definition is simply carried over to the 2022 Regulations, the insertion of 'limbs' (a) and (b) would be a drafting error, albeit an error primarily of form not substance. The drafting error could be put right if the words of limb (b) were read as if the words 'in the case of diagram 1017.1 at item 12' were put before them.

## THE PURPOSE OF REGULATION 11(2)

53. We are content to accept TfL's argument that there is no material distinction between the definition of a 'red route' in Regulation 9A(7) of the 2007 Regulations, as amended, and Regulation 11(2) of the 2022 Regulations. After all, we do not find anything in the explanatory memorandum to the 2022 Regulations that supports the view that the drafters, contrary to what had been said in 2015, had now decided to expand the circumstances in which CCTV enforcement could be used on a red route. If that was the drafters' intention then we would have expected to see express reference to it in the memorandum to the 2022 Regulations. There is a presumption that, as consolidating regulations, they retain the status quo.
54. There are, in the panel's view, four factors which support either Mr. Murray-Smith's literal interpretation of Regulation 11(2) or the interpretation postulated in paragraph 51 above in respect of Regulation 9A(7), carried over into Regulation 11(2). These factors are difficult to reconcile with the interpretation contended for by TfL, namely that limbs a) and b) are alternatives. That is to say, there are substantive reasons why TfL's interpretation might create an absurdity but the alternative interpretations make sense and do not create an absurdity.
55. The first and, in the panel's view, weighty consideration is the viability of enforcement by CCTV cameras of parking bays on red routes for vehicles displaying a disabled person's blue badge and, where applicable, a parking disc. We were, with respect, left a little unclear as to how TfL satisfies itself that there is 'reason to believe' (as required by Regulation 10(2)(a) of the 2022 Regulations) that a PCN is payable in respect of a contravention of the requirements of a disabled person's parking bay, during the permitted hours, on the basis of CCTV evidence. The reasons for doubting the viability of CCTV enforcement in respect of such bays are clear from the requirements for the display of a disabled person's blue badge and parking disc in the TMO itself. In the case of a vehicle with a dashboard or fascia (as no doubt most vehicles used by disabled people have) the badge must be placed on the dashboard or fascia so that the front of the badge is clearly legible from the front of the vehicle. In the case of a parking disc the requirements are yet more exacting; the quarter hour period when the period of waiting began must be clearly legible from the outside of the vehicle. Although, perhaps with the most sophisticated camera equipment, a disabled person's blue badge and parking disc might be 'clearly legible' from a CCTV camera facing the front quarter of the vehicle, this is simply impossible in the case of a camera located to the vehicle's rear or either side. It appears to us quite obvious that the enforcement of the requirements of disabled person's parking bays, unless outside of the permitted hours, cannot be left to CCTV enforcement but is intended to be left to CEOs, who can clearly see the disabled person's blue badge and parking disc, or their absence or invalidity, or that they are a copy, from the outside of the vehicle. Indeed the most recent version

of the Department for Transport's statutory guidance to local authorities on the civil enforcement of parking contraventions recommends that "approved devices are only used where enforcement is difficult or sensitive and enforcement by a civil enforcement officer is not practical". Here the very opposite is true. The enforcement of such bays by CCTV is likely to lead to many contraventions not being enforced and therefore to considerable abuse of these bays, which are very valuable to disabled people. That cannot have been the drafters' intention.

56. Second, and linked to what was said in the explanatory memorandum to the 2015 Amendment Regulations at paragraph 7.3, a motorist who receives a PCN issued on the basis of evidence produced by an approved device in respect of an alleged contravention of a loading/unloading bay may find it impossible to obtain the necessary evidence, after the event, to discharge the burden of proving loading/unloading. A motorist parked in such a bay who encounters a CEO may, there and then, be able to show the CEO that s/he is loading or unloading or, if served with a PCN at the scene, can readily obtain the evidence - perhaps from the persons at the premises at which s/he was loading or unloading - to substantiate that claim in representations. A prime example of this is in Mr. Jackson's case in which he might have had the chance to obtain evidence there and then from the premises at which he had made the purchase in question. That chance is, to a significant extent, diminished if the PCN is served well after the event on the basis of CCTV footage.
57. Thirdly, in connection with the above two points, it is worth observing that the other types of parking contravention in Regulation 11(1) in respect of which PCNs may be issued on the basis of a record produced by an approved device are also contraventions to which there are very few, if any, exemptions such as those for vehicles that are loading/unloading, or displaying a disabled person's blue badge. Those other contraventions in Regulation 11(1) have, therefore, much more in common with contraventions of the prohibition on stopping on a double or single red line on a red route than with contraventions of a red route parking bay.
58. Fourthly, it is significant that the drafters of 'limb' (b) of Regulation 11(2) referred specifically to the upright sign at Part 1 of Schedule 6 to the TSRGD 2016 rather than to 'the upright sign at Schedule 6'. Mr. Byass sought skilfully to persuade us that the express reference to Part 1 in particular had no real significance because it is Part 1 that prescribes the sign as a whole, including a bottom panel as prescribed by Part 2 that would be appropriate for a red route bay sign. However, a sign could be erected on a red route without any of the symbols or legend contained in Part 2 and containing only symbols or legend required by Part 1. That would be the case in respect of a sign stating the restricted hours of a prohibition on stopping indicated by a single red line. If the drafters had intended to refer in 'limb' (b) of Regulation 11(2) to the prescribed signs for red route parking bays, which necessarily include symbols and legend in Part 2, it would have been far more natural to refer either to 'an upright sign in Parts 1 and 2 of Schedule 6' or, simply, to 'an upright sign in Schedule 6'. The wording used is more



consistent with the construction of Regulation 11(2) as a whole postulated in paragraph 51 above in respect of Regulation 9A(7), namely that the upright sign is required to state the restricted hours in respect of a single red line, and not to accompany a red route parking bay.

#### CONCLUSION ON THE CORE ISSUE

59. Whether on the basis of the natural and ordinary meaning of the words used as a whole in Regulation 11(2), in and of themselves or in the context of other regulations, or on the basis of a purposive construction of the regulation, informed by its genesis and other external aids, the panel is unable to accept the construction of the Regulation contended for by TfL.
60. The panel finds, having analysed the extensive submissions and materials with which we have been provided, that parking contraventions on a red route enforceable on the basis of a record produce by an approved device are confined, in the context of Regulation 11(2) to those where the vehicle is stationary on a length of road marked with double or single red line markings. There is a material distinction between the definition of a red route for the purposes of the TSRGD 2016 and the definition in Regulation 11(2) governing the circumstances in which camera enforcement of parking contraventions is permissible. That is to say, the contexts are different.
61. No-one suggests that contraventions of red route parking bays marked with the 'item 6 bay marking' are not enforceable at all. They are enforceable but, the panel finds, the meaning of the 2022 Regulations is that they are not enforceable on the basis of a record produced by an approved device. They are enforceable by CEO's and, in the event the CEO is unable to effect service of the PCN in the circumstances described in Regulation 9(4) to (6), by post.
62. The panel therefore finds itself in agreement with Mr. Chan and his decision in *Commercial Plant Services Ltd v Transport for London* (2220896928, 2 March 2023).
63. In respect of those cases below in which the PCNs did not comply with Regulation 11(2) as we construe it, we find there was a procedural impropriety and we direct those PCNs to be cancelled. The other points will, therefore, be dealt with more briefly.

#### THE INDIVIDUAL APPEALS

##### 2220794881 Mr. Muhammad Aslam

64. It appeared that Mr. Murray-Smith had served in this appeal a skeleton argument in relation to another matter and which addressed points that did not arise in Mr. Aslam's case. Plainly Mr. Aslam had asked Mr. Murray-Smith to represent him and to

make arguments in relation to his case. Human error, and not on Mr. Aslam's part, had led to the wrong skeleton argument being served. It would prejudice Mr. Aslam if the panel did not adjourn the hearing in order that Mr. Murray-Smith could serve a skeleton argument that related to his case. We heard from Mr. Garret on behalf of TfL. There was very little identifiable prejudice to TfL in adjourning this matter for a short period of a few weeks and that is what the panel resolved to do. The appeal may, but does not need to be, heard by any members of this panel.

2230060716 Commercial Plant Services Ltd

65. This appeal engages the core issue. The vehicle was parked on a (red) marked bay on a red route. Yet the PCN was served not by a CEO but by post on the basis of a record produced by an approved device. For the reasons given at length above, we hold that this was a procedural impropriety.

66. We would also have allowed the appeal on two other bases.

67. First, having been addressed at some considerable length on the evidence of the signage that was in place on the occasion in question, we were not satisfied that, on the balance of probabilities, it was adequate to inform motorists of the restriction in question. In particular, it appeared highly likely to us that the prescribed sign present at the location was, for whatever reason, facing away from the direction of traffic. We did not find the contravention proved.

68. Second, we were somewhat concerned by the manner in which the representations made by Ms. Karen Bagnell on behalf of the appellant company were dealt. TfL responded to the representations:

*"Our records show that we did not issue the PCN to you. We did not use your name and address when we created issued and served the PCN. As such you do not have the right to make representation against this PCN."*

69. It would have been quite obvious to anyone who had considered the correspondence from Ms. Bagnell on the appellant company's behalf that she was acting in that capacity and not as an unauthorised third party. Indeed, TfL actually wrote to Ms. Bagnell at the company's address. TfL was, we find, under a statutory duty to consider the representations made by Ms. Bagnell on behalf of the company.

70. In a later response to Ms. Bagnell, TfL expressly stated that it had *"decided to ignore the representation"*. "To ignore" being an antonym of "to consider", TfL can therefore be taken to admit that it failed (indeed refused) to consider the representation. This is also a procedural impropriety rendering the PCN unenforceable.

2230177189 Commercial Plant Services Ltd

71. This appeal engages the core issue. The vehicle was parked on a (white) marked bay on a red route. Yet the PCN was served not by a CEO but by post on the basis of a record produced by an approved device. For the reasons given at length above, we hold that this was a procedural impropriety.
72. Given that we are allowing the appeal we deal only briefly with the issue concerning type approval, which might need to be dealt with more extensively on another occasion.
73. Taking the evidence as a whole we would have been minded to find that there was, on the balance of probabilities, certification and approval in place for the device in question at the relevant time.
74. We also thought that the point about the expression of the statutory time period in the notice of rejection had no merit. It was a distinction without a difference.

2230154456 Mr. Krzyztof Burger

75. This appeal engages the core issue. Although there does appear to have been a time when the vehicle was parked on double red lines, that was not when the PCN was issued. The vehicle was, at the time stated on the PCN, parked on a (red) marked bay on a red route. Yet the PCN was served not by a CEO but by post on the basis of a record produced by an approved device. For the reasons given at length above, we hold that this was a procedural impropriety.
76. We further add that we would have allowed the appeal on the issue of signage. The evidence of the location and state of the signage was unsatisfactory. It was not possible to make a finding that there was probably a sign present on the footway adjacent to the bay in which the vehicle parked. Even if there had been such a sign present in that location, it would have been liable to be obscured by a large banner on the footway visible in the CCTV footage.

2230173982 Mr. Richard Jackson

77. This appeal engages the core issue. The vehicle was parked on a (red) marked bay on a red route. Yet the PCN was served not by a CEO but by post on the basis of a record produced by an approved device. For the reasons given at length above, we hold that this was a procedural impropriety.
78. We would not have allowed the appeal on the basis of the wording of the time limit (for the reasons given above) or on the basis of the loading exemption. We would not have found that the loading exemption applied because it was clear to us that, given the items were taken on foot for some 4-5 minutes to the car, they were

sufficiently portable that they did not require the use of a car and loading bay to transport them.

2230087392 Mitchell Perry

79. This appeal engages the core issue. The vehicle was parked on a (red) marked bay on a red route. Yet the PCN was served not by a CEO but by post on the basis of a record produced by an approved device. For the reasons given at length above, we hold that this was a procedural impropriety.

2230006834 Mr. Raja Mian

80. This appeal engages the core issue. The vehicle was parked on a suspended (white) marked bay on a red route. The fact that the bay was suspended does not alter the fact that bay markings, and not single or double red line markings, were present. Yet the PCN was served not by a CEO but by post on the basis of a record produced by an approved device. For the reasons given at length above, we hold that this was a procedural impropriety.

2230149387 Mr. Muhammad Asif

81. In the event, this appeal did not engage the core issue. Whilst the PCN was issued by post on the basis of a record produced by an approved device, the vehicle was parked on a road with two wheels other than on the carriageway, to which double red line markings had been applied. The explanation, that the driver was picking up a passenger, is no defence. This contravention is proved and the PCN enforceable.

Edward Houghton

Teresa Brennan

Jack Walsh