**Issue: RUCA Review decision – Adequacy of ULEZ signage**

**Case Details**

**Case reference** 9190285441

**Appellant** Robert Morris

**Authority** Transport for London

**VRM** BD02WML

**PCN Details**

**PCN** YJ01334192

**Contravention date** 15 May 2019

**Contravention time** 21:40:00

**Contravention location** Gower Street South

**Penalty amount** £160.00

**Contravention** Failure to pay charge for Ultra Low Emission Zone

**Decision Date** 17 Oct 2019

**Adjudicator** Leslie Cuthbert

**Previous decision** Appeal refused

**Appeal decision** Appeal refused

**Direction** The Appellant must pay the penalty.

**Parties**

1. This is an application for review by the Appellant, Mr Morris, against the decision made by another Adjudicator, Mr Edie, on 13 August 2019, refusing the appeal against the penalty imposed by Transport for London, relating to the London Ultra Low Emission Zone (ULEZ).

2. The application for review was scheduled for a personal hearing at 10.00 am on Thursday 17 October 2019. A Mr Garrett, on behalf of Transport for London, attended the personal hearing. Mr Morris had written in, by e-mail on 14 October 2019, indicating that it was his understanding that the review would take place on a paper basis and that in the absence of his supporter, Miss Anderson, who assisted him at the original oral hearing on 13 August 2019, he did not wish to attend and relied upon his written submissions.

**Issue**

3. The responsibility is upon the Appellant to satisfy me, more likely than not, that one of the grounds justifying a review is made out.

**Law**

4. The grounds justifying a review under Paragraph 12 of Part II of the Schedule to the Road User Charging (Enforcement and Adjudication) (London) Regulations 2001, as amended, are that:
1) the decision was wrongly made as a result of an error on the part of the administrative staff;
2) that a party failed to appear at a hearing having good and sufficient reason for failing to appear;
3) that new evidence has become available that was not reasonably foreseeable at the time of the hearing or

4) that a review is required in the interests of justice.

5. If a review is justified then, under Paragraph 12(4) of Part II of the Schedule, the Adjudicator considering the review may direct the original decision be set aside and may substitute such decision as he thinks fit or order a re-determination by either the same or a different adjudicator.
Ground put forward in this application for review

6. The Appellant, in his 8 page application for review dated 18 August 2019, puts forward that a review is required in the interests of justice on the basis that: (i) The Adjudicator had failed to apply the law correctly in his decision, specifically at paragraphs 17 - 20 of his decision and (ii) that he should not have to pay £160 and not be put to the cost of undertaking Judicial Review proceedings.

**Transport for London's position**

7. The representative for Transport for London asserted that the original Adjudicator made no error in law and that there was no justification for a review.

**Conclusion**

8. Dealing with the Appellant's second basis for seeking a review, namely that he should not have to pay the £160 penalty nor incur costs in pursuing judicial review proceedings, if this was a justification for allowing a review then any appellant whose appeal was refused would be able to seek a review since every appellant would then have a penalty or penalties that had to be paid. As for the issue of judicial review proceedings that is a separate matter and should any individual wish to pursue such proceedings that is a choice for them, however, the prospect of judicial review proceedings cannot be a basis for arguing that a decision should be reviewed 'in the interests of justice' since, again, anyone suggesting that they intend to potentially judicially review a decision would then automatically be entitled to a review of the decision relating to their appeal.

9. Turning to the Appellant's first basis for seeking a review, namely that the previous Adjudicator, Mr Edie, failed to apply the law correctly, if this submission is correct then this would indeed be a justification for a review.

10. In considering whether Mr Edie erred in law I took into consideration both the Appellant's original representations and his representations seeking a review in which he again referred to an article in The Mail on Sunday newspaper, as well as two High Court decisions relating to penalties imposed in respect of contraventions relating to parking and travelling in bus lanes. Whilst I accept that these decisions may be analogous to penalties imposed in relation to the Ultra Low Emission Zone they do not relate to the same statute or regulations. I also note that the Appellant accepts that "the majority" of what Mr Edie set out in his decision was accurate. The Appellant makes particular reference to paragraph 5 of Mr Edie's decision which does not relate to an analysis of the law but rather expresses a view as to the newspaper article produced by the Appellant. He also points out that the Adjudicator, in paragraphs 7 and 8 of the original decision, refers to certain paragraphs of the two High Court decisions but does not refer to paragraphs which Mr Morris set out in his case summary. Whilst I accept that the Adjudicator did not do so it is not a requirement that everything contained within a party's submissions, or indeed that all paragraphs of an authority which is cited, must be reiterated in an Adjudicator's decision. Mr Morris also drew attention to paragraph 63 of the decision in Oxfordshire County Council v The Bus Lane Adjudicator [2010] EWHC 894 (Admin), which he had not specifically referred to in his original submissions, but which is the essence of his case namely that there is a duty to place signs providing adequate information in relation to a penalty scheme, a concept which Mr Edie distinctly referred to in his decision.

11. In respect of paragraphs 17 - 20, where Mr Morris specifically states that Mr Edie got the law wrong, in paragraph 17 the point Mr Morris makes is that the Controlled Zone sign does refer to parking, by use of the symbol, whilst Mr Edie states that there is no reference to parking on the sign. It is correct that there is no word for parking contained on the sign but I equally recognise Mr Morris's point that the symbol may well be recognised by many people as one used to denote something to do with parking. However, this sign is not the one which is relevant to this case and whether Mr Edie's interpretation or Mr Morris's is correct in relation to that sign has no bearing on the Ultra Low Emission Zone penalty and is not indicative of an error of law by Mr Edie.

12. Paragraph 18 merely states factually the difference between an Ultra Low Emission Zone sign and a Low Emission Zone sign and therefore is not wrong in law.

13. Paragraph 19 of Mr Edie's decision refers to the authorisation of the signage used by Transport for London by The Secretary of State for Department of Transport and accurately reflects that Mr Morris does not assert that the signage does not conform to the requirements of that authorisation nor suggests that signs were placed in a way that meant that they were not visible at all entry approaches to the Ultra Low Emission Zone.

14. However, Mr Morris, on page 7 of his request for a review, refers to the 'Oxfordshire' High Court decision as precedent for the principle that, "The fact that signs are prescribed or authorised DOES NOT MEAN they are sufficient for securing adequate information as to the effect of the order". Accordingly, I take this to mean that Mr Morris considers that an Adjudicator may conclude, despite authorisation by the Secretary of State, that a sign contains inadequate information as required by Regulation 18 of the Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996. However, this works on the assumption that such Regulations do indeed relate to signs which cover the Ultra Low Emission Zone. I am not satisfied that such Regulations do apply since such Regulations flow from the Road Traffic Regulation Act 1984 whilst the Ultra Low Emissions Zone comes from the Greater London Authority Act 1999. However, proceeding on the basis that signage relating to the ULEZ ought to comply with Regulation 18 of the Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996, as Mr Edie appears to have concluded, Transport for London has provided a document with the reference GT50/139/0171 being the 'Authorisation of Traffic Signs and Special Directions' signed by the Secretary of State for the Department of Transport and dated 7 August 2018. This specifically sets out that the signs which have been erected by Transport for London were authorised without prejudice to any regulations made under paragraph 22(1)(e) of Schedule 9 to the Road Traffic Regulation Act 1984 which the Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996 were. Accordingly, the Secretary of State, by authorising the signage to be displayed as shown by Transport for London in its case summary, must have formed the view that the signage did comply with The Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996 by containing adequate information as to the effect of the order and that they were being placed in such positions to ensure that such information was made available to persons using the roads. In my judgment it is not within my power or jurisdiction, or that of any Adjudicator, to act contrary to the will of Parliament in the form of the opinion of the Secretary of State for the Department of Transport.

15. However, if I am incorrect and it is open to an Adjudicator to potentially find signage to be inadequate, despite the Secretary of State's authorisation, Mr Edie, at paragraph 20 of his decision, specifically finds that, "the signage gave adequate notice to the user that there was a restriction on emissions. In my view the Appellant should have been put on notice, if he had seen the signs, that a restriction existed concerning his vehicle emissions which applied 'At all times'." This is not an error of law but rather is Mr Edie's conclusion applying the facts of the case to the law. Mr Morris may disagree with Mr Edie's conclusion as to the adequacy of the signage but that is a disagreement as to the application of the facts to the law - not an error in law itself.

16. Accordingly, as I am satisfied that none of the grounds justifying a review under Paragraph 12 of Part II of the Schedule to the Regulations is made out I refuse the application for a review. The original decision made by Mr Edie, which I set out below, remains in force.

**Mr Edie's original decision**

Parties
1. The Appellant, Mr Robert Morris, attended for a personal hearing and presented his case with assistance from Miss Catherine Anderson who had helped in researching the legal background to the case. The appeal is against the penalty imposed by the Authority relating to the Ultra Low Emission Zone. The Authority did not appear and was not represented.

Issue

2. The responsibility is upon the Authority initially to demonstrate that there may have been a 'contravention', that is a breach, of the Ultra Low Emission Zone scheme (ULEZ). If I am satisfied from the evidence that there has been a potential contravention then the responsibility moves to the Appellant to satisfy me, more likely than not, that one of the six grounds of appeal as set out in the relevant regulations is made out.

Law

3. The law relating to penalties imposed in regards to the Ultra Low Emission Zone (ULEZ) is set out in the Greater London Low Emission Zone Charging Order 2006 as amended. The relevant regulations relating to the possible grounds of appeal are Regulation 13(3) of the Road User Charging (Enforcement and Adjudication) (London) Regulations 2001, as amended.

Ground of appeal in this appeal

4. The Appellant's grounds of Appeal are that in the circumstances of the case, no penalty charge is payable. The Appellant travelled to London on Wednesday 15th May 2019 during the evening and returned on Friday 17th May 2019. It was only after going online to pay the Congestion charge that the Appellant realised that there was a ULEZ scheme in operation. There is a link on the website which drew his attention to the scheme. The Appellant made further enquiries and was able to pay a ULEZ charge for 17th May but discovered that he was unable to pay the charge for the 15th May because the payment window had expired.

5. Put briefly the Appellant's case is that the information shown on the ULEZ signage was inadequate. The signs do not refer to a charge being payable. Neither do the signs say when or how that charge has to be paid. The Appellant also pointed out that disproportionate numbers of users have been confused by the signage as evidenced by newspaper articles and activity on the internet.

6. The Appellant argued that the road signs were not compliant with the requirements of Regulation 18 of the Local Authorities Traffic Orders (Procedure) Regulations 1996 which provide that an authority must insure that 'adequate information as to the effect of the order is made available to persons using the road'.

6. The Appellant further argued that his case was supported by the decisions in 2 cases namely Herron -v- Parking Adjudicators and Sunderland City Council [2011] EWCA Civ 905 ('Herron') and Oxfordshire County Council -v- The Bus Lane Adjudicator [2010] EWHC 894 (Admin) ('Oxford').

'Herron'

7. Particular reference was made to the passage at paragraph 35 of the judgement of Stanley Burnton LJ:-

'35. It has long been recognised that the enforceability of a TRO requires that adequate notice of the applicable restriction is given to the road user. This principle is derived from the duty imposed by Regulation 18 of the Procedure Regulations, which I have set out above. In Macleod v Hamilton 1965 S.L.T. 305 Lord Clyde said, at 308

'It was an integral part of the statutory scheme for a traffic regulation order that notice by means of traffic signs should be given to the public using the roads which were restricted so as to warn users of their obligations. Unless these traffic signs were there accordingly and the opportunity was thus afforded to the public to know what they could not legally do, no offence would be committed. It would, indeed, be anomalous and absurd were the position otherwise.'

Lord Migdale said, at.309

'. . . the order is not effective unless and until the council complies with Regulation 15(c) and erects road signs at the locus. Signs were erected but they were not the proper ones nor were they clear.
The regulation to which Lord Migdale referred was in the same terms, so far as material, as Regulation 18 of the Procedure Regulations.'

'Oxford'

8. Again in Oxford the principle was restated in the judgement of Beatson J at paragraph 65:-

'65. The Defendant's submission that the fact that signs are prescribed or authorised does not mean they are sufficient for securing adequate information as to the effect of an order is made available to road users is clearly correct. If the signs do not in fact provide adequate information no offence is committed; see James v Cavey [1967] 2 QB 676. Such information is a requirement and, as Jackson J stated in R (Barnett LBC) v Parking Adjudicator [2006] EWHC 2357 (Admin) at [41], if the statutory conditions are not met the financial liability does not arise.'

Authority's case

9. The Authority asserts that the signs are adequate. The ULEZ signs were placed and orientated to ensure that they would be visible on all entry approaches to the ULEZ. Although the ULEZ signs do not appear in The Traffic Signs Regulations and General Directions 2016 (TSRGD) they are subject to special authorisation. They also have a supporting lower panel or 'time plate' however there are numerous examples of Regulatory signs which do not include a 'time plate' because the principle in place is that where there is no time or day information provided on a traffic sign, drivers should generally make the automatic presumption that the sign applies at all times.

10. The Authority also asserts that signing best practice requires signs be as concise and clear as possible so additional unnecessary information should be avoided. However although the ULEZ operates in exactly the same area as Congestion Charging, Congestion Charging only operates on Mon-Fri from 7am -6pm. Because the signs would be placed adjacent to each other the additional text "At All Times" was added in the lower panel to ensure clarity and ensure that drivers did not think the ULEZ applied at the same hours as Congestion Charging or vice versa.

11. The Special Authorisation directs that ULEZ entry signs (Types A & B) must be placed to indicate the entry to the scheme. These are the only sign types that are mandatory. Sign Type A is used where the ULEZ signs are mounted alone. Sign Type B is used where the 'Transport for London' header is not required because the signs are mounted directly below a Congestion charging sign (which already bears the TfL header).

12. With regard to publicity the Authority states as follows:-

'The major publicity campaign we launched in May 2018 aimed to promote the ULEZ and to ensure drivers and businesses are ready for the ULEZ. Since June 2018 we have sent 3.3 million awareness emails to customers in our databases, including congestion charging and oyster card account holders. At the point of the scheme commencement we had issued 5.3 million e-mails. Additionally we sent over 600,000 letters through the DVLA to vehicle owners whose vehicle had been within the central London Congestion Charge Zone since October 2017. These letters were sent to vehicles considered to be non-complaint with the ULEZ.

We have also undertaken a multimedia campaign that has included Posters using large digital formats, roadside and sites across the TfL network. We have also placed reminders of the ULEZ on the Congestion Charge payment receipt's we have issued. We have also run radio adverts across 10 London channels. Undertaken a wider ranging press campaign using both National and London press and into Trade press publications too, such as Fleet World, Motor Cycle News and Truck and Driver. We have extended advertising across 'Google search adverts' that directed those interested to the TfL website for further information, Additionally to Petrol station screens and nozzles, used online videos targeting London drivers to get them ready for launch. We have also developed a partnership with 'Waze' (a global driving app) to make 1 million London drivers aware of the new ULEZ boundary. We have also used 'Twitter' to London drivers again pushing the ULEZ boundary/map and to push motorists/users to check our ULEZ vehicle checker. Subsequently our online vehicle checker had been accessed over 3.3 million times up to the schemes launch. The checker sets out our view of the vehicles status under the ULEZ. Fuller details of our campaign and examples of the publicity are shown in 'ULEZ Publicity campaign' document the appended to this case summary.

Motorists are made aware when they are about to enter the ULEZ through the use of regulatory 'Ultra Low Emission Zone' entry signs. We have installed over 300 new ULEZ signs at the side of every road that enters the ULEZ. They are placed on or near the boundary in accordance with the Department for Transport (DfT) authorisation GT50/139/0171. At least one entry sign has been placed on each entry road with larger multi-lane roads generally having two signs. The number, location and orientation of the ULEZ signs required were considered carefully to ensure the regulatory signs would be visible on all entry approaches to the ULEZ.'

Facts not in dispute

13. There is no dispute that the vehicle was registered to the Appellant, as is also confirmed by the evidence I have been provided with from the Driver and Vehicle Licensing Agency (DLVA). The DVLA also confirm that vehicle uses diesel fuel.

14. It is also not disputed that the vehicle was used in Gower Street South on 15th May 2019, within the Ultra Low Emission Zone, when no payment for that vehicle, for that date, was received by Transport for London.

15. The signage was authorised by the Secretary of State at the Department of Transport on 1st August 2018

Conclusion

16. I have carefully considered the evidence and accept the principle set out in the the case of 'Herron' by Stanley Burnton LJ 'that the enforceability of a TRO requires that adequate notice of the applicable restriction is given to the road user.' However in deciding what amounts to 'adequate notice of the applicable restriction' I have to take into account and accept that 'best practice requires signs be as concise and clear as possible so additional unnecessary information should be avoided'.

17. In 'Herron' at paragraph 12 the sign illustrated in the Traffic Signs Regulations and General Directions 2002 (TSRGD), diagram 663 is referred to. The only words appearing on the sign are 'Controlled Zone' and the lower panel, which includes details of the times of restriction, may 'be omitted where the restrictions apply at all times'. The sign makes no reference to parking. Similarly the sign used for the Low Emission Zone only includes the words 'Low Emission Zone' and does not include a reference to the times of operation.

18. The sign in question is identical in content to the Low Emission sign but also includes the words 'At all times' for the reasons referred to above.

19. There is no suggestion in this case that the signage does not conform to the requirements of the authorisation or that they were not placed and orientated to ensure that they would be visible on all entry approaches to the ULEZ.

20. I conclude that the signage gave adequate notice to the user that there was a restriction on emissions. In my view the Appellant should have been put on notice, if he had seen the signs, that a restriction existed concerning his vehicle emissions which applied 'At all times'.

21. Whilst I have no doubt of the truthfulness of the Appellant's account of not being aware of the existence of the Ultra Low Emission Zone or of needing to purchase the appropriate daily charge to drive their vehicle within the Ultra Low Emission Zone these facts do not amount to a ground of appeal as set out in Regulation 13(3) of the Road User Charging (Enforcement and Adjudication) (London) Regulations 2001, as amended.

22. The vehicle is a Land Rover type vehicle, which uses diesel fuel, and was manufactured in 2002 and I am satisfied that the vehicle was liable to the Ultra Low Emission scheme and was required to pay a daily charge to avoid a penalty. The evidence shows that the vehicle was used within the Ultra Low Emission Zone and that no daily charge was purchased. A penalty charge was therefore issued.

23. The Ultra Low Emission scheme came into force on 8 April 2019 and applies to all vehicles that do not meet the relevant emissions standards as set out in the Charging Order, as amended.

24. The Appellant has referred to mitigating circumstances but the Authority has chosen not to exercise its discretion to waive the penalty in this case. No such discretion is available to me [Walmsley v Tfl & Others. EWCA Civ 1540].

25. Accordingly, since I am satisfied that none of the grounds of appeal under the Regulations are made out, having considered all six, not simply the grounds of appeal raised by the Appellant, I therefore have no option but to find in favour of the Authority and must refuse the appeal.

Amount to be paid

26. The penalty is £160.00 if paid within 28 days. If full payment has not been made within 28 days of the date of this letter, the penalty amount will increase by 50% and the Authority will be able to pursue its normal enforcement procedures.