Neutral Citation Number: [2014] EWHC 560 (Admin)

Case No: CO/2890/2013

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 7 March 2014

Before :

HIS HONOUR JUDGE KEYSER QC
Sitting as a Judge of the High Court

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Between :

THE QUEEN **on the application of ALEXIS ALEXANDER**	**Claimant**
- and -	
THE PARKING ADJUDICATOR	**Defendant**
- and -	
THE LONDON BOROUGH OF HAMMERSMITH AND FULHAM	**Interested Party**

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The Claimant appeared in person
Celina Colquhoun (instructed by **LB Hammersmith Legal Dept.**) for the **Interested Party**
The Defendant did not appear

Hearing dates: 26 February 2014

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Approved Judgment

H.H.J. Keyser QC :

Introduction

1. This case relates to a challenge by the claimant motorist, Mr Alexander, to a penalty charge notice that was served upon him for performing a prohibited U-turn on Gliddon Road, London W14, on 18 March 2012.

2. More precisely, the case involves a challenge to the decision of Parking Adjudicator Andrew Harman on 13 December 2012 upholding the decision of Parking Adjudicator Anthony Chan on 15 October 2012 to dismiss the claimant's appeal against the penalty charge.

3. The challenge is brought pursuant to permission to apply for judicial review granted on 5 July 2013 by Mr Michael Fordham Q.C. sitting as a deputy High Court judge.

4. The issue in the case is a point of law: whether the combination of Article 3 of the Hammersmith and Fulham (Gliddon Road) (Banned U Turn) Order 2011 ("the Order") and the familiar "No U-turn" traffic sign made unlawful the manoeuvre performed by the claimant, which was what is generally known as a 3-point turn.

5. At the hearing of the claim, the claimant represented himself with (if I may say so) intelligence and courtesy. The defendant, named as the decision-maker of Parking and Traffic Appeals Service, an independent tribunal, took no part. I am grateful to Ms Colquhoun for her written and oral submissions on behalf of the interested party, the London Borough of Hammersmith and Fulham ("the Council").

The Order

6. The Order was made on 3 August 2011 under powers conferred by the Road Traffic Regulation Act 1984 ("the 1984 Act") and came into effect on 15 August 2011.

7. Article 3 of the Order reads as follows:

> "No person causing or permitting any vehicle to proceed in those lengths of Edith Road or Gliddon Road that lie between the common boundary of Nos. 21 and 23 Edith Road and the northern kerb-line of Talgarth Road shall cause or permit that vehicle to turn at any point in those lengths of roads so as to face in the opposite direction to that in which it was proceeding."

8. Article 2 (2) of the Order provided:

> "The reference in Article 3 of this Order to lengths of Edith Road or Gliddon Road shall be construed as a reference to the whole width of those lengths of roads, including the carriageway, the footway and the footway crossovers leading to or from premises adjacent to those lengths of road."

9. It is relevant to note the mischief against which the Order was directed. Vehicles approaching the junction of Talgarth Road and Gliddon Road along Talgarth Road

from the west are prohibited from making a right-hand turn so as to proceed southwards along the southern part of Gliddon Road. Many motorists, among them the claimant, got round this inconvenience by the simple device of turning left at the junction, onto the northbound lane of Gliddon Road, and then turning the vehicle around in the road by means of a manoeuvre that may or may not (and this comes near the heart of the matter) properly be called a U-turn. In a report dated 9 January 2012 to the cabinet of the Council in connection with proposed modernisation of CCTV traffic enforcement facilities, the problem was described in the following terms:

> "A large number of drivers travelling eastbound on Talgarth Road were turning left into Gliddon Road then carrying out a U-turn in order to travel southward towards Barons Court. At peak times, around one hundred drivers were carrying out this manoeuvre in one hour, resulting in conflicts with oncoming vehicles and raising safety concerns for users of the footway."

The facts

10. The manoeuvre performed by the claimant at 4.21 pm on 18 March 2012 is shown on film taken by the interested party's CCTV cameras and on stills taken from that film. From Talgarth Road the claimant turned left into Gliddon Road, so that he was travelling in a northbound direction. He then slowed down and turned his vehicle to the right, across the southbound traffic, and mounted the paved area (a footway crossover on the pavement) before the entry to a gated block of flats. Then he stopped the vehicle and reversed into the path of the southbound traffic. He then moved forward, joining the line of the southbound traffic. I ought to remark that it is not suggested that there was anything dangerous about the way in which the claimant performed the manoeuvre.

11. The manoeuvre took place on the length of Gliddon Road mentioned in Article 3 of the Order. It also took place entirely on the public highway, because the pavement and the footway crossover are part of the highway and are part of the whole width of the length of road by reason of Article 2 (2). Subject only to the question whether the manoeuvre was a U-turn, it was precisely the manoeuvre described in the report to cabinet mentioned at paragraph 9 above. It is also common ground that the manoeuvre fell within the terms of the prohibition in Article 3 of the Order.

12. On 29 March 2012 the Council issued the claimant with a penalty charge notice ("PCN") in respect of the manoeuvre. The PCN identified the alleged traffic contravention as follows: "Performing a prohibited turn — no U turn". The claimant wrote to the Council, making representations against the PCN, but the defendant maintained the penalty.

The defendant's decisions: appeal and review

13. The claimant appealed against liability for the payment of the penalty charge in the PCN. The appeal was heard by the adjudicator, Mr Chan, who on 15 October 2012 refused the appeal. The arguments raised by the claimant appear from the adjudicator's decision, which may be summarised as follows:

i) The claimant complained that he and others had been performing this manoeuvre for several years and that proper warning should have been given of the introduction of any prohibition. The adjudicator noted that the interested party said that it had given warning of the changes, but he pointed out that warnings of impending changes were not a legal requirement and that this argument would not avail the claimant even if no warnings had been given.

ii) The claimant said that the only relevant street signs that might indicate a prohibition of the manoeuvre were "No U-turn" signs; he, however, had not performed a U-turn, because he had not performed a continuous sweeping manoeuvre but rather a 3-point turn, in which he had driven across the road, reversed and then moved forward again. A U-turn was quite different, in that it did not involve the need to stop or to reverse. The adjudicator made two points about this: first, the Order described the prohibited manoeuvre in terms that were wide enough to include the 3-point turn performed by the claimant; second, the decision of the Parking and Traffic Appeals Service's Panel in *London Borough of Hammersmith and Fulham v Azadegan* (13 July 2011) confirmed that the "No U-turn" sign prohibited the manoeuvre that the claimant had performed.

iii) The claimant said that he had not seen and had not been able to see the "No U-turn" signs. The adjudicator observed that there were two such relevant signs. One was on the very corner around which the claimant was turning left; this one, he accepted, might not be seen by a motorist performing that turn. The other, however, was across the road, on the pavement of the southbound carriageway, and drivers should not have undue difficulty seeing that sign.

14. The claimant applied for a review of Mr Chan's decision. The application was heard by Mr Harman, who refused it on 13 December 2012. The relevant part of his statement of reasons was in the following terms:

> "The appellant summarised the grounds upon which he sought to make the application, all of which appeared to arise from issues concerning signage and the definition of 'u-turn'. I considered what the appellant said but I was satisfied that in seeking to review the decision made he was contesting the findings of fact made by the adjudicator. That is not in itself a ground for review. I was satisfied that the adjudicator was entitled to reach the decision he did on the basis of the evidence before him. There was no ground under the Regulations on which that decision, with which, in any event, I agreed, may be disturbed. The application was refused."

Penalty charge notices and traffic adjudicators: the relevant legal framework

15. The Council's authority for issuing the penalty charge notice against the claimant for breach of the Order was conferred by section 4 of the London Local Authorities and Transport for London Act 2003 ("the 2003 Act").

16. The procedure for challenging a penalty charge notice is set out in Schedule 1 to the 2003 Act. Paragraph 1 provides that the recipient of the notice may make representations to the authority that issued it (the enforcing authority, in this case the Council) on specified grounds, which are set out in paragraph 1 (4) and include:

> "(b) that there was no–
>
> (i) contravention of a prescribed order; or
>
> (ii) failure to comply with an indication; or
>
> (iii) contravention of the lorry ban order,
>
> under subsection (5) or (7) of the said section 4 as the case may be".

Paragraph 2 provides that the enforcing authority shall cancel the penalty charge notice if it is satisfied that the ground in question has been made out.

17. Paragraph 4 provides that, upon receipt of notice of rejection of his representations by the enforcing authority, the recipient of the penalty charge notice may appeal to the traffic adjudicator against the decision of the enforcing authority. Sub-paragraphs (2) and (3) provide:

> "(2) On an appeal under this paragraph, the traffic adjudicator shall consider the representations in question and any additional representations which are made by the appellant on any of the grounds mentioned in paragraph 1(4) above and may give the enforcing authority such directions as he considers appropriate.
>
> (3) It shall be the duty of the enforcing authority to whom a direction is given under sub-paragraph (2) above to comply with it forthwith."

18. The review by Mr Harman was conducted pursuant to regulation 11 of the Road Traffic (Parking Adjudicators) (London) Regulations 1993, as amended, which provides in part:

> "The adjudicator shall have power on the application of a party to review and revoke or vary any decision to dismiss or allow an appeal or any decision as to costs on the grounds (in each case) that–
>
> (a) the decision was wrongly made as the result of an error on the part of his administrative staff;
>
> (b) a party who had failed to appear or be represented at a hearing had good and sufficient reason for his failure to appear;
>
> (c) where the decision was made after a hearing, new evidence has become available since the conclusion of the hearing the

existence of which could not have been reasonably known of or foreseen;

(d) where the decision was made without a hearing, new evidence has become available since the decision was made, the existence of which could not have been reasonably known of or foreseen; or

(e) the interests of justice require such a review."

This claim

19. This claim, which was filed on 11 March 2013, seeks a quashing order in respect both of Mr Chan's decision and of Mr Harman's decision. The detailed statement of grounds mentions unfairness, procedural flaws and allegations of bad faith on the part of the Council. But at the heart of the claim lies a single complaint: that the Order was unenforceable, and therefore the PCN ought not to have been issued, because the Council had failed to take proper steps to bring the prohibition in Article 3 of the Order to the notice of the public by means of appropriate traffic signage. That complaint rests on two contentions: first, that the "No U-turn" sign was not a proper sign by which to notify the public of the prohibition contained in the Order; second, that the sign, even if otherwise appropriate, was so positioned as to be likely to be unobserved by the very motorists whose conduct it purported to regulate.

20. The claimant made detailed and lengthy submissions orally and in writing. I hope that I do not do injustice to his argument if I summarise it as follows:

i) Only rarely will motorists have any direct knowledge of orders made for the management and regulation of traffic. Their knowledge will almost always come from the information conveyed to them by traffic signs. The meanings of those signs cannot be a matter for the arbitrary decision of local authorities; as they are part of a scheme that imposes criminal liability on motorists who contravene prohibitions or fail to comply with mandatory requirements, the signs must be clear in their meaning and readily understandable by motorists.

ii) The sign used by the Council to inform motorists of the prohibition in the Order is known as a "No U-turn" sign. The expression "U-turn" is a common one and is used to refer to a single, sweeping forward movement, without using reverse gears, that results in the vehicle facing in the opposite direction to that in which it was formerly proceeding. That manoeuvre is different from the manoeuvre known as a 3-point turn, which involves at least one stop and at least one reversing movement. Further, the diagram on the "No U-turn" sign shows a single, arcing movement, which is precisely what the expression U-turn indicates. Accordingly the sign indicates a prohibition of U-turns but not of the manoeuvre undertaken by the claimant.

iii) The adjudicators erred because they followed the incorrect decision of the Panel in the *Azadegan* case.

iv) Regardless of which sign was used, the Council has placed signs in positions in which they will be hard to see for those to whom they are directed, namely

motorists making a left turn into Gliddon Road. One sign is directly on the corner around which the turn is made, and as Mr Chan accepted it might not be seen by the motorist. The other is across the road, to the north-east of the junction; although it might be visible in theory, it is unlikely that the motorist to whom it is directed, who has just made a left turn and is about to make the manoeuvre in question, will see it. In this regard, the claimant points to a previous decision of a different adjudicator, who had upheld the motorist's complaint of inadequate signage.

v) The claimant suggests that the inadequacy of the signage is indicative of bad faith on the Council's part and that it is deliberately keeping inadequate signage in place with a view to "catching" unsuspecting motorists and using them as a source of income.

Traffic regulation: the relevant legal framework

21. As the traffic authority for a road in Greater London, the Council has power under section 6 (1) of the 1984 Act to make an order for controlling or regulating vehicular and other traffic. The purposes for which such orders may be made are set out in Schedule 1 to the 1984 Act; paragraph 4 specifies the following such purpose:

> "For prescribing the places where vehicles, or vehicles of any class, may not turn so as to face in the opposite direction to that in which they were proceeding, or where they may only so turn under conditions prescribed by the order."

The Order in the present case was made pursuant to these powers and reflects the terms of paragraph 4. Schedule 1 does not distinguish between different versions of the turn mentioned in paragraph 4; the paragraph relates to all such turns, both those that do and those that do not involve a reversing movement, and no other paragraph makes provision in that regard.

22. Contravention of, or non-compliance with, an order under section 6 of the 1984 Act is an offence: section 8 (1). However, for Greater London the effect of section 8 is modified by section 7 (2) of the 2003 Act, so that section 8 (1) of the 1984 Act does not apply in relation to any person who acts in contravention of or fails to comply with *inter alia* an order under section 6 of the 1984 Act, if as a result a penalty charge is payable under section 4 of the 1984 Act. In other words, where the civil enforcement regime of penalty charges applies it displaces the criminal liability.

23. The submissions made to me were directed specifically to the position in Greater London. However, because the issues regarding signage are not confined to Greater London, it is relevant to note the corresponding provisions in Part I of the 1984 Act in respect of traffic regulation in England outside Greater London:

> "Section 1
>
> (1) The traffic authority for a road outside Greater London may make an order under this section (referred to in this Act as a "traffic regulation order") in respect of the road where it

appears to the authority making the order that it is expedient to make it—

(a) for avoiding danger to persons or other traffic using the road or any other road or for preventing the likelihood of any such danger arising, or

...

(c) for facilitating the passage on the road or any other road of any class of traffic (including pedestrians), or

(d) for preventing the use of the road by vehicular traffic of a kind which, or its use by vehicular traffic in a manner which, is unsuitable having regard to the existing character of the road or adjoining property ...

Section 2

(1) A traffic regulation order may make any provision prohibiting, restricting or regulating the use of a road, or of any part of the width of a road, by vehicular traffic, or by vehicular traffic of any class specified in the order,—

(a) either generally or subject to such exceptions as may be specified in the order or determined in a manner provided for by it, and

(b) subject to such exceptions as may be so specified or determined, either at all times or at times, on days or during periods so specified.

(2) The provision that may be made by a traffic regulation order includes any provision—

(a) requiring vehicular traffic, or vehicular traffic of any class specified in the order, to proceed in a specified direction or prohibiting its so proceeding;

(b) specifying the part of the carriageway to be used by such traffic proceeding in a specified direction;

(c) prohibiting or restricting the waiting of vehicles or the loading and unloading of vehicles;

(d) prohibiting the use of roads by through traffic; or

(e) prohibiting or restricting overtaking.

Section 4

> (1) A traffic regulation order may make provision for identifying any part of any road to which, or any time at which or period during which, any provision contained in the order is for the time being to apply by means of a traffic sign of a type or character specified in the order (being a type prescribed or character authorised under section 64 of this Act) and for the time being lawfully in place; and for the purposes of any such order so made any such traffic sign placed on and near a road shall be deemed to be lawfully in place unless the contrary is proved.
>
> Section 5
>
> (1) A person who contravenes a traffic regulation order, or who uses a vehicle, or causes or permits a vehicle to be used in contravention of a traffic regulation order, shall be guilty of an offence."

24. The claimant's complaint is not that there was anything wrong with the terms of the Order but, as I have mentioned, that the traffic signage placed by the Council did not adequately bring the prohibition to the attention of the public.

25. Section 73 (1) of the 1984 Act deals with traffic signs:

> "In connection with any order under section 6 or 9 of this Act made or proposed by them, Transport for London, the council of a London borough and the Common Council of the City of London may, as respects any road for which they are the traffic authority affix any traffic sign to any lamp-post or other structure in the highway, whether or not belonging to Transport for London or the council."

26. Regulation 18 (1) of the Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996 ("the Procedure Regulations") applies to orders made under various statutory provisions including section 6 of the 1984 Act:

> "Where an order relating to any road has been made, the order making authority shall take such steps as are necessary to secure—
>
> (a) before the order comes into force, the placing on or near the road of such traffic signs in such positions as the order making authority may consider requisite for securing that adequate information as to the effect of the order is made available to persons using the road;
>
> (b) the maintenance of such signs for so long as the order remains in force; and
>
> (c) in a case where the order revokes, amends or alters the application of a previous order, the removal or replacement of

> existing traffic signs as the authority considers requisite to avoid confusion to road users by signs being left in the wrong positions."

27. Compliance with the duty imposed by regulation 18 of the Procedure Regulations has been held to be a condition of the enforceability of an order under section 6 of the 1984 Act. In *R (Herron and another) v Parking Adjudicator* [2011] EWCA Civ 905, [2011] R.T.R. 34, in the context of consideration of regulation 4 in Part I of the Traffic Signs Regulations and General Directions 2002 and the road-marking requirements in respect of a controlled parking zone (CPZ), Stanley Burnton J, with whom Aikens LJ and Sir David Keene agreed, said this:

> "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.
>
> 36. That principle was approved and applied by the Divisional Court in *James v Cavey* [1967] 2 QB 676. Giving a judgment with which the other members of the court agreed, Winn LJ said:
>
> > '... regulation 15, by sub-paragraph (c) ... [prescribed] that the authority should take forthwith "all such steps as are reasonably practicable to cause to be erected on or near to the said roads traffic signs in such positions as the local authority may consider to be requisite" - and here come the operative words in my opinion - "for the purpose of securing that adequate information as to the effect of the order is

> given to persons using the said roads ..." The authority should take all such steps as are reasonably practicable for the purpose of securing that adequate information is given to persons using the said roads.
>
> The short answer in my view which requires that this appeal should be allowed is that the local authority here did not take such steps as they were required to take under that regulation. They did not take steps which clearly could have been taken and which clearly would have been practicable to cause adequate information to be given to persons using the road by the signs which they erected.'
>
> See too *R (Oxfordshire C.C.) v. Bus Lane Adjudicator* [2010] EWHC 894 (Admin).
>
> 37. Applying this principle, the question for the Adjudicator was whether the local authority had taken steps to secure that adequate information was conveyed to the Appellants as to the parking restrictions that they had infringed. The definition in regulation 4, and whether the roads in the CPZ had been signed as it envisages, are relevant to that question. Provided in substance the requirements of the definition are satisfied, the CPZ is valid. The test for invalidity is not 'Are the irregularities trivial?', but whether there is substantial compliance with the statutory definition."

28. Provision in respect of traffic signs is made in sections 64 and 65 of the 1984 Act and in the Traffic Signs General Directions 2002 ("the 2002 Directions"), which comprise Part II of the Traffic Signs Regulations and General Directions 2002.

29. Section 64 of the 1984 Act provides, so far as material:

> "(1) In this Act "traffic sign" means any object or device (whether fixed or portable) for conveying, to traffic on roads or any specified class of traffic, warnings, information, requirements, restrictions or prohibitions of any description—
>
> (a) specified by regulations made by the Ministers acting jointly, or
>
> (b) authorised by the Secretary of State,
>
> and any line or mark on a road for so conveying such warnings, information, requirements, restrictions or prohibitions.
>
> (2) Traffic signs shall be of the size, colour and type prescribed by regulations made as mentioned in subsection (1)(a) above except where the Secretary of State authorises the erection or retention of a sign of another character; and for the purposes of this subsection illumination, whether by lighting or

> by the use of reflectors or reflecting material, or the absence of such illumination, shall be part of the type or character of a sign.

30. Section 65 (1) of the 1984 Act provides:

> "The traffic authority may cause or permit traffic signs to be placed on or near a road, subject to and in conformity with such general directions as may be given by the Ministers acting jointly or such other directions as may be given by the Secretary of State."

31. Direction 7 of the 2002 Directions provides, so far as material:

> "(1) … the signs to which this paragraph applies may be placed on or near a road only to indicate the effect of an Act, order, regulation, byelaw or notice ("the effect of a statutory provision") which prohibits or restricts the use of the road by traffic.
>
> (2) Paragraph (1) applies to—(a) the signs shown in diagrams … 614 …"

32. Direction 11 of the 2002 Directions provides, so far as material:

> "(1) Paragraph (2) applies to the signs shown in diagrams 614 …
>
> (2) … at least one of each of the signs to which this paragraph applies shall be placed
>
> (a) along a road which is subject to a restriction, requirement, prohibition or speed limit which can be indicated by the sign; and
>
> (b) in the case of the signs shown in diagrams 614 …, to face each stream of traffic to which the sign is intended to convey that restriction, requirement, prohibition or speed limit."

33. In the 2002 Directions, a reference to a numbered diagram is to a diagram so numbered in a schedule to the Traffic Signs Regulations 2002 ("the 2002 Regulations"), which comprise Part I of the Traffic Signs Regulations and General Directions 2002: direction 4 (d).

34. Diagram 614 is found in Schedule 2 to the 2002 Regulations and provides for the traffic sign ("sign 614") that was used in the present case. It is the familiar sign, described in the Schedule as "No U-turns for vehicular traffic": a red circle crossed with a diagonal red line, to indicate a prohibition, and within it in black an inverted "U" shape, the ends of which are shaped to indicate a clockwise forward movement involving reversal of direction.

35. There is nothing further in the 2002 Directions or the 2002 Regulations either to specify the terms of the prohibition that can be indicated by sign 614 or by way of definition of "U-turns".

Discussion

36. The issue before the adjudicators—and for present purposes I do not think it necessary to distinguish between the appeal function performed by Mr Chan and the review function performed by Mr Harman—was whether the PCN ought not to have been issued because the Order was unenforceable because the Council did not by the traffic signs which they erected cause adequate information of the prohibition to be given to persons using the road. The adjudicators' decisions are subject to review on normal public law grounds: in summary, that they involved an error of law or were irrational in the result, or that the adjudicators took into account irrelevant matters or failed to take into account relevant matters, or that the procedure by which they were reached was unfair. The single issue before the adjudicators involved two distinct considerations, namely the nature of the signage and the position of the signage, and I shall discuss those in turn.

Use of the "No U-turn" sign

37. The 1984 Act does not use the expression "U-turn" but instead refers to vehicles turning so as to face in the opposite direction to that in which they were proceeding; see paragraph 21 above.

38. The 2002 Regulations and the 2002 Directions provide for the use of sign 614, "No U-turns for vehicular traffic", but they neither specify the prohibitions that can be shown by its use nor contain a definition of "U-turns"; see paragraphs 31 to 35 above.

39. The claimant's contention that sign 614 was inappropriate to give notice of a prohibition of the manoeuvre that he was performing, which I but not he call a 3-point turn, rests at least in part on the assertion that the common understanding of a U-turn, and therefore the, or at least a, natural interpretation of sign 614, is that it comprises a single, sweeping forward movement, without using reverse gears, and that it is different from a 3-point turn. For convenience, I shall refer to the manoeuvre described by the claimant as "the paradigmatic U-turn". In support of that assertion the claimant has referred to numerous definitions of "U-turn" or instances of the use of that expression. I shall mention only what I consider the most important of these.

    i) The AA publication, *Theory Test for Car Drivers* (12th edition, 2011), advises: "If you want to make a U-turn, slow down and ensure that the road is clear in both directions. Make sure that the road is wide enough to carry out the

manoeuvre safely." The claimant says that the second sentence in this advice seems to suppose the paradigmatic U-turn. The same advice is contained in the Driving Standards Agency's official *Theory Test for Car Drivers* (16th edition, 2012).

ii) The Driving Standards Agency's publication, *Driving – the essential skills* (7th edition, 2010), states: "A U-turn means turning the car right round without any reversing." Underneath, it says: "Never make a U-turn … wherever a road sign forbids it."

iii) *The Highway Code* (15th edition, 2007; 13th impression, 2011) mentions U-turns only once in its index, and that is a reference to advice to avoid making U-turns at mini-roundabouts.

iv) Schedule 8 to the Motor Vehicles (Driving Licences) Regulations 1999 makes provision for the practical section of the driving test for motorcycles. In its original form, Schedule 8 contained the following requirement at paragraph C.9: "Cause the vehicle to face in the opposite direction by driving it forward (a 'U-turn')." That requirement was revoked by subsequent amendment, but it has been repeated in identical terms in the new Schedule 8A, which deals with the specified requirements for the motorcycle manoeuvres test. It is the only statutory explanation of a U-turn, in any context, to which I have been referred. In the decision in the *Azadegan* case, mentioned in paragraph 13 above, it is recorded that the Department for Transport had informed the appeals Panel that this was the only such provision of which it was aware. A letter dated 30 December 2013 from the Department for Transport to the claimant confirms that the meaning of "No U-turn" is not defined in primary legislation and says that "it would be a matter of factual evidence in any particular case."

v) Consistently with the schedules to the Motor Vehicles (Driving Licences) Regulations 1999, the pictorial representation of a U-turn in the Driving Standard Agency's publication, *Compulsory Basic Training for Motorcyclists* (2nd edition, 1999) shows the paradigmatic U-turn.

40. Two other publications, both by the Department for Transport, may be mentioned. *Know Your Traffic Signs* (5th edition, 2007; 6th impression, 2010), shows sign 614 ("No U-turn") with the familiar "No right turn" and "No left turn" signs underneath the explanatory text: "Where changes of direction are prohibited, a red bar across the sign is used in addition to the red circle."

41. *Traffic Signs Manual* (2008) was published "to give advice to traffic authorities and their agents on the correct use of signs and road markings". It gives technical guidance as to the use of sign 614, but as to the reason for its use it says only, "The 'no U-turn' sign to diagram 614 is used to give effect to an order which may apply to a junction or a length of road."

42. One question that occurs is: if sign 614 is inapt to refer to 3-point turns as well as to paradigmatic U-turns, which sign ought to be used for that purpose? The claimant suggests the sign to diagram 606, which shows a white arrow on a blue background

with a white border; the arrow may point either horizontally to the left or to the right or vertically upwards.

43. Whereas regulatory signs that are circular with a red border, such as sign 614, are prohibitory, in that they tell drivers what they must not do, regulatory signs that are circular with a white border and symbol on a blue background are generally positive, in that they indicate something that all drivers must do. Thus the description of the sign to diagram 606 in the 2002 Regulations is, "Vehicular traffic must proceed in the direction indicated by the arrow." The claimant's argument is to the effect that, by requiring positive conduct which is inconsistent with the manoeuvre prohibited by the Order, the sign to diagram 606 would sufficiently indicate that the prohibited manoeuvre was not to be performed.

44. I do not accept that the sign to diagram 606 was appropriate.

45. First, the sign would prohibit both right and left turns. A prohibition in the terms of Article 3 of the Order and paragraph 4 of Schedule 1 to the 1984 Act does not prohibit either right or left turns. The claimant seeks to respond to this objection by saying that the only relevant turn on the piece of road in question would be a right turn into the entrance to the gated block of flats mentioned in paragraph 10 above; and he suggests that the residents of those flats would doubtless be willing to put up with the minor inconvenience of taking a minor detour and turning left into the entrance to their block of flats. However, whether or not the residents would object to a prohibition on right turns and whether or not there might be merit in such a prohibition, the fact remains that the prohibition in the Order does not extend to right turns; therefore a sign that has the effect of showing a prohibition on right turns is inappropriate. Further, the question whether the sign to diagram 606 is appropriate to give notice of the prohibition in the Order cannot turn on the contingency of whether a particular right turn might also be prohibited. No one has suggested that it is axiomatic that the circumstances that would justify a prohibition in the terms of Article 3 of the Order would necessarily justify a prohibition of right turns; there is no reason to suppose that it is axiomatic. As the sign to diagram 606 does not distinguish between those different directional movements, it would be inappropriate to use the sign to show a prohibition of the former movement only.

46. Second, the recommended purpose of the sign to diagram 606—and accordingly its normal use—is different from the purpose for which the claimant says it might have been used. It is "to indicate the only route that may lawfully be taken through a junction", including a roundabout or the slip road to a dual carriageway; see *Traffic Signs Manual,* chapter 4, and in particular paragraph 4.2.

47. As I have already mentioned, no other traffic sign has the effect of distinguishing between the paradigmatic U-turn and the 3-point turn. Although that might not be a

conclusive point against the claimant's argument, it strongly suggests that the argument is wrong.

48. First, the 1984 Act and the Procedure Regulations permit the making of a prohibition such as that contained in the Order and require it to be brought to the attention of the public by way of traffic signs, but if the claimant's objection to sign 614 is correct there does not appear to be a traffic sign capable of giving the required information.

49. Second, it can hardly be supposed that, although traffic authorities might have reasons for prohibiting paradigmatic U-turns, they could have no reasons for prohibiting 3-point turns. On the contrary: the principal point of objection is the oppositional change of direction of the vehicle, and to the extent that it matters how that change is brought about it is likely to be preferable that it be achieved in a single forward movement rather than in a sequence of forward and backward movements. There is immediate attraction in the supposition that sign 614 is intended to apply to both kinds of manoeuvre. The claimant's reliance on the pictorial nature of traffic signs and on the single forward movement of the black directional line on sign 614 seems to me to take pictorial literalism to an absurd length.

50. The claimant's contention that sign 614 renders unlawful a paradigmatic U-turn but not a 3-point turn is also open to the objection that it produces results so surprising that it cannot be right. If the claimant is correct, a prohibition on U-turns can be circumvented by making the manoeuvre more complicated and turning it into a 3-point turn. He denied this conclusion, but as I understood his submission it was simply that the subjective intention of the motorist to circumvent the traffic regulation would not be permitted to succeed. That is no basis for traffic enforcement. Again, the distinction between the manoeuvres might be fortuitous: you are a skilled driver in a good, modern car and succeed in performing a simple U-turn; but I am less skilled, or the steering on my car is less responsive, and I fail to clear the kerb and have to reverse before completing the manoeuvre; or perhaps I am having a bad day and failed to commence my turn close enough to my nearside kerb, so that I am forced into a 3-point turn: in these cases you are in breach of the prohibition and I am not. Or perhaps, just after I have commenced my intended U-turn, a temporary obstacle comes into the road at the far end of my turning circle and I am forced to stop and reverse; my manoeuvre would have been an unlawful U-turn but it has been turned into a lawful 3-point turn. These conclusions do not seem right.

51. In my judgment, sign 614 is a perfectly adequate schematic representation of the manoeuvre or group of manoeuvres to which paragraph 4 in Schedule 1 to the 1984 Act applies. I do not consider that a motorist interpreting the sign reasonably and in good faith, and without what in a different context Sir Thomas Bingham M.R. (as he then was) called excessive exegetical sophistication, would consider that it prohibited only the paradigmatic U-turn but left untouched the 3-point turn.

52. So far as the expression "U-turn" itself is concerned, it does not form part of sign 614, which is pictorial not verbal. Nonetheless, both the statutory description of the sign and its common name include "U-turn", and it is right to have regard to that fact when considering the information that would reasonably be conveyed by the sign. It may very well be true that "U-turn" is commonly used of what I have called the paradigmatic case. That is by no means the only sense in which it is used however. By way of example, part of the evidence submitted by the claimant included

correspondence from an employee of the Driving Standards Agency which used the expression in the wider sense of "turning round and going back the way you came" and said that this could be done in either of the ways that I have called the paradigmatic U-turn and the 3-point turn. That correspondence has no force as a legal authority, but I do not see that the employee's use of language was idiosyncratic. Indeed, when the claimant wrote to take issue with his correspondent's definition, he suggested not only that she had been "nobbled" (which did not do him credit) but that she was "confusing the strict, technical, driving meaning with its everyday metaphorical use". A difficulty with that objection is that there is no legal definition of "U-turn", which is itself a figurative expression. The meaning of any symbol, whether verbal or other, cannot be ascertained in isolation from the context of its use. I do not think, for example, that the use of the expression in the context of provisions relating to the competence of an examinee in the physical handling of his motorcycle is illuminating when one comes to consider the relevant context, which is that of traffic regulation and the prohibition of manoeuvres that are deemed contrary to good traffic management. In the latter context, to confine the meaning of the expression to the paradigmatic case would in my view be contrary to reason and sound common sense.

53. In his oral submissions, the claimant attempted to explain how it could be sensible to interpret the traffic sign at Gliddon Road as prohibiting the paradigmatic U-turn but not a 3-point turn. He said that it was simply impossible to perform the former manoeuvre with any vehicle other than a motorcycle. Therefore it was reasonable to understand the sign as being intended to prohibit a manoeuvre that could not be performed by the vast majority of vehicles—as I understood it, lest imprudent attempts be made to do the impossible—but as leaving unaffected the manoeuvre that he and others had performed without difficulty for many years. That attempted explanation serves only to confirm me in the view expressed in the second sentence of paragraph 51 above.

54. In conclusion, I hold that sign 614 was the appropriate sign by which to inform the public of the prohibition in Article 3 of the Order.

55. That was also the conclusion reached by the appeals Panel in the *Azadegan* case. That decision does not bind this Court but I consider it to be correct on this point and, though I have referred to it only in passing, I have found the Panel's consideration of the issues to be of much assistance.

Position of the signage

56. The claimant did not raise any technical objection to the signage, for example that it was of inadequate dimensions or contravened a requirement of the 2002 Directions or the 2002 Regulations. As has already been mentioned, his central point regarding the position of the signage was that the sign at the northbound lane was too close to the corner around which the motorists most likely to make the U-turn would be turning and that the sign at the southbound lane was unlikely to be seen by a motorist who was making or had just made the left turn at the junction.

57. In support of this central point, the claimant referred to several matters in support, among which three may be mentioned.

i) A large number of PCNs have been issued for breach of Article 3 of the Order: as I understand the information, in a three-year period more than 25,000 PCNs have been issued on this ground (though it may perhaps be that some of that number relate to tickets for other infractions at this location). This is contrasted with the experience in respect of the Wokingham Borough Council (A4130 White Hill, Remenham Hill) (Prohibition of U-turn) Order 2012, in respect of which no fixed penalty notices have been issued since that order came into effect in July 2012.

ii) There have been appeals to the adjudicator at which PCNs have been cancelled on the ground that the signage was inadequate. For example, in *Ryan v London Borough of Hammersmith and Fulham* (22 October 2011) the adjudicator allowed the appeal for the following reasons: "I find the first sign plate on the left hand side, as you turn left into Giddon (sic) Road, could easily be missed due to it being on the very corner of the road, and the pavement which protrudes causes drivers to take a wide sweep. Further, that the second sign plate should be further along the road and nearer the location where too many motorists appear to be performing this prohibited manoeuvre. Finally, it is clear that the authority has decided to have two sign plates located in Giddon (sic) Road. If the first is missed due to its proximity to the corner then I find that the one on the right is insufficient and accordingly inadequate."

iii) The Council has given disclosure of its internal emails in the aftermath of the original appeal decision of the adjudicator, Mr Chan, in the case of *Azadegan*, when he allowed Mr Azadegan's appeal against the PCN on the ground that sign 614 was inappropriate for a manoeuvre other than the paradigmatic U-turn. The decision of the Panel, to which I have referred above, was made on a review decision on the Council's application. The emails express considerable concern at Mr Chan's decision having regard to the large numbers of PCNs being issued. The claimant contends that the emails show that the Council's true motivation is not road safety or traffic management but the generation of income from PCNs and that it deliberately positions traffic signs so as not to be clearly visible to those to whom they are supposedly directed.

58. Appeal decisions of adjudicators do not have the force of precedent; apparently inconsistent decisions might be made on the facts of particular cases. I am concerned with the decision of Mr Chan on 15 October 2012 as upheld by the decision of Mr Harman on 13 December 2012; see paragraphs 13 and 14 above. The decisions of adjudicators in other appeals, even if in apparent conflict with those two decisions, are relevant only if and insofar as they suggest that Mr Chan or Mr Harman made an error of law or reached an irrational conclusion.

59. The issue for the adjudicators in the present case was whether adequate information as to the effect of the Order was given to motorists by the traffic signage; see paragraphs 26, 27 and 36 above.

60. Mr Chan did not recite the language of regulation 18 of the 1996 Regulations or of judicial decisions mentioned in and including *R (Herron and another) v Parking Adjudicator*, but he was not required to do so. In my judgment, he clearly had the correct issue at the forefront of his mind and addressed it. In the context of the appeal, I should not consider it reasonable to construe his use of the words "drivers

should not have undue difficulty seeing the sign" as involving the substitution of any different or less stringent test for that established by the 1996 Regulations and the cases.

61. I therefore consider that Mr Chan asked and addressed the correct question of law and that Mr Harman was right to conclude that no point of law arose.

62. The finding that the signage was indeed adequate turned on the facts as they appeared to the adjudicator. The fact that other adjudicators have made apparently contrary decisions does not mean that Mr Chan's decision was wrong. There is no basis on which I could conclude that his decision was irrational, in the sense of being so unreasonable that no reasonable tribunal could have made it, or that he failed to have regard to relevant matters or had regard to irrelevant matters. Accordingly, as he addressed the correct legal question, the decision whether or not the signage was adequate information to motorists was for him to make and I cannot properly interfere with it.

63. Of the three points mentioned in paragraph 57 above, I have dealt with the second (decisions of other adjudicators). I shall comment briefly on the other two points. As for the number of PCNs, it would be unsafe to attempt to draw conclusions as to the adequacy of signage on that basis, in the absence of knowledge of the roads in question or any proper evidence of the volume of traffic, possible reasons for the numbers of contraventions or comparable figures at other sites in central London. I can draw no relevant conclusions from the experience of Wokingham Borough Council regarding a location of which I know even less.

64. As for the Council's concerns at the challenges to the adequacy of the signage, I have not read the emails as implying any acceptance that the signage is incorrect or inappropriate; to the contrary, they express the belief that the Council has acted properly and adequately. Mention of the large number of PCNs being issued might imply that the author of the email was concerned at potential loss of revenue, but it might equally reflect the possibility that, if the Council had simply used unlawful signage, questions of compensation for wrongfully exacted charges might arise. At all events, I have seen nothing in the emails to lead me to the view that the Council has acted in bad faith. More specifically, they contain nothing that suggests that the Council is wilfully maintaining signage that it knows or believes to be inadequate in the hope of catching law-abiding motorists unawares and thereby swelling its coffers.

Conclusion regarding signage

65. For the reasons set out above, I reject the challenge to the adjudicators' decisions on the ground that the signage was inadequate to inform motorists of the prohibition in Article 3 of the Order.

66. I might observe that the discussion and conclusions set out in paragraphs 56 to 64 above should not be viewed as an invitation to complacency on the part of the Council. I have held that Mr Chan made no reviewable error in his decision regarding the position of the traffic signage. I should hope nonetheless that, as a matter of good administration if nothing else, the Council would continue to reflect on whether there are any respects in which the signage might be improved. Even if information given to motorists is adequate, that is not to say that it might not be improved.

Other points

67. When he gave permission to apply for judicial review, Mr Fordham Q.C. made clear his view that the various other matters raised by the claimant did not amount to free-standing grounds of review in themselves but were relevant if at all to the extent that they were linked with the central issue, namely the adequacy of signage. I agree with that view. In the light of my decision on the central issue, the other points cannot avail the claimant. I shall mention them only briefly.

68. The claimant complains that the procedure before the adjudicators was flawed and unfair. The principal complaint is that the adjudicators fettered their consideration of the appeal by feeling constrained to follow the Panel's decision in *Azadegan*. As I have held that that decision was correct on the point in question, this complaint falls away. A further complaint, that Mr Harman denied the claimant a full hearing at the review, was not pursued before me. However, I find in any event that the claimant has established no ground for criticism of the procedure, whether in respect of the non-admission of new evidence or otherwise, having regard to the limited basis on which a review hearing is to be conducted. In the light of my findings as to the principal issue in the case and my remarks concerning allegations of bad faith on the part of the Council, the complaint that CCTV is being used in furtherance of unlawful collection of money from the public falls away.

Conclusion

69. The claim for judicial review fails and will be dismissed.

70. There is no need for the parties to attend on the handing down of this judgment. If all outstanding matters, including costs, can be agreed ahead of the hand down hearing, then a draft agreed order should be submitted for approval. If not, the outstanding issues will be dealt with either at a later hearing (if possible over the telephone) or in writing, as the parties consider best. I will extend the time for applying for permission to appeal so that period of time for making an application to the Court of Appeal for permission to appeal should not begin to run until I have dealt with any application made to me for permission to appeal at a further hearing or on paper.