**Issue: RUCA Review decision – Land Rover and LEZ Scheme**

**Case Details**

**Case reference** 9160111805

**Appellant** Andrew Stanley

**Authority** Transport for London

**VRM** B649LRA

**PCN Details**

**PCN** LZ23721839

**Contravention date** 07 Nov 2015

**Contravention time** 13:34:00

**Contravention location** A206 Plumstead Road

**Penalty amount**  £500.00

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

**Decision Date** 08 Nov 2016

**Adjudicator** Christopher Rayner

**Previous decision** Appeal refused

**Appeal decision**  Appeal refused

Reissuing the decision, with corrections

This decision is being reissued under the provisions of Regulation 16 to the Schedule to the Road User Charging (Enforcement and Adjudication) (London) Regulations 2001, (The 2001 Regulations) which provides, “Unintentional errors or slips in any document recording a direction or decision of an adjudicator may be corrected by the proper officer on the direction of the adjudicator”. The need to use this provision in this case arises because it was apparent on the face of the document promulgated on 26 October 2016 that a number of clear errors had arisen. As this was an important appeal, raising issues of general application, the adjudicator was anxious that a proper version of the decision be available. The adjudicator apologises for the errors in the original version.

Adjudicator’s decision

I heard this application on 30 August 2016. I would usually have issued a decision on the same day, but the review raised issues of some importance, and I had extensive documentation to read, which is why the decision is delayed. On 30 August Mr Stanley, the appellant, attended the Tribunal as did Mr Garrett on behalf of Transport for London (TfL). I am grateful that both presented their arguments in a considered and fair manner.

The issue in essence appears straightforward: whether a 1984 Land Rover 110 or Defender is captured by the provisions of the London Low Emission Zone (LEZ) Scheme, such that it requires modification to be compliant with that scheme, or whether the motorist has to pay a daily fee to use it within the zone. Before dealing with that substantive manner I recite briefly how the matter has come before the Tribunal.

History of appeal

Mr Stanley lives in London. He is the owner of a 1984 Land Rover Defender registration mark B649LRA. He purchased it on 6 February 2015. I deal with its appearance and use below.

His vehicle was first captured being used in the LEZ on 14 February 2015. TfL sent a “Low Emission Zone Warning Letter” advising that the vehicle came within the terms of the LEZ and captured by the requirements of the LEZ, so that his use of the vehicle on 14 February 2015 was in breach of the scheme. This is a standard form letter and TfL advised Mr Stanley that if he used the vehicle in the LEZ 28 days after that letter he would be liable to receive a PCN.

Mr Stanley did subsequently use the vehicle on three occasions on roads in the LEZ:
a) at 13:34 on 7 November 2015 on the A206;

b) 12:54 on 8 November 0215 on Woolwich Common Road (both Case no 9160111805); and

c) 16:01 on 31 December 2015 on Woolwich Common Road (Case no. 916011532).

On each occasion the vehicle was captured by TfL cameras. TfL served postal penalty charge notices (PCN) on Mr Stanley, as the registered keeper, alleging breaches of the London LEZ scheme.

Mr Stanley appealed all three PCNs, and attended the Tribunal on 13 April 2016 when the adjudicator adjourned the appeal to request further representations from TfL. Having received those representations the adjudicator refused the appeals on 6 July 2016. Mr Stanley requested a review of that refusal on 20 July 2016, which application was listed before me on 30 August 2016.

Reviews are a two stage process. In the first instance the Tribunal must determine whether there are grounds to review a decision. If there are such grounds, the Tribunal may rehear the appeal and remake the decision. The Tribunal Rules stipulate stringent grounds on which one adjudicator may review the decision of another adjudicator. However Mr Garrett did not oppose the application to review the decision of 6 July 2016. Indeed, given the uncertainty around these vehicles, and that adjudicators have given conflicting decisions on essentially the same facts he accepted that it was “in the interests of justice” to clarify the matter: Paragraph 12(1)(d) of the 2001 Regulations was satisfied. I therefore allow Mr Stanley’s application to review the decision of 6 July 2016, and heard the appeal afresh, considering the evidence already provided as well as the representations and evidence provided by the parties at the hearing.

The Low Emission Scheme

The Low Emission scheme was set up to reduce air pollution throughout London. Its statutory basis is The Greater London Low Emission Zone Charging Order 2006. The Scheme Order uses European definitions well known in the manufacturing world to classify vehicles. In general, vehicles classified ‘M’ under the scheme are passenger carrying vehicles; and those classified as ‘N’ are commercial type vehicles. Depending on the classification, the vehicles are required to comply with Euro 3 or Euro 4 levels of emission.

Mr Garrett described the chronology of the scheme. There was an initial consultation process before the Scheme Order was drafted and approved. The scheme was implemented in stages to enable those affected by it to become compliant. From February 2008 the scheme initially applied to larger vehicles, trucks and lorries etc. In July 2008 it was extended to a wider group of vehicles, passenger carrying and smaller commercial vehicles. These were all required to achieve Euro 3 emission standards. In January 2012, the scheme was changed in two ways: vehicles within the scheme had to achieve Euro 4 levels of emission and new, smaller vehicles were introduced into the scheme. The relevant classification for this appeal is the introduction of vehicles classified as N1(iii), which were included in the scheme from January 2012. By reason of paragraph 2(f) of Annex 2 to the Scheme Order, the N1(iii) category comprises, “… vehicles designed and constructed for the carriage of goods, … powered by compression-ignition engine and having a reference mass exceeding 1,760 Kilograms and a maximum mass not exceeding 3,500 kilograms”.

For clarity, “cars” are not within the scheme. Mr Garrett and Mr Stanley referred to cars as M1 vehicles. In fact the term M1 vehicle does not appear in the Scheme Order. Passenger carrying vehicles with more than eight seats in addition to the driver’s seat are class M2 (vehicles with a maximum mass not exceeding 5,000 kilograms); or M3 (vehicles with a maximum mass exceeding 5,000 kilograms), and are within the Scheme. Passenger carrying vehicles with eight or fewer seats (in addition to the driver’s seat) are not within the scheme. By deduction, the term M1 is applied to “Vehicles designed and constructed for the carriage of passengers and comprising no more than eight seats in addition to the driver’s seat”.

The sole issue for the appeal is whether a 1984 Land Rover 110 (later or alternatively known as a Defender) is a vehicle “designed and constructed for the carriage of goods” and therefore in the N1(iii) category or a passenger carrying vehicle of eight or fewer seats in addition to the driver’s seat, in which case it is an M1 vehicle and not within the scheme.

Land Rovers

The difficulty arises from the fact that over many years a whole range of Land Rover vehicles were manufactured in different configurations, and, as durable and versatile vehicles, many have been adapted and changed in their history. The initial diversity in manufacture is demonstrated by the helpful promotional document that Mr Stanley received from the National Heritage Trust. That document is undated, but Mr Stanley believes it to date from 1984, and that nothing of significance changed in the manufacture and use of the vehicle from 1947 until 1998 or indeed beyond. I quote, for example, from the literature about the 110, “With more than 35 years of operating experience, Land Rover have developed a tremendously wide range of standard bodies for commercial, utility and private use … They include Full Length Soft Tops, Hard Tops, a High Capacity Pick Up and Station Wagons.” It is clear from the literature that the carrying capacity of the vehicles is emphasised. “”Its One Ten counterpart can handle 1.25 tonnes with ease. Every Ninety and One Ten can tow at least 4 tonnes. The One Ten High Capacity Pick up swallows 1.6 m (cubed) (56.5 ft (cubed)) and will accept metre-pallets flat on the load platform between the wheel arches”. The literature shows that that Land Rover also configured some vehicles as “station wagon” alternatives, with options of 9 or 10 ) or indeed others numbers) of seats.

Mr Garrett readily acknowledged that these vehicles were always seen as likely to cause difficulty on the introduction of the LEZ scheme.

Mr Stanley’s vehicle

Mr Stanley’s vehicle contains a number of seats that gives the impression that its primary (or even sole) use is as a passenger vehicle. It has two seats in the front, one of which is the driver’s, three behind, and four “bench” seats in the rear at right angles to the other seats. In short, in his appeal notice, Mr Stanley describes the vehicle as having “fixed seats in the rear, windows all round and a total of nine seats”. It appears that one seat may have been removed from the front of the vehicle, so that it is currently has eight seats plus a driver, (which would make it an M1 passenger carrying vehicle and outside of the LEZ) but at one time may have had nine seats plus a driver (which would have made it M2 and within the scheme as a passenger vehicle). While this information relates to whether the vehicle would be within the scheme as a “passenger-carrying vehicle”, that is a peripheral matter as far as TfL is concerned as Mr Garrett submits that it is within the scheme not because it falls within category M2, but because it is a commercial vehicle within category N1(iii). It is however central to Mr Stanley’s case, as he submits it should be categorised as an M1 vehicle.

Representations

Against that background both Mr Stanley and Mr Garrett made straightforward and compelling arguments.

Mr Garrett submitted that it was clear from the inception of the scheme that Land Rovers would form a difficult group of vehicles. By reason of their engine size and their particulate emission they would fall within the scheme. However they had a variety of uses, and public perception of them varied, so clarity was required both for motorists and for TfL in administering the scheme.

Because of this likely confusion, Mr Garrett explained that TfL entered into negotiations with Land Rover to ascertain how their vehicles were designed and constructed. The results of those discussion are reproduced on the TfL website. I append the relevant section of the website to this decision. It is both short and comprehensive so I need not précis it.

Mr Garrett started with the DVLA classification for Mr Stanley’s vehicle, which is a “light utility 4 x 4”. DVLA categorisation is based on the information provided by Land Rover at the time of first registration. That is an important starting point when looking at the vehicle, because this is a “commercial” rather than a passenger classification. There are, as TfL acknowledge, some Land Rovers that were “designed and constructed” (and mostly registered as such with DVLA) as “Estates”. They are not within the scheme. According to the TfL website (see below) these are, “Defender, 88, 90, 109 and 110 station wagon variants up to nine seats inc the drivers”. Mr Garrett submitted however that all those Land Rovers classified by DVLA as “Light Utility 4x4” vehicles, on the advice of Land Rover at the time of manufacture, are within the scheme, subject to limited exemptions explained below.

**Mr Garrett** submitted that Mr Stanley’s vehicle is within the LEZ scheme, for the following reasons:

**-** Land Rover told TfL that all Land Rover 110s built before 1998 (and therefore Mr Stanley’s vehicle) were constructed as “commercial” and not “passenger” vehicles. Land Rover told TfL that despite the appearance of some Land Rovers, they did not design, construct or have tested any passenger vehicles before 1998. All their vehicles before that date were designed, constructed and tested as commercial load carrying vehicles and categorised at DVLA as such. That, Mr Garrett submitted immediately puts them within “N” rather than “M” class, and therefore within the LEZ scheme.
**-** Mr Garrett acknowledges that there are vehicles built after 1998 that are passenger vehicles and registered as such and that they look very much the same as those manufactured before 1998, (such as Mr Stanley’s), but which, according to Land Rover are not passenger vehicles but are commercial. Because of the difficulty that issue was likely to cause, TfL had confirmed that point with Land Rover on a number of occasions.

**-** There is a limited exception to that classification in relation to ‘station wagons’, and these are contained to in the promotional literature provided by Mr Stanley. Based on the information given to TfL by Land Rover, how they were treated by DVLA and for the LEZ depended on whether they were manufactured before or after 1998.

**-** For vehicles registered before 1998, (such as Mr Stanley’s) TfL state that in order to gain exemption from the scheme, owners are advised to “register your vehicle with TfL with suitable photographic proofs showing all sides of the vehicles with all doors open which clearly shows the entire internal seating arrangements.” If TfL is satisfied with that information against the criteria they provide on their website they will “exempt” the vehicle.

**-** I mention that for owners of station wagon vehicles registered after 1998 there is a separate process for securing exemption, which requires owners to contact DVLA rather than TfL. I need not elaborate on that, as this does not relate to Mr Stanley’s vehicle.

Mr Garrett therefore submitted that whatever the appearance of Mr Stanley’s vehicle, it was “designed and constructed” as a commercial vehicle for the carriage of goods, based on what Land Rover told initially DVLA and now TfL. It was registered at DVLA as “light utility 4x4”, which is not a passenger-carrying classification. Mr Stanley has not managed to persuade TfL that his vehicle should be exempt, and therefore it is captured by the LEZ scheme.

**Mr Stanley** relies primarily on the appearance of his vehicle, which he submits is plainly for the carriage of passengers. It is clear, Mr Stanley submits, that contrary to what Land Rover may have told TfL, they did design and construct vehicles before 1998 that were intended for passenger carrying. His is within that class of vehicle. There is no way that it could be described as being “commercial”, much less for the carriage of goods. Land Rover has refused to enter into correspondence with Mr Stanley about why they have given that advice to TfL. When these vehicles were registered as “light utility 4x4” at DVLA, Mr Stanley submitted that it was long before the importance of that registration would be understood for this scheme. It was wrong, he submitted, with hindsight, to allocate these vehicles to a category that attracts a penalty for a scheme that was not even contemplated at the time the vehicle was produced. The importance of the registration class could not have been known to Land Rover or indeed DVLA at the time of registration.

In any event, Mr Stanley submits, there are elements of the advice that Land Rover have given for which no objective justification can be found. For example, it is clear that they did produce what were plainly passenger vehicles before 1998. Further, there is nothing in public records to indicate a change in manufacturing that would justify treating pre-1998 models differently from post-1998 models when looking to exempt vehicles, as described on TfL’s website.

Mr Stanley’s primary submission is that he should not need a discretionary exemption from TfL as his vehicle doesn’t fall within a category captured by the scheme. However, if he did need an exemption, he submits that his car falls within the description of vehicles TfL state they will exempt on their website. Mr Stanley had been in correspondence with TfL, providing photographs and documents, to secure exemption from the scheme for his vehicle, in accordance with the information on their website about pre-1998 Land Rovers. He complains that TfL give conflicting advice, change the goalposts and act unreasonably in failing to exempt his vehicle. He is adamant that he satisfies all the conditions stipulated by TfL. Mr Garrett was candid that because of the strict criteria that TfL has set, they grant exemption for very few vehicles under this scheme. He could not say why Mr Stanley’s vehicle had not been accepted within this scheme.

Decisions and Reasons

Both arguments have their attractions. Mr Stanley’s is essentially, “Look at my vehicle. It is plainly for passenger carrying. It is highly likely it was produced that way. It makes no sense to call it a commercial much less “designed and constructed for the carriage of goods”, particularly given the windows and seating arrangement. Although TfL are not attempting to classify it is as an M2 vehicle, it would not fall into that category either because it has nine seats including the driver’s. It is an M1 vehicle and outside of the scheme. Even if it were, for some technical reason an N1(iii) vehicle, it falls within the general description of exempt vehicles on TfL’s website.”

In essence Mr Garrett’s argument is, “It does not matter what the vehicle looks like. It is the purpose for which it was “designed and constructed” that fixes its classification. TfL must, for Land Rovers, (as they do for all vehicles) rely on what the manufacturers tell them. Land Rover tell TfL that this class of vehicle was a commercial goods carrying vehicle when it was “designed and constructed”. That puts it into category N1(iii). However it looks and however, or indeed whether or not it has been subsequently adapted, is irrelevant. It is how it was “designed and constructed” that determines the category.”

I was not referred to any legal authority on the matter. Mr Stanley submitted that there had been a House of Lords case in 1956 where it had been decided that that a Land Rover was a car and not a commercial vehicle in the context of a speeding contravention. I advised Mr Stanley that I could not consider the matter unless he provided a reference for the case. He has not done so. In the absence of any authority I must consider the appeal on basic principles and interpretation primarily of the Scheme Order.

The crucial issue is the phrase “designed and constructed”, used throughout the Scheme Order. That term is not further defined in the Scheme Order. By way of an example of why that is important, I pause to consider the configuration of Mr Stanley’s own vehicle having eight seats plus a driver’s. It is clear from Mr Stanley’s promotional literature that there were Land Rover Station Wagon vehicles “designed and constructed” with 10 or more seats. If these were “passenger carrying” vehicles, they would now be Class M2 and within the scheme. However, a motorist who wanted to take such a vehicle outside of the scheme might remove a seat and say, “Now it has only nine seats, it is class M1 and outside the scheme”. Plainly, because of the definition in the scheme of “designed and constructed”, that argument would not work. The vehicle had been “designed and constructed” with 10 seats. Removal of a seat would not affect that design and construction; the vehicle would remain within the scheme as an M2 vehicle, even with nine seats. It does not matter how easy or complicated such an amendment to the vehicle is, it would not change the purpose for which it had been “designed and constructed”. I cite this as an example not relating it to Mr Stanley’s vehicle, but to emphasise the importance of the phrase “designed and constructed”, rather than relying exclusively on the appearance of the vehicle at any particular time.

The issue therefore is who is the arbiter of how a vehicle is “designed and constructed”? Is it the owner, DVLA, TfL, the manufacturer, the Tribunal or some other body? I have given this matter careful thought. I conclude ultimately that it must be the manufacturer. The manufacturer’s view is then reflected in how they classify it at DVLA on first registration. Certainly the Tribunal has no access to the design and manufacturing information. Adjudicators, owners and others may well be able to look at a vehicle and say, “that vehicle looks like a car, or van, or bus and ambulance or whatever”. However that is not the test for the purpose of the LEZ. The test is, “For what was this vehicle ‘designed and constructed’?” The best, indeed the only body that can answer that, is the manufacturer. They uniquely have the record and details of the design, construction manufacturing and indeed initial registration process. TfL may have to interpret that information in classifying a model, but ultimately if the manufacturer gives them and DVLA the information that must be highly persuasive, if not conclusive, of the class to which the vehicle the class of vehicle and indeed the individual vehicle, is allocated. If TfL place a particular class of vehicles or an individual vehicle in the wrong category, I am not sure this Tribunal would have any jurisdiction in correcting that. It would be a matter which the motorist would have to challenge with the manufacturer, DVLA, TfL and ultimately in a different legal forum.

For modern vehicles that are built to exact and demanding specifications that have Europe or worldwide standards, with detailed records, allocating models to a specific category is a straightforward matter. It may be more difficult for older vehicles, and this class of Land Rover plainly creates its own issues as identified in this appeal and review. It is unfortunate that neither Land Rover nor TfL feel able to disclose the discussions that caused TfL to be able to state with certainty that Land Rovers of this class, description and age were all commercial vehicles. However, DVLA has classified the vehicles in the manner as notified by Land Rover, and I am satisfied that is binding upon me.

It follows that I accept that what is on the TfL website is an accurate representation of what Land Rover told them about the design and construction of their vehicles. This Tribunal has no role in going behind the manufacturer’s, DVLA’s and, ultimately, TfL’s classification under the LEZ scheme. For that reason, I accept that Mr Stanley’s Land Rover, in common with all Land Rovers of this era and description, whatever their appearance when they left the production line and however they appear today, are commercial vehicles “designed and constructed for the carriage of goods” and within Class N1(iii) of Annex 2 to the LEZ Scheme Order.

I finally mention the issue of TfL refusing to give Mr Stanley’s vehicle exemption from the zone requirements under the “exemption scheme” on the website. Mr Stanley believes that it satisfies all the criteria for exemption on TfL’s website, and Mr Garrett is unable to explain today why it does not. I understand Mr Stanley’s frustration over this issue, particularly when the correspondence from TfL is somewhat ambivalent as to why they won’t exempt his vehicle, or explain what, if anything, he could do to secure an exemption. However, I have found that his vehicle is within the N1(iii) category so is liable to the LEZ scheme. There is no statutory exemption within the scheme itself for a vehicle that satisfies certain criteria. TfL run what can best be described as a “discretionary” exemption scheme. It is not a statutory scheme nor an exemption from a contravention. The Tribunal has no jurisdiction or authority over that “informal” exemption. Even if I were to take a different view from TfL as to whether this vehicle ought to fall within that exemption, I could not cancel the penalty or direct TfL to exempt the vehicle. If Mr Stanley believes that TfL are not applying their own criteria and policy on the matter, again he may have a remedy in an alternative forum, but not in this Tribunal.

That being the case, although I have allowed the review application, I find the contravention proved and no exemption applies. I dismiss the appeal on its merits. Mr Garrett has indicated that although the contravention is proved, he does not pursue a penalty in this case.

Postscript - TfL website

I have concentrated on Mr Stanley’s vehicle. However, as noted above, there are many Land Rover vehicles and models about which TfL has negotiated with Land Rover. TfL have passed the wording on their website to Land Rover to approve, which they have done. That no doubt is why Land Rover refer enquirers, such as Mr Stanley, to that website. As I place much reliance on the manufacturer’s view of the correct classification for vehicles, and because I accept that TfL has accurately recorded the information passed to them by TfL, I find that for owners of vehicles affected and for appellants to this Tribunal, reliance can be placed on the information in that website as to the appropriate classification of the models and vehicles involved.

**Land Rovers**

We have worked with Land Rover to establish which vehicles with the body type of 'Light 4x4 Utility Vehicle' are subject to the LEZ. Vehicles manufactured before 1973 are considered to be 'historic' vehicles and are exempt from the LEZ.

The vehicles listed below are subject to the LEZ standards:

**-** All Defenders; 88s, 90s, 109s, 110s, 127 and 130s (except station wagon variants see below)

**-** All Defenders manufactured with 10 or more seats including the driver's seat

**-** Freelander Commercial

**-** Discovery or Discovery Series 2 Commercial

**-** Conversions (eg ambulance, motor home)

The following vehicles are not subject to LEZ as they are classed as 'estates':

**-** Defender, 88, 90, 109 and 110 station wagon variants up to nine seats inc the drivers

A small number of Defenders 90s and 110s may be a 'station wagon' but may not be classified as such by the DVLA. This means vehicles with side and rear windows manufactured with fixed seating throughout the vehicle including the area accessed via the back door and there are nine seats or less including the driver's seat. Please note that vehicles without fixed seating throughout will not be treated as an estate and will be subject to LEZ. Fixed seating means individual seats with seat belts. It does not include benches or homemade seating variants.

If your vehicle meets this criterion it will not be subject to the LEZ. In these circumstances if you intend to use the vehicle in the LEZ you need to:

**-** For models registered from 1998 - correct the body type description, vehicle model details and/or number of seats with the DVLA and provide photographic proof

**-** For models registered before 1998 - register your vehicle with TfL with suitable photographic proofs showing all sides of the vehicles with all doors open which clearly shows the entire internal seating arrangements.

Certain vehicles meet the Euro 3 standard because they are early adopters:

**-** All Defenders, 90s, 110s, 127s and 130s manufactured after 6 August 2001

**-** Freelander Commercial manufactured after 14 September 2000

**-** Discovery or Discovery Series 2 Commercial manufactured after 2 July 2001

**-** Conversions (eg ambulance, motor home) manufactured after 2 January 2002

We've updated our database to reflect these vehicles' emissions standards.