



HILLINGDON

LONDON

The Mayor of London,
Sadiq Khan
City Hall
Kamal Chuncie Way
London
E16 1ZE

First sent by email to: Mayor@London.gov.uk

12 January 2023

Our Ref: 3E/04/GE/58301/021379

PRE-ACTION PROTOCOL LETTER

Dear Mayor,

RE: ULEZ Extension Order Decision

1. We write on behalf of the London Borough of Hillingdon, the London Borough of Harrow, the London Borough of Bexley and the London Borough of Bromley, who we refer to collectively as the “**Claimants**” in this correspondence. This is a pre-action protocol letter under the Judicial Review Pre-Action Protocol in relation to the Mayor’s decision, taken on 25 November 2022, to extend the Greater London Ultra Low Emissions Zone (“**ULEZ**”) to the whole of Greater London (the “**ULEZ Decision**”). An identical letter before action is also being sent to Transport for London as the interested party.
2. This letter sets out the main facts (to the extent currently known to the Claimants) and the legal basis on which any claim would be pursued. Please be clear in your response in identifying any areas of factual and/or legal dispute and the basis for them so that the issues in dispute can be identified and if possible narrowed.

(1) The Defendant

3. The Mayor of London, Sadiq Khan
City Hall
Kamal Chuncie Way

London
E16 1ZE
(the “Defendant”)

(2) The Claimant(s)

4. The Claimants are all outer London boroughs, located in west, north-west and south-east London:

The London Borough of Hillingdon

Legal Services, Civic Centre, Uxbridge, UB8 1UW.
DX 45101 UXBRIDGE

The London Borough of Harrow

Legal Services, Civic Centre 1, Station Road, Harrow, HA1 2UH.
DX30450 HARROW

The London Borough of Bexley

Legal Services, Civic Offices, 2 Watling Street, Bexleyheath, DA6 7AT.
DX31897 BEXLEYHEATH

The London Borough of Bromley

Legal Services, Bromley Civic Centre, Stockwell Close, Bromley, BR1 3UH.
DX 5727 BROMLEY

(3) The Defendant’s reference details

5. The Claimants are unaware of any reference details for this matter.
6. The decision at issue has the reference number MD3060.

(4) The details of the Claimant’s legal advisers dealing with this claim

7. Please address all correspondence to the Claimants’ to: Mr Glen Egan, Acting Head of Legal Services 3E/04, London Borough of Hillingdon, Civic Centre, Uxbridge, UB8 1UW. DX45101 Uxbridge. Ref 3E/04/GE/58301/021379

(5) The details of the matter being challenged

8. The Defendant’s decision (MD3060) on 25 November 2022 to:
- a. confirm the Greater London Low Emission Zone Charging (Variation and Transitional Provisions) Order 2022 with the modifications incorporated in the Instrument of Confirmation for that order; and
 - b. Approve £110 million in funding for the preparation and implementation of a new London Vehicle Scrappage Scheme, by means of the transfer by way of a revenue

grant to be paid by the Greater London Authority to Transport for London (“TfL”) under section 121 of the Greater London Authority Act 1999.

(the “ULEZ Decision”)

(6) The details of interested parties

9. Transport for London (“TfL”)

Commissioner Andrew Lord.
TfL,
9th Floor, Endeavour Square,
London,
E20 1JH.

(7) The issue

BACKGROUND FACTS

10. The Defendant will be familiar with the factual background in this matter. In short, the ULEZ Decision was a decision primarily to approve the extension of the existing ULEZ beyond its current remit to broadly encompass all of Greater London’s 32 boroughs (“**ULEZ Scheme**”).¹ The extension of the ULEZ will operate from 29 August 2023, such that any vehicle driving in the newly expanded area which does not comply with the ULEZ emissions standards will need to pay the charge (currently set at £12.50 per day) or subsequently pay a penalty fare.

11. In the Greater London Authority’s (“**GLA**”) “request for mayoral decision – MD3060” (title: “MD3060 London-wide Ultra Low Emission Zone (ULEZ) Scheme”) (“**Request for a Mayoral Decision MD3060**”), the decision taken by the Mayor is recorded as:

“The Mayor:

- 1. confirms (a) the Greater London Low Emission Zone Charging (Variation and Transitional Provisions) Order 2022 with the modifications incorporated in the Instrument of Confirmation for that order and (b) the Greater London (Central Zone) Congestion Charging (Variation) Order 2022 as set out in the Instrument of Confirmation for that order, without any modifications*
- 2. notes the key details of TfL’s proposals for a new London Vehicle Scrappage Scheme as set out in this Form and approves funding for the preparation and implementation of that scheme by means of the transfer by way of a revenue grant to be paid by the Greater London Authority (GLA) to TfL under section 121 of the Greater London Authority (GLA) Act 1999 in the sum of £110 million.”*

¹ The ULEZ was first introduced into central London on 8 April 2019. On 1 March 2021, the ULEZ standards for heavy vehicles were incorporated into a London-wide Low Emissions Zone, covering nearly all of Greater London. The Low Emissions Zone had, in fact, been introduced back in 2008, so this change represented a tightening of emissions standards in that area for heavy vehicles. On 25 October 2021, the Mayor expanded the ULEZ up to, but not including, the North and South Circular Roads.

12. The “Greater London Low Emission Zone Charging (Variation and Transitional Provisions) Order 2022” (“**ULEZ Extension Order 2022**”) took the form of a variation order to the existing Greater London Low Emission Zone Charging Order 2006 and this variation order was then confirmed through the Mayor’s Greater London Low Emission Zone Charging (Variation and Transitional Provisions) Order 2022 Instrument of Confirmation 2022 (“**ULEZ Extension Confirmation Order 2022**”).
13. The ULEZ Extension Order 2022 was not, therefore, a new stand-alone charging order, but rather a variation to an existing charging scheme.
14. We note at the outset that we have only been able to access a “draft” copy of the ULEZ Extension Order 2022 online (downloaded from the TfL consultation website²). We, therefore, reserve the right to vary or add to any of the grounds below, once we have reviewed the final version of the made order.
15. Prior to the ULEZ Decision being taken, the proposed ULEZ Scheme was the subject of a public and stakeholder consultation. The consultation concerned four proposals, of which the ULEZ extension was “Proposal 1”.³ It ran alongside (and was integrated with) a consultation on the Mayor’s concurrent proposal to revise the Mayor’s Transport Strategy (“**MTS**”) so as to provide policy support for the ULEZ Scheme. The public and stakeholder consultation process lasted 10 weeks between 20 May 2022 and 29 July 2022 and received a significant number of responses.⁴
16. The following documents were included in the consultation materials:
 - a. Consultation document issued by the Mayor of London entitled: “our proposals to help improve air quality, tackle climate emergency, and reduce congestion by expanding the ULEZ London-wide and other measures” (May 2022) (the “**Proposals Report**”) - a 117-page report by TfL which provided further information and background on the consultation proposals, including the proposed ULEZ Scheme;
 - b. London-Wide ULEZ Integrated Impact Assessment (ULEZ Scheme IIA) (17 May 2022) (the “**ULEZ Scheme IIA**”) - a 197-page assessment commissioned by TfL and carried out by Jacobs, which included the findings of (a) an environmental assessment, (b) a health impact assessment, (c) an equality impact assessment, and (d) an economic and business impact assessment; and,
 - c. London-wide ULEZ and MTS Revision Baseline Report for ULEZ Scheme IIA and MTS IIA (17 May 2022) (“**Baseline Report**”) - a 139-page report, also produced by Jacobs, providing the policy context and baseline data that informed the ULEZ Scheme IIA.
17. The Claimants each responded to the consultation and strongly objected to the ULEZ Scheme.

² See <https://www.london.gov.uk/who-we-are/governance-and-spending/promoting-good-governance/decision-making/mayoral-decisions/md3060-london-wide-ultra-low-emission-zone-ulez-scheme>.

³ The other three proposals are described at paragraph 1.4 of the Request for a Mayoral Decision MD3060.

⁴ 57,937 responses were received during the consultation period (342 from stakeholders, 11,868 from organised responses and the rest from the public).

18. The Claimants' consultation responses raised a number of very serious concerns about the scheme and its assessment by Transport for London ("TfL"). Most notably (and in brief⁵):
- a. The data provided in the consultation materials was confusing and inconsistent with regards to the level of assumed ULEZ vehicle compliance rates in outer London. There was no sensible explanation for how outer London compliance rates had been assessed and predicted.
 - b. The full details for the proposed scrappage scheme were not disclosed, but, from what could be discerned, the scheme would afford no benefit whatsoever to people who lived outside of London. That was notwithstanding that there was a significant population outside of London who needed access to London for work, retail and leisure, health care and in the course of their daily lives.
 - c. No overall costs were shown for the implementation of the scheme; nor, any monetised social and economic impacts. There was not direct comparison of the negative costs against the benefits in a benefit cost ratio calculation and there should have been a specific assessment of the impacts on individual boroughs.
 - d. There was no clarity as to where any of the revenues raised through the scheme would be spent.
19. TfL produced a 307-page "Report to the Mayor: Our proposals to help improve air quality, tackle the climate emergency, and reduce congestion by expanding the ULEZ London-wide and other measures (scheme consultation)" (November 2022) ("**Report to the Mayor**") (along with 14 appendices) which sought to summarise the consultation responses and provided overall conclusions and recommendations for the Mayor (including two modifications be made to the ULEZ Scheme, in the form of two new time-limited grace periods, both of which were accepted by the Mayor through the ULEZ Decision).
20. The ULEZ Decision was also preceded by the Request for a Mayoral Decision MD3060, which included a summary of the recommendations in the Report to the Mayor, and requested that the Mayor consider whether to confirm (with or without modifications) the two variation orders that TfL had made and submitted to him.
21. Further facts will be referred to, where relevant, in relation to the potential grounds of claim.

THE GROUNDS OF CLAIM

22. Whilst a number of grounds for judicial review are set out below, should matters proceed further, the Claimants reserve the right to reformulate, vary and/or add to these grounds in any future claim filed particularly, but not only, in order to address any response given to this PAP letter.
23. However, in short, the ULEZ Decision is unlawful on the basis of any one of the grounds listed below.

⁵ See the consultation responses of the Claimants, in particular the response of the London Borough of Hillingdon, in Chapters 2, 11 and 14, and its Appendix on pp. 55-56, and the response of the London Borough of Bexley, under the section headed "We believe that the costs of the ULEZ have not been properly considered and that other options have not been adequately assessed".

Ground 1: Failure to comply with the statutory requirements in Schedule 23 and/or frustration of the statutory purpose

24. As noted above, the ULEZ Extension Order took the form of a variation order – which varied the existing Greater London Low Emission Zone Charging Order 2006 – rather than constituting a fresh new charging scheme order.

25. Schedule 23 to the GLAA 1999 sets out the order-making and confirmation process for a charging scheme order. A “charging scheme” is defined in paragraph 1 of Schedule 23 as “a scheme for imposing charges in respect of the keeping or use of motor vehicles on roads in an area designated in the scheme”.

26. Paragraph 38 of Schedule 23 then provides:

“[t]he power to make a charging scheme includes power to vary or revoke such a scheme, and paragraph 4 above (apart from sub-paragraphs (3)(f) and (6)) applies in relation to the variation or revocation of a charging scheme as to the making of a charging scheme”

27. Paragraph 4 of Schedule 23 is entitled “Making a charging scheme” and provides aligning with the references in paragraph 38 (emphasis added):

“4.— Making a charging scheme

(1) Any charging scheme must be contained in an order—

*(a) made under this Schedule by the authority making the scheme; and
(b) submitted to, and confirmed (with or without modification) by, the Authority.*

(2) An order containing a charging scheme shall be in such form as the Authority may determine.

(3) The Authority may—

(a) consult, or require an authority making a charging scheme to consult, other persons;

(aa) require such an authority to publish its proposals for the scheme and to consider objections to the proposals;

(b) hold an inquiry, or cause an inquiry to be held, for the purposes of any order containing a charging scheme;

(c) appoint the person or persons by whom any such inquiry is to be held;

(d) make modifications to any such order, whether in consequence of any objections or otherwise, before the order takes effect;

(da) require the authority by whom any such order is made to publish notice of the order and of its effect;

(f) require the authority by whom any such order is made to place and maintain, or cause to be placed and maintained, such traffic signs in connection with that order as the Authority may determine.

(...)

(6) The charging authority may enter any land, and exercise any other powers which may be necessary, for placing and maintaining, or causing to be placed and maintained, traffic signs in connection with the charging scheme.

28. Paragraph 38, therefore, dis-applies (in the context of variation or revocation) the two subsections of paragraph 4 which concern signage and the need to put in place new traffic signs in connection with the charging scheme order in question. This shows that the legislature did not intend for there to be any need for new signage for a variation order (clearly, there would not need to be new signage for a revocation order). The legislative intention was for any new “charging scheme” to be pursued afresh by way of a new charging order (and not simply by way of a variation order to an existing charging scheme).
29. It is obvious that the ULEZ Scheme was a “*charging scheme*” for these purposes. The effect of the ULEZ Decision was to introduce a new charge (the ULEZ charge of £12.50 daily for non-compliant vehicle use) to an entirely new geographical area (i.e. the areas of Greater London not yet encompassed in the existing ULEZ zone).
30. Indeed, we understand that the Defendant has accepted that the ULEZ Scheme was a “*charging scheme*” for the purposes of Schedule 23. This is on the basis that the Mayor considered it necessary to revise the MTS policy first, before taking the ULEZ Decision,⁶ in order to meet the requirement in paragraph 3 of Schedule 23⁷ that “A *charging scheme* may only be made if it appears desirable or expedient for the purpose of directly or indirectly facilitating the achievement of any policies or proposals set out in the Mayor’s transport strategy” (emphasis added).
31. Further, and in any event, Schedule 23 of the GLAA 1999 contains a number of prescriptions as to what a charging scheme must include in its terms. This includes the requirement at paragraph 19:⁸

Paragraph 19 - Charging authority’s 10 year plan for their share

- (1) *A charging scheme must include a statement of the charging authority’s proposed general plan for applying the authority’s share of the net proceeds of the scheme during the opening ten year period.*
- (2) *In sub-paragraph (1) above, “the opening ten year period” , in relation to any charging scheme, means the period which—*
- (a) *begins with the date on which the scheme comes into force; and*
- (b) *ends with the tenth financial year that commences on or after that date.*
- (3) *An order containing a charging scheme shall not come into force unless and until the statement required by sub-paragraph (1) above has been approved—*
- (...)
- (b) *if the scheme is a borough scheme, by the Authority.*

32. Paragraph 19 is an important safeguard. It ensures that a charging authority is accountable for the revenues it receives through a new charging scheme (and that the level of expected revenues are properly considered). There is no good reason

⁶ See the Request for a Mayoral Decision – MD3047 (Title: Proposed Mayor’s Transport Strategy Revision) at 1.20-1.21 and 6.7-6.8.

⁷ See also the requirement in paragraph 5 that “*A charging scheme must be in conformity with the Mayor’s transport strategy*”.

⁸ We note further requirements in Schedule 23, which do not appear to have been met, such as paragraph 9(7), which prohibits a charging scheme from imposing charges in respect of a trunk road “except with the consent of the Secretary of State”. We have seen no indication that the Secretary of State has given his consent to the application of the ULEZ Scheme on various trunk roads.

why paragraph 19's requirement does not bite on any new charging scheme, whether or not it has been brought about through a variation order. Certainly, it was Parliament's intent that the introduction of a new charge to a new geographical area (especially, one the size of the whole of outer London) would need to comply with this requirement.

33. The ULEZ Extension Order 2022 (in draft form) did not make any change to "Annex 3" to the existing Greater London Low Emission Zone Charging Order 2006. Annex 3 had (appropriately at the time it was introduced) set out "Transport for London's General Plan for Applying its Share of any Net Proceeds of this Scheme during the Opening Ten Year Period" in line with paragraph 19's requirements. However, that Ten Year plan had run from 2008-2018 (2008 being the earliest date that the newly introduced LEZ scheme could commence) and so had expired by the time the ULEZ Extension Order 2022 was introduced.

34. This must be seen in a context where a number of consultees had raised concerns as to where the expected revenues raised would be spent and/or whether the scheme had been rushed in as a money-making project for the Mayor.⁹

Errors of law:

35. In light of the above, the Mayor's ULEZ Decision was unlawful on the following grounds:

- a. It was *ultra vires* (beyond the powers of the statute) for the ULEZ extension scheme to be introduced by way of a variation order. The ULEZ extension scheme needed to be introduced through a new charging order and to promote the scheme by way of a variation order was unlawful as falling outside the statutory powers in Schedule 23 or as a frustration of the legislative scheme. Public authorities are required to promote, and not to frustrate, the statutory purpose of their powers (see e.g. Padfield v Minister of Agriculture Fisheries & Food [1968] AC 997; Patel v SSHD [2013] UKSC 72 at 28 per Lord Carnwath).
- b. Further, and in any event, even if it was lawful to promote the ULEZ expansion scheme by way of a variation order, this variation order (the ULEZ Expansion Order) was unlawful for failing to comply with all the requirements of Schedule 23, most notably paragraph 19's requirement for a 10 year plan. In the event that the Mayor has avoided this requirement, by pursuing the ULEZ Extension Order 2022 as a variation order, this would also constitute an unlawful frustration of the statutory purpose of Schedule 23.

Ground 2: Failure to take into account a material consideration and/or material error of fact and/or irrationality due to incorrect assumption for expected compliance rates in outer London

Further relevant facts:

⁹ See, for example, the Report to the Mayor consultation response A11 on p. 84.

36. The assumed ULEZ compliance rates used in the ULEZ Scheme IIA were fundamental assumptions which underlay the entire impact assessment that supported the Mayor's ULEZ Decision. This is because the level of assumed compliance rates factored into almost all of the IIA's assessments of impacts - whether in relation to particular protected characteristic groups or more generally. It is the people using non-compliant vehicles who would be directly impacted by the ULEZ Scheme, and the extent of this impact is reflected by the assumed compliance rates.

37. Table 4-1 ("TfL vehicle compliance rate assumptions, outer London, 2023 reference case") on p. 34 of the ULEZ Scheme IIA sets out the assumed overall compliance rate for private cars in "outer London" in 2023 as 91%.¹⁰ We understand the "reference case" to imply that this is (allegedly) the projected 2023 compliance rate, assuming there has been no extension of the ULEZ to outer London (i.e. it is premised on a "without scheme" assumption).

38. No data source is given for this figure; nor, any clear explanation in the surrounding text for how it was calculated.

39. The information provided in the Baseline Report directly contradicts it. Most notably:

a. Maps 7 and 8 on pp. 101-102 show much lower recorded levels of "existing" compliance, with the vast majority of outer London areas showing compliance levels of 79% or below. We understand that this data was taken from 2020 (as detailed in footnote 36 on p.86 of the ULEZ Scheme IIA).

b. The commentary to Maps 6 and 7 in the Baseline Report records the following:
"Map 7 and Map 8 illustrates the existing levels of compliance within the GLA relative to income deprivation, for cars and for all vehicles respectively. As shown the levels of compliance of registered vehicles within the existing ULEZ boundary are generally high, at over 72 per cent, with areas of lower compliance in the north and east of inner London which correspond with areas of high deprivation (e.g. Hackney, Newham). Outer London has large areas with lower levels of compliance (62 – 72 per cent), which also correspond with areas of high deprivation in the north and east (including Hounslow, Ealing, Brent, Barking and Dagenham, north Croydon, southern Kingston upon Thames, south Havering and north Bexley). The lowest levels of compliance (58-67 per cent) are shown in Hounslow."

Again, illustrating much lower levels of compliance particularly in certain outer London boroughs, such as Hounslow.

40. Moreover, the consultation responses themselves indicate a much higher proportion of currently non-compliant vehicles (than in the assumed 91%). Figure 6 of the Report to the Mayor (on p. 47), records that 40% of respondents from outer London owned a vehicle that was "not compliant". This is in stark contrast to the "current inner London ULEZ", where less than 5% of respondents owned a "not compliant" vehicle. See also Table 13 (on pp. 46-47) of the Report to the Mayor, which records that 54% of respondents in outer London either stated that their vehicle did not meet the

¹⁰ This is against a separate overall compliance rate "London-wide" in 2023.

standards or that they had “more than one vehicle, one or more of which do not meet the standards” (compared to 14% in the current inner London ULEZ).¹¹

41. The Proposals Report contains, in Appendix B, further information on “Modelling methodology and data sources”. This has a section headed “Compliance rates” (pp. 96-7) and a later section on “Compliance rates in 2023 with proposed changes” (p. 98).

42. In the section headed “Compliance rates” it states as follows (quoted in full, our emphasis added in underline):¹²

“Compliance rates

Forecast compliance rates for 2023 with the proposed changes are based on work undertaken as part of on-going preparation of the LAEI (London Atmospheric Emissions Inventory) which focuses on 2019, 2025 and 2030. Compliance rates are based on the fleet compositions which are prepared as part of the LAEI which include information on age and Euro standards, alongside fuel type and vehicle type across London. This information is initially derived from cross referencing anonymised ANPR camera observations in London with the DVLA record of vehicle information, alongside vehicle kilometre estimates in London. In this way the different types and ages of vehicles along with correlated Euro standards can be determined. This method has been used in the LAEI 2016, and again for the LAEI 2019 which includes recent information across 2019, 2020 and 2021. This allows TfL to represent changes in the fleet overtime, for example observed reductions in pre-Euro 6 diesel vehicles can be seen, alongside increasing proportions of electric vehicles. To forecast the fleet compositions TfL use information on existing pathways of Euro standards which increase most rapidly when a new Euro standard is introduced, and rate of update reduces over time towards 100 per cent. In addition, work undertaken by Element Energy for the LAEI 2019 forecasts (still in progress) alongside GLA carbon projections has been used to estimate the increasing proportion of electric and plug-in vehicles in 2023. Together the overall compliance rate by vehicle type in 2023 can be determined, and then this data is adjusted based on the uplift that is forecast from the TfL ULEZ vehicle response tool as described below.

Compliance rates are then used to understand the volumes of non-compliant vehicles that would be affected by London-wide ULEZ. This assumes that proportions of compliant and non-compliant vehicles based on the existing camera network are suitable to estimate unique vehicles, although changes to the camera network will increase the density of observations over time.”

43. The section which follows directly on from this, is entitled “Vehicle switching and travel behaviour change”. It provides further detail on how the “TfL ULEZ vehicle response tool” works (emphasis added):

¹¹ We must note that the percentages listed in this table do not appear to add up to 100% in each column and they also do not appear to directly align with the percentages shown in Figure 6.

¹² We note that this is, essentially, quoted verbatim in TfL’s response to consultation at 5.11.9 of the Report to the Mayor (responding to: “LB Barking & Dagenham questioned the figures provided on the number of compliant vehicles and Heathrow Strategic Planning Group suggested that the proportion of vehicles that are non-compliant may be significantly higher than that modelled by TfL”).

“Vehicle switching and travel behaviour change

There are two main tools to understand the potential behavioural changes in response to the proposed changes. Firstly, to understand how the proposed changes may encourage owners of non-compliant vehicles to switch to compliant vehicles, a ULEZ vehicle response tool is used. This tool estimates the percentage of non-compliant vehicles that might switch to compliant vehicles using a breakeven analysis based on cost of upgrade versus cost of paying a charge. Secondly, TfL’s demand and assignment models, MoTiON and LoHAM, together estimate how the remaining non-compliant vehicles might respond to a charge by changing travel behaviour. For example, deciding not to travel, changing mode or where possible changing the destination to avoid the charge. Together these behavioural responses drive the changes in compliance, vehicle kilometres, mode shift and ultimately air quality and carbon impacts. (...)”

44. The next section is the one entitled “Compliance rates in 2023 with proposed changes” which focusses on the methodology for estimating compliance rates “with the proposed changes”. That states (emphasis added):

“Compliance rates in 2023 with proposed changes

Estimates of forecast compliance rates with the proposed changes is based on a combination of the vehicle switching and the travel behaviour change. The time it could take for this compliance rate to be achieved is assumed based on monitoring of the ULEZ expansion to inner London, which suggested that the majority of the behavioural response takes place before the scheme is launched (called pre-compliance) and within six to 12 months of the scheme launch. However, lower levels of pre-compliance could be attributed to a shorter notice period. The wider economic context could impact upon compliance, such as the increase in fuel costs, inflation, as well as the scale of a scrappage scheme.

Sensitivities were undertaken to represent this uncertainty. The sensitivities consider variations in the frequency distribution into the proposed area, the rate of pre-compliance and how quickly compliance is reached after scheme launch. At the lower end of the range, a London-wide compliance rate of around 95 per cent for cars and 87 per cent for vans was estimated around six months after scheme launch. A higher overall response and more rapid pre-compliance could see estimates of around 97 per cent for cars and 92 per cent for vans around three months after scheme launch, which would bring forward benefits at an earlier stage. On balance an estimate of 95 per cent for cars and 91 per cent for vans after three months was used for the emissions, air quality and carbon modelling and impacts.”

45. There is, then, a final section entitled “Hybrid Forecast”, which seeks to explain how a further forecasting assessment was used as a comparator forecast to the “reference case”.

46. A number of stakeholders (mainly, but not limited to, outer London boroughs) raised concerns over the assumed compliance rates and the lack of any data supporting it. The responses given in the Report to the Mayor either rely on the Baseline Report¹³

¹³ See at 5.3.12 (in response to LB Camden, LB Harrow and LB Havering)

(which (as noted above) does not support the 91% assumed compliance rate) or the Proposals Report¹⁴ (which does not take matters any further than what has been outlined above).

Summary of compliance rate forecasting:

47. In light of the above, we note the following:

- a. The text under the heading “Compliance rates”, in the Proposals Report, addresses the “*forecast compliance rates for 2023 with the proposed changes*” (our emphasis) and how these were calculated. It says nothing at all about how any forecast compliance rates for 2023 were calculated *without* the proposed changes (i.e. the “reference case”).¹⁵
- b. This is further supported by what is said about the “*vehicle response tool*” (which was used to adjust the data for the forecast compliance rates in 2023). The relevant text explains that this tool was intended to estimate the percentage on non-compliant vehicles that might switch to compliant vehicles “in response to the proposed changes” (i.e. assessing compliance rates *with the proposed changes*).
- c. In fact, there is nothing in Appendix B to the Proposals Report (nor, anywhere else in the documentation) that explains how any assumed compliance rates *without* the proposed changes (i.e. the “reference case”) have been calculated.
- d. Furthermore, there is no differentiation between the assumed compliance rates for inner and outer London (at least on the face of the text). Certainly, there is no explanation for how the specific assumed compliance rate of 91% for “outer London” (as opposed to “London-wide”) has been calculated.
- e. Indeed, from the text in Appendix B to the Proposals Report, there are a number of different indications that an assumption was made that outer London’s compliance rate (and/or responses to the extended ULEZ) would mirror the behaviours that have been seen in inner London:
 - i. The section under “Compliance rates” refers to baseline data taken from “*anonymised ANPR camera observations in London*” without specifying if this is in inner or outer London and goes on to recognise that an assumption is applied “*that proportions of compliant and non-compliant vehicles based on the existing camera network are suitable to estimate unique vehicles*”.
 - ii. The section under “Compliance rates in 2023 with proposed changes” then refers to a “*London-wide compliance rate*” having been calculated, with no indication as to how any “outer London” rate differentiated from this.

¹⁴ See at 5.11.3 (in response to LB Hillingdon) and at 5.11.9 (in response to LB Barking & Dagenham and Heathrow Strategic Planning Group).

¹⁵ The “proposed changes” being referred to, here, must be to the proposed ULEZ expansion into outer London (there being no other likely candidate).

Assumptions:

48. From this, it is clear that the expected compliance rate for outer London of 91% (for the “reference case”) was based on two incorrect assumptions:

a. Incorrect assumption that inner London compliance rates applied to outer London

49. The 91% compliance rate for outer London assumed that there would be the same take-up and increased compliance rates in outer London boroughs (which, at present are not subject to the ULEZ) as have been witnessed and recorded for inner London boroughs (which are already subject to the ULEZ).

50. The ULEZ Scheme IIA, itself, records at 2.3 (on p. 23) the recorded compliance rate, within the first month of operation of the ULEZ expansion in 2021 (i.e. in inner London) (emphasis added):

“In the first month of operation of the ULEZ expansion (to the North and South Circular Roads) in 2021 there was 91 per cent compliance with vehicle standards, and the combined impact of the ULEZ expansion and tightened LEZ, is expected to reduce NOx emissions by 30 per cent in its first year (by October 2022). As a result, Greater London is now on track to meet legal air quality limits for NO2 by 2025 at the latest.”

51. It is, on any sensible analysis, inconceivable that the expected compliance rate in outer London *before* the ULEZ is expanded to include its area, will be the same as the recorded compliance rate in inner London one month *after* the ULEZ had expanded to include its area. Certainly, there is no evidence put forward to suggest that this is the case (or, at least, none that is publicly available and decipherable).

52. Based on the information presented in the consultation documents, most notably in Appendix B to the Proposals Report, the only sensible reading of the assessments is that Jacobs and/or TfL assumed that outer London would respond to an extended ULEZ, in the same way as had been recorded to be the case in inner London.

53. Of course, any such assumption ignores entirely the significant differences between the characters of outer and inner London boroughs, not least in terms of levels of car dependency¹⁶ and the accessibility to public transport (whether reflected in PTAL ratings or otherwise¹⁷). These points were clearly raised by the Claimants (and others) in their consultation responses.

Errors of law:

54. Due to this assumption, the Mayor’s ULEZ Decision – which was inherently based on the ULEZ Scheme IIA and its impact assessments, as reported by TfL in the Report to the Mayor and the GLA in its Request for a Mayoral Decision MD3060 - was unlawful for the following reasons:

¹⁶ We do not expect this point to be disputed by the Defendant. Indeed, it is recognised in the Report to the Mayor in consultation response F16 on p. 204 (“Outer London has historically been more dependent on car travel, but we know that walking, cycling and public transport are safer, cleaner, cheaper and more efficient alternatives...”).

¹⁷ An indication of the differences in PTAL ratings between inner and outer London is reflected in Map 5 on p. 99 of the Baseline Report.

- a. The Mayor failed to have regard to an obviously material consideration for the purposes of his decision, namely, the expected ULEZ-compliance rate in outer London boroughs (as distinct from inner London boroughs) as the area over which the extended ULEZ would operate; and/or
- b. The Mayor proceeded on the basis of an error of fact, by wrongly assuming¹⁸ (through reliance on the 91% compliance rate) that outer London boroughs would respond to an expanded ULEZ scheme in the same way that inner London boroughs had done so; alternatively, the Mayor was materially misled on this matter;¹⁹ and/or
- c. The Mayor irrationally relied on the 91% compliance rate, as reflecting the expected level of ULEZ compliance rates in outer London boroughs, notwithstanding that this rate was unsupported by any evidence and, in truth, had no rational connection to that geographical area;²⁰ and/or his decision here was inadequately reasoned.
- d. The Mayor failed to give adequate reasons for his decision.

b. Assumption that the ULEZ Scheme (extension to outer London) has already been approved

55. Rather than truly assessing the “reference case” (i.e. the “without scheme”) compliance rate predictions for 2023, the 91% compliance rate for outer London has assumed that the proposed scheme (i.e. the ULEZ extension to outer London) had already been approved. In so doing, it has factored into its assessment the effect that the introduction and announcement of the scheme would have on compliance rates, including in the run up to the introduction of the charges on 29 August 2023 (see points in paragraph 47 above).

56. This was not made clear at all in the ULEZ Scheme IIA, or underlying consultation documents.

57. To properly assess the impacts of the scheme, TfL and the Mayor needed to assess all impacts felt by the population, including in the run-up to the charges being introduced, e.g. the costs people and businesses incur by switching their vehicles or adapting their business operations. Indeed, for a scheme such as this, a significant

¹⁸ See, for example, *R (Michael) v Governor of HMP Whitemoor* [2020] EWCA Civ 29 at [48] (“*This is an example of a decision which proceeded upon a straightforward and undisputed misunderstanding of a central material fact*”). See also *R (British Gas Trading Ltd) v Gas and Markets Authority* [2019] EWHC 3048 (Admin) at [87]-[88].

¹⁹ See *Mansell v Tonbridge & Malling BC* [2016] EWHC 2832 (Admin) at [46] (in the context of a planning officer’s report); the question is whether officer advice significantly misled the decision-maker about material matters and this was not corrected before the decision was made.

²⁰ See for example *R (Lancashire CC) v SSEFRA* [2019] UKSC 58 at [32] per Lord Carnwath and Lord Sales (“An assessment made without any supporting evidence cannot stand”) and also *Associated Provincial Picture Houses Ltd v Wednesday Corp* [1948] 1KB 223.

21 See *South Bucks DC and another v Porter (No 2)* [2004] UKHL 33 AT [36] (and *R (CPRE Kent) v Dover DC* [2017] UKSC 79 at [50] ff)

proportion of the impact will be “front-loaded” and experienced *before* the charges are introduced.

58. If, however, the assumed compliance rate has effectively estimated the likely level of compliance as of 29 August 2023 (when the charging starts), then it will have subsumed (and effectively ignored) these early impacts that will be experienced in the period of time between the announcement of the scheme and when the charges kick in.

59. We further note, in support of the above, that there are a number of other references in the documents that clearly indicate that the 91% figure represents the expected level of compliance “*with the proposed changes*” (i.e. by the time the extended ULEZ charge has been introduced). For example, see the following references in the ULEZ Scheme IIA (emphasis added):

p. 4 “The assessment has been informed by strategic traffic modelling undertaken by TfL to compare the situation in 2023 (the proposed year of implementation) with and without the Proposed Scheme. The model outputs comprise traffic demand (by mode of travel and journey purpose), road traffic emissions and air quality concentrations. The analysis is based upon forecast rates of vehicle compliance with the ULEZ standards for when the Proposed Scheme would be introduced. The forecast rates for outer London are: 91 per cent for private cars; 97 per cent for private hire vehicles (PHVs) and 82 per cent for light goods vehicles (LGVs). London-wide this equates to 92 per cent, 98 per cent and 85 per cent respectively.”

p. 28 “Furthermore, the anticipated change in vehicle fleet composition is considered to have negligible effect on noise, given the high levels of compliance (assumed to be over 90 per cent when the Proposed Scheme is scheduled to launch).”

p. 86 “There have been increasing levels of car compliance since the original ULEZ scheme was implemented, and overall car compliance (in vehicle kilometres) is expected to be high (>90 per cent) when the Proposed Scheme is in place. Baseline data suggests that car compliance is likely to be lower in the most deprived areas of London.”

60. We note that the Report to the Mayor responds, at various points, to consultee comments as follows (emphasis added):

“85 per cent of vehicles seen driving in outer London already meet the ULEZ standards on an average day and therefore would not need to re-route to avoid the charge. If proposals are taken forward, cars seen in the new zone are expected to be over 95 per cent compliant by the end of 2023. For vans, compliance is expected to be 91 per cent.”

61. To the extent that the figure records an 85% current compliance figure for outer London (in contrast to the expected 91% rate) it further indicates that the 91% rate has been based on an assessment which had factored in the expected increase in compliance rates due to the announcement of the scheme itself (i.e. it factors into the baseline (and therefore effectively ignores when assessing the scheme's impacts) the early-stage impacts of the scheme). In any event, no evidence or data references are given for the 85% figure referred to; nor, to how this has been assessed.

Errors of law:

62. Due to the above assumption, the Mayor's ULEZ Decision was unlawful for the following reasons:

- a. The Mayor proceeded on the basis of an error of fact, by wrongly assuming that the 91% assumed compliance rate represented a "without scheme" or "do nothing" scenario, when in fact it was a "do something" scenario; alternatively, the Mayor was materially misled on this matter; and/or
- b. The Mayor irrationally relied on an impact assessment which, when assessing the positive and negative impacts from the proposals at issue, had assumed a baseline scenario with "the proposed changes" already factored in; and/or his decision here was inadequately reasoned.
- c. The Mayor failed to give adequate reasons for his decision.

Inadequate consultation process:

63. Further, and in the alternative to the above errors of law, even if the incorrect assumptions set out above had not been made, the consultation documents were not sufficiently clear to enable consultees to make an intelligent response.²¹ The question of expected compliance rates in outer London (and, thereby, the expected impacts of the proposed scheme) was a key aspect of the proposal being consulted on. The consultation documentation was so confused and unintelligible on this point that it did not reasonably allow a proper and effective response from consultees. This meant that the consultation process was so unfair as to be unlawful (see: R (oao Moseley) v Haringey LBC [2014] UKSC 56 at [25]; R v North and East Devon Health Authority, ex p Coughlan [2001] QB 213 per Lord Woolf MR at [108] and [112]; and R (oao Help Refugees Limited) v SSHD [2018] EWCA Civ 2098 at [90(ii)]).

64. Moreover, TfL's consultation responses (in the Report to the Mayor) failed to answer consultee's comments questioning how the alleged "do nothing" compliance rates for outer London were calculated. As noted above, TfL's responses merely rely on the consultation documentation which only refers to how the forecast compliance rates for 2023 "with the proposed changes" had been calculated. TfL's failure to respond on this issue further undermined the consultation process, as it could not be said that "the product of the consultation had been conscientiously taken into account before finalising" the ULEZ Decision (see Help Refugees Limited at [90(v)]).

²² Contrary to case-law, see R v North and East Devon Health Authority, ex p Coughlan [2001] QB 213 per Lord Woolf MR at [112]

Ground 3: Failure to take into account a material consideration and/or irrationality due to failure to consider the potential for inclusion of non-Londoners in the new scrappage scheme

65. As noted above, concurrent with his decision to extend the ULEZ boundary, the Mayor also committed £110 million under section 121 of the GLAA 1999 to fund a new London Vehicle Scrappage Scheme, in accordance with TfL's proposals for the same "as set out" in the Request for a Mayoral ULEZ Decision. The existence of this proposed scrappage scheme was fundamental to the Mayor's decision, as it formed part of the mitigation package which the Mayor relied on to reduce the expected negative impacts associated with the ULEZ Decision. It formed a key part of the recommendations in the Report to the Mayor and the Request for a Mayoral Decision MD3060.
66. The exact details of that new scrappage scheme are not yet precisely known, but paragraphs 2.27-2.28 of the Request for a Mayoral ULEZ Decision sets out the broad parameters (emphasis added):

"2.27 A new £110 million scrappage scheme will be targeted at supporting people on lower incomes, disabled Londoners, micro businesses and charities to scrap or retrofit their non-compliant vehicles in preparation for the London-wide expansion of the ULEZ. It's proposed eligibility will be limited to Greater London residents and eligible micro businesses and charities based in Greater London.

2.28 The key features of the proposed scheme are as follows:

Scrappage grants for low income and disabled Londoners will be £1,000 for a motorcycle, £2,000 for a car or £5,000 for a wheelchair accessible vehicle.

Successful applicants can opt for a mobility credit package made up of an annual Bus & Tram pass alongside a reduced scrappage payment, which together will exceed the value of the standard scrappage payment. All buses and trams are wheelchair accessible. There will also be an option for two annual Bus & Tram passes alongside a further reduced scrappage payment which may be attractive to those who transport others with their vehicle.

Microbusinesses and charities scrapping vans and minibuses would receive a £5,000 grants for a van, £7,000 for a minibus or, for those replacing their vehicles with an electric alternative, an additional payment of £2,500.

Microbusinesses and charities will now also have the option of a £5,000 grant to retrofit their vehicle to meet the ULEZ standards.

TfL will seek to secure complementary offers from third parties for those who use the scrappage scheme, in order to support and encourage them to consider alternatives to private vehicle ownership.

To reach eligible audiences, TfL will launch a comprehensive multi-channel marketing campaign, including targeting of representative stakeholder groups.

Rigorous accessibility testing on TfL’s scrappage webpages will be done, and alternative options for those not able to complete an online application will be available.”

67. Further details on eligibility criteria have also, now, been provided on TfL’s website.²² This states that:

“The ULEZ car and motorcycle scrappage scheme will be open to applicants who live in one of the 32 London boroughs or the City of London and receive one or more of [a number of listed benefits]”

“The ULEZ van and minibus scrappage scheme...will be open to:

Micro businesses with:

- 10 or fewer employees
- Up to £632k turnover or up to £316k balance sheet total in the preceding and current financial year and
- Companies House registration as an active company, or VAT registered, within the 32 London boroughs or the City of London (...)

68. It is clear from this that the scheme will be limited, in terms of its reach for individuals, to “Londoners” (i.e. only those resident in London). For “micro businesses”, the ULEZ van and minibus scrappage scheme will only be accessible to those that are registered within Greater London.

69. That is echoed at paragraph 6.1.10 of the Report to the Mayor, on the scrappage scheme: *“It is proposed eligibility will initially be limited to Greater London residents and eligible micro businesses and charities based in Greater London.”*

70. This needs to be seen in a context where the Mayor had previously funded £61 million for a series of targeted vehicle scrappage schemes, introduced from February 2019, in order to support Londoners on lower incomes, disabled Londoners, small business and charities who would have found it more difficult to afford to adapt to the (pre 2022 expansion) ULEZ. According to the “ULEZ Scrappage Schemes Evaluation Report” (November 2022) (“Scrappage Report”) produced by TfL, the eligibility requirements, for the previous schemes, were as follows:

- a. **ULEZ Car and motorcycle scrappage scheme:** to be eligible, applicants had to live within the 32 London boroughs or the City of London and receive at least one of a number of means-tested income benefits or non-means-tested disability benefits;²³
- b. **ULEZ van and minibus scrappage scheme:** this scheme extended to micro-businesses with fewer than 10 employees with an annual turnover of not more than £632,000 and/or a balance sheet total of not more than £316,000, plus charities, which were based or operating in London. To be eligible, organisations had to be registered within Greater London or the UK and (for

²³ See here: <https://tfl.gov.uk/modes/driving/ultra-low-emission-zone/scrappage-schemes>.

²⁴ The vehicle also had to be registered by the applicant with the DVLA (or to someone at the same address as the applicant), be owned for more than 12 months before 23 October 2019, be insured, have an up-to-date MOT certificate and road tax, and not meet the ULEZ standards (Scrappage Report, p.10).

some options) needed to show the vehicles had a minimum number of journeys into the Congestion Charge zone (initially 52 journeys, when the scheme launched in February 2019, reducing to 26 journeys, when the scheme was revised in January 2020);²⁴ and,

- c. **LEZ Heavy vehicle scrappage scheme:** to be eligible for this scheme, organisations had to be registered within Greater London, have an operator's licence with an operating centre within Greater London, hold a London Service Permit or prove that their vehicle had made 26 journeys into Greater London during the six months before the start of the heavy vehicle scrappage scheme.²⁵

71. There are two key points to note from all of this:

- a. Firstly, whilst the ULEZ car and motorcycle scrappage schemes imposed a London-residency requirement for applicants, neither the ULEZ van and minibus scrappage scheme nor the LEZ heavy vehicle scrappage scheme were restricted to any London residency (or business registration) requirements. Either of these schemes could apply to drivers who lived and worked outside of Greater London; in other words, the Mayor has previously funded a scrappage scheme that was open to non-Londoners.
- b. Secondly, whilst the car and motorcycle scrappage scheme was restricted to Londoners, this was not restricted to Londoners who lived within the (then existing) ULEZ zone boundary; rather it included applicants living anywhere in Greater London (i.e. any of the 32 London Boroughs). This is notwithstanding that the original ULEZ (introduced on 8 April 2019) only applied to the Congestion Charge zone and then expanded (on 25 October 2021) to include "inner London" (within the boundaries of the North and South Circular roads). In other words, even where the previous scrappage scheme imposed a London-residency requirement, it did so in such a way as to encompass a significant²⁶ "buffer zone" around the ULEZ-area, essentially affording the same mitigation offering to both those who lived within the ULEZ zone and those who lived in areas immediately surrounding it. Notably, the Scrappage Report shows that, for the ULEZ car and motorcycle scheme, a significant proportion of recipients live in postcodes outside the ULEZ boundary, in outer London (Figure 8 records a 59% vs 41% split between those living within and outside of the ULEZ boundary).²⁷

72. It can, therefore, be seen that the more recent ULEZ Decision has effectively shifted the ULEZ boundary to the outer perimeter of London, but has not afforded any equivalent shift to the mitigation area surrounding the newly expanded ULEZ boundary (i.e. the new "buffer zone"). That approach is not only inconsistent with the Mayor's previous approach, but also it ignores the fact that, in terms of social, health and economic interactions between residents and businesses, there is no physical

25 Scrappage report, pp. 8 and 13.

26 Scrappage report, p. 13.

27 The outer London area encompasses a much greater sized area than that composed of inner London (and certainly the congestion charge zone).

28 Scrappage Report pp. 20-21.

barrier aligning with the administrative boundary of Greater London and that there is no (rational) reason to suspect that residents living a mile outside of Greater London would be any less affected by the ULEZ expansion than residents of the outer London boroughs were affected by the previous ULEZ expansion.

73. No reasoning (and certainly no adequate reasoning) is given for why the proposed new scrappage scheme should (for individuals) be restricted to Londoners. No reference is made to this issue in the section headed “New London vehicle scrappage scheme” in the Request for a Mayoral ULEZ Decision (paragraphs 2.24-2.29). In the Report to the Mayor, the response to the issue raised by consultees that the “Scrappage scheme should be available to everyone”, simply said (emphasis added):²⁸

“The Mayor continues to call for a national scrappage scheme, to support those outside of London. The Government has provided scrappage funding in other cities, including Birmingham, Manchester and Portsmouth, but has not extended the same support for London. If a national scheme is not forthcoming, the Mayor has requested specific funding from the Government for a local London scheme. With a finite amount of funding available, a scrappage scheme will be most effective when funds are targeted at those who will be disproportionately negatively impacted and less able to avoid the charge without mitigation or appropriate support. This has been informed by the ULEZ Scheme IIA, stakeholder engagement and consultation responses. See section 6.1.”

74. This does not begin to grapple with the issue. It does not explain why non-Londoners have been excluded (in the manner set out above), unless it is assumed that anybody living outside of London will not be disproportionately negatively impacted. That assumption is not supported by the ULEZ Scheme IIA, which found a “*minor negative*” impact for “[c]ommunity severance impacts for people living in communities adjacent to the London-wide ULEZ boundary who are required to travel into outer London by non-compliant car to access employment, services and facilities. Disproportionate impact on people with low incomes”. This specific finding must also be read alongside the multiple recorded negative impacts on those driving in outer London, regardless of whether those people live in, or outside of, outer London.

75. Finally, we note that notwithstanding the significant amount of public expenditure needed to support the scheme (£110m) and the fact that it constituted a key part of the mitigation provision that was being relied on throughout the Report to the Mayor in response to consultees’ concerns, and as a means to mitigate the negative impacts of the scheme, the consultation process failed to contain any details of the proposed scrappage scheme,²⁹ there was no disclosure to consultees of the details on eligibility requirements or any worked up costings for it. As a result, consultees were unable to scrutinise or comment on its feasibility and whether it reflected a good use of public money.

²⁹ See response E7 on p. 183 of the Report to the Mayor.

³⁰ A complaint raised by multiple stakeholders, see paragraph 5.6.4 of the Report to the Mayor.

76. Moreover, the Mayor was not told why the figure £110m was selected, nor, how long the scheme was expected to last (in other words, how many people and businesses it could feasibly assist).

77. This was all in a context whereby a number of the previous scrappage schemes had to be suspended due to over-demand and “limited funds” (namely both the ULEZ van and minibus scheme and the heavy vehicle scheme³⁰) with the heavy vehicle scrappage scheme being suspended on 14 October 2020, just two weeks after it had launched on 28 September 2020.

Errors of law:

78. In view of all of the above, the Mayor’s ULEZ Decision (including both his decision to approve funding for the proposed new scrappage scheme his decision to extend the ULEZ itself (in relation to which he took account of the proposed new scrappage scheme as mitigation) was unlawful on the basis of any one of the following grounds:

- a. The Mayor failed to consider whether the new scrappage scheme should be extended to include affected non-Londoners situated in a reasonable “buffer zone”, notwithstanding this was an obviously material consideration to the ULEZ Decision at issue, which he failed to take into account; and/or
- b. The Mayor failed to consider how long the new proposed scrappage scheme would be able to last for and how many individuals and businesses it could assist, notwithstanding this was an obviously material consideration to the ULEZ Decision at issue, which he failed to take into account; and/or
- c. The Mayor’s approval of the scrappage scheme, notwithstanding it would not be available to affected non-Londoners (as individuals) and notwithstanding it could (lawfully) be made available to such individuals was irrational (particularly in contrast to the previously imposed scrappage schemes and their remit), and/or inadequately reasoned; and/or
- d. The Mayor failed to give adequate reasons for his decision.
- e. The consultation process was so unfair as to be unlawful, due to the fact that no details or information were given regarding the extent to which the proposed scrappage scheme would apply outside of London, nor on the scrappage scheme’s expected costings and longevity. As a result, consultees were unable to make intelligent, proper and effective responses (see case-law cited to above).

79. Further, or in the alternative, section 141 of the Greater London Authority Act 1999 (“GLAA 1999”) provides that (emphasis added):

31 See Scrappage Report pp. 14 (in relation to the van and minibus scrappage scheme) “Applications for the van scheme were suspended on 28 August 2020 due to high demand and a limited budget. It remained open for eligible charities to scrap minibuses until 24 November 2021, when all scrappage schemes closed” and on p. 9 (in relation to the heavy vehicle scrappage scheme) “Due to high demand and limited funds, the scheme was suspended on 14 October 2020.”

- (1) *The Mayor shall develop and implement policies for the promotion and encouragement of safe, integrated, efficient and economic transport facilities and services to, from and within Greater London.*
- (2) *The powers of the Authority under this Part shall be exercised for the purpose of securing the provision of the transport facilities and services mentioned in subsection (1) above.*
- (3) *The transport facilities and services mentioned in subsection (1) above include facilities and services for pedestrians and are—*
 - (a) *those required to meet the needs of persons living or working in, or visiting, Greater London, and*
 - (b) *those required for the transportation of freight.*

80. The Mayor's ULEZ Decision needed to be exercised for the purpose of securing the provision of the transport facilities and services mentioned in section 141(1) of the (see section 141(2)). In that context, the reference to "efficient and economic transport facilities and services to [and] from" Greater London must include road facilities and services. Moreover, section 141(3) makes clear that these facilities and services include those not only meeting the needs of people living in Greater London, but also people working in or visiting Greater London. Therefore, in the context of complying with the statutory duty in section 141(2), the fact that the proposed new scrappage scheme would not apply to any non-Londoners (as individuals) was an obviously material consideration, which needed to be considered by the Mayor in determining whether, and how, his action would impact on the "efficient and economic transport facilities and services" both "to" and "from" Greater London, including those facilities and services required to meet the needs of persons working in or visiting Greater London.

Ground 4: Failure to have regard to an obviously material consideration and/or irrationality due to the failure to carry out any cost-benefit analysis and/or have regard to the Green Book methodology

81. Under the heading "financial comments" in the Request for a Mayoral ULEZ Decision, the total implementation costs and expected net operating surplus is provided "for information only"³¹, as follows:

“5.2. The total implementation cost based on current assumptions is estimated at £159.5m for expansion of the ULEZ. Separately, a £110m scrappage scheme is proposed as a key mitigation. It is proposed that the GLA provides TfL with funding and finance to support the implementation of the scheme, which includes:

- *financing for the expansion of the ULEZ (£159.5m)*
- *grant funding for the scrappage grant and the implementation of the scrappage scheme (£110m)*

5.3. The expansion is expected to generate an incremental net operating surplus of c.£200 million with a range +/- c.50 per cent in the first full year of operation.”

32 At 5.4, continuing to state that these figures "...serve as context to the forecast operation of the London-wide ULEZ and scrappage schemes rather than being a relevant consideration for the Mayor when deciding whether or not to confirm the Scheme Proposals (...)"

82. However, no details have been given (whether in the consultation materials, or otherwise) as to how these estimates were calculated. Nor, was there any attempt to monetise all of the competing benefits and impacts of the scheme and to assess this through any kind of cost-benefit analysis. The ULEZ Scheme IIA appears to have sought to monetise some of the health benefits, but certainly no comprehensive analysis was undertaken such that the full “costs” and “benefits” could be compared.

83. HM Treasury’s “The Green Book: Central Government Guidance on Appraisal and Evaluation” (March 2022) (the “**Green Book**”) provides clear guidance, from central government, to all public decision-makers, as to how to appraise policies programmes and projects. As stated at 1.1 of the Green Book:

“The Green Book is guidance issued by HM Treasury on how to appraise policies, programmes and projects. It also provides guidance on the design and use of monitoring and evaluation before, during and after implementation. Appraisal of alternative policy options is an inseparable part of detailed policy development and design. This guidance concerns the provision of objective advice by public servants to decision makers, which in central government means advice to ministers. In arms-length public organisations the decision makers may be appointed board members, and where local authorities are using the method, elected council members. The guidance is for all public servants concerned with proposals for the use of public resources, not just for analysts.”

84. Whilst the Green Book is guidance, and must, of course, be applied proportionality (see the Green Book at paragraph 1.2), it clearly states, as paragraph 1.5, that:

“Where the use of significant new and existing public resources is required the proportionate employment of the Green book and its supplementary business case guidance is mandatory.”

85. There can be no question that the ULEZ Decision was a major new policy decision, requiring the use of “significant new” public money. It required an initial investment of over £260m. It was a large-scale decision, which applied a new road-based charging scheme to the entirety of outer London (an area of around 480 square miles, with a population of over 4.9m) with obvious impacts on those living in adjacent boroughs non-London boroughs as well.

86. There is no evidence, nor indication, that the Mayor ever considered the Green Book, and whether to apply its methodology to the ULEZ Decision.

Errors of law:

87. In the context of all of this, and in view of the significant expenditure of public resources at stake, the Mayor’s failure to even consider whether to apply the Green Book methodology (and/or failure to consider the Green Book at all) in relation to the ULEZ Decision was unlawful and/or irrational.

88. Further, or in the alternative, in light of the nature of the ULEZ Decision, the Mayor's failure to carry out any kind of monetised cost-benefit analysis (at least any evidenced one) was irrational.

(8) The details of the action that the defendant is expected to take

89. In light of the fundamental unlawfulness of the ULEZ Decision – based on the grounds set out above – the Defendant should consent to judgment that the ULEZ Decision be quashed.

(9) ADR proposals

90. Given the nature of the issues, the Claimants do not consider that the claim is readily amenable to ADR. Not least, the Mayor is now *functus officio* with respect to the ULEZ Decision.

(10) The details of any information sought

91. The Claimant request that the following be provided by way of disclosure:

- (i) A copy of the ULEZ Extension Order (“Greater London Low Emission Zone Charging (Variation and Transitional Provisions) Order 2022”) as finally made and signed on, or around, 21 November 2022.
- (ii) Copies of any information and documents (including any relevant correspondence, meeting notes, drafts, reports, memorandums and telephone conversation notes) considering whether the ULEZ Extension Order should be made as a variation order (as detailed above) or as a new scheme order.
- (iii) Copies of any information and documents (including any relevant correspondence, meeting notes, drafts, reports, memorandums and telephone conversation notes) concerning how the expected outer London ULEZ-compliance rates (most notably, the “outer London, 2023 reference case” figure) was calculated. This should include information on any underlying assumptions used.
- (iv) Copies of any information and documents (including any relevant correspondence, meeting notes, drafts, reports, memorandums and telephone conversation notes) concerning how TfL and/or the Mayor assessed the proposed new scrappage scheme (as identified above), including any assessments as to the funding requirements for that scheme and how long those funds are expected to last, and how (if at all) the scheme should be open to non-Londoners.
- (v) Copies of any information and documents (including any relevant correspondence, meeting notes, drafts, reports, memorandums and telephone conversation notes) considering any cost-benefit analysis of the ULEZ Decision and/or considering whether to follow the Green Book methodology

and/or considering any alternative schemes, their comparative merits and the reasons why they were rejected.

(11) The details of any documents that are considered relevant and necessary

92. See above.

(12) The address for reply and service of court documents

93. Mr Glen Egan, Legal Services 3E/04, London Borough of Hillingdon, Civic Centre, Uxbridge, Middlesex, UB8 1UW. DX45101 Uxbridge. Ref 3E/04/GE/58301/021379

(13) Proposed reply date

94. We request that the Defendant replies to this letter no later than 4pm on 27 January 2023.

Yours sincerely,



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