# Transport for London

27 January 2023

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

Dear Mr Egan

**Possible challenge to the London-wide expansion of the ULEZ and approval of a grant for vehicle scrappage**

1 Thank you for your letter of 12 January 2023 pursuant to the Judicial Review Pre-Action Protocol ("**PAP Letter**") on behalf of the London Boroughs of Hillingdon, Harrow, Bexley and Bromley ("**Proposed Claimants**"). This letter responds for the Mayor, as proposed Defendant, and Transport for London ("**TfL**"), as proposed Interested Party.

2 The PAP Letter challenges the lawfulness of the Mayor's decisions to confirm with modifications TfL's proposal to extend the Ultra Low Emission Zone ("**ULEZ**") London-wide (the "**Extension Decision**")[1] and to approve the making of a grant of £110 million to TfL under s 121 of the Greater London Authority Act 1999 (the "**GLA Act**") for a vehicle scrappage scheme (the "**Grant Decision**", together the "**Decisions**"). We refer to the challenged amendments to the Greater London Low Emission Zone Charging Order 2006 (the "**Emission Zone Order**") as the "**Amendments**".

3 None of the grounds advanced establish that the Decisions were unlawful, or that this is arguable. The Mayor had power to take the Decisions and make the relevant instruments, this did not frustrate any statutory purpose, the Mayor did not fail to take account of any mandatory relevant consideration, the Decisions are properly reasoned and rational, and the consultation was fair, with all responses conscientiously considered. We explain the reasons for this, and our responses to your arguments, below.

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1 Effected by the Greater London Low Emission Zone Charging (Variation and Transitional Provisions) Order 2022 — Instrument of Confirmation (the "**IoC**"), which confirmed, with modifications, the Greater London Low Emission Zone Charging (Variation and Transitional Provisions) Order 2022 (the "**Variation Order**"). The Variation Order and the IoC amend the Emission Zone Order, which contains the London Emission Zones Charging Scheme.

4 As a general point, many of the arguments presented are, in substance, disagreements with the conclusions the Mayor and TfL reached or with their assessments of various matters, or seeming attempts to misstate TfL's analysis, rather than matters that establish arguable errors of law. It is for the Mayor as a democratically accountable decision-maker, with assistance and analysis from TfL, an expert decision-maker, to decide on the merits. Political disputes between London boroughs and the Greater London Authority ("**GLA**") about air pollution in London are not appropriately decided by the Courts. As you know, judicial review enables review by the courts of the legality, but not the merits, of decisions. This is a point that your proposed grounds incorrectly ignore.

## A BACKGROUND TO THE DECISIONS

5 As you are aware, the Decisions pursue important objectives of benefit to all Londoners, including those who live and work in Hillingdon, Harrow, Bexley and Bromley.

6 The Decisions are forecast, as explained in *Request for Mayoral Decision — MD3060 — London-wide Ultra Low Emission Zone (ULEZ) Scheme* of 25 November 2022 ("**MD3060**"), meaningfully to **reduce harmful emissions** as their primary objective, in particular nitrogen oxides ($NO_x$) and small particles that are harmful to breathe ($PM_{2.5}$ and $PM_{10}$), to **improve London's air quality**, removing toxic pollution and getting London's air quality closer to UK legal limits (in some areas) and World Health Organization ("**WHO**") guideline levels. In addition, the Decisions will achieve subsidiary benefits of (i) **reducing carbon dioxide ($CO_2$) emissions**, to assist in **tackling the climate crisis**, and (ii) **reducing the number of vehicles on London's roads** (and encouraging mode switch to sustainable means of transport), **reducing traffic congestion**.

7 In forecasting the expected effects of the Decisions, including expected levels of compliance with ULEZ emissions standards ("**compliance**") with and without the Decisions (so as to estimate their impact), TfL relied on its extensive experience, institutional knowledge, previous work, and models and data relating to travel in London and the effects of road-user charging schemes (including those based on emissions). The Mayor relied on TfL's analysis. Assessments such as these are well within the Mayor's and TfL's institutional competence, and the courts are reluctant to interfere with them.[2]

8 For convenience, a chronology of relevant events/documents is at **Annex A**.

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[2] See generally *R (Kind) v Secretary of State for the Home Department* [2021] EWHC 710 (Admin) [83] (Jay J, Bean LJ agreeing). See, specifically in relation to TfL and the Mayor (in the analogous context of rights adjudication), *R (Independent Workers Union of Great Britain) v Mayor of London* [70]–[72], [82] (Simler LJ, Vos C and Singh LJ agreeing); *R (Uber London Ltd) v Transport for London* [2018] EWCA Civ 1213, [2018] RTR 33 [36]–[39], [66]–[70] (Gloster LJ, Patten and Floyd LJJ agreeing).

## B ALLEGED GROUND 1

### (1) Alleged lack of vires or frustration of statutory purpose

9 Ground 1 contends that the Amendments could not be made under Sched 23 to the GLA Act as a variation (ie in a variation order) but, instead, had to be made as "*a new charging order*": PAP Letter ¶35(a). The contention, and the suggested bases for it, are incorrect. They do not reflect the GLA Act, in particular Sched 23, or the Emission Zone Order.

*(a) Key points that emerge from the statutory scheme*

10 The PAP Letter has evidently been drafted by people familiar with the statutory scheme under GLA Act s 295 and Sched 23. Nonetheless, the PAP Letter largely ignores the relevant provisions, which we have set out in **Annex B**. Those provisions establish that:

10.1 TfL and other charging authorities have discretion as to the definition of a "*charging scheme*", including the nature of/basis for the charges imposed, the definition of the "*charging area*", and the roads within the charging area in respect of which charges apply: see especially s 295 and Sched 23 paras 8–10.

10.2 A charging scheme may be made only if it appears desirable or expedient for the purpose of directly or indirectly facilitating the achievement of the policies and proposals in the Mayor's Transport Strategy ("**MTS**") (Sched 23 para 3) and, in addition, a charging scheme must be in conformity with the MTS (Sched 23 para 5).

10.3 Critically for present purposes, a charging scheme has both (i) an area (the "*charging area*") and (ii) certain roads within that charging area in respect of which charges are imposed for the keeping or use of vehicles: Sched 23 paras 8(a), (c) and 9(1)(a)–(b). The PAP Letter incorrectly ignores these provisions and their application in the Emission Zone Order.

10.4 Further, Sched 23 provides expressly in paragraphs 8–9 and 10(4) that a charging scheme may make different provision in respect of different roads within its charging area, as well as different provision for different events (ie different kinds of charges) and/or various kinds of vehicles. This is again critical but omitted from the PAP Letter.

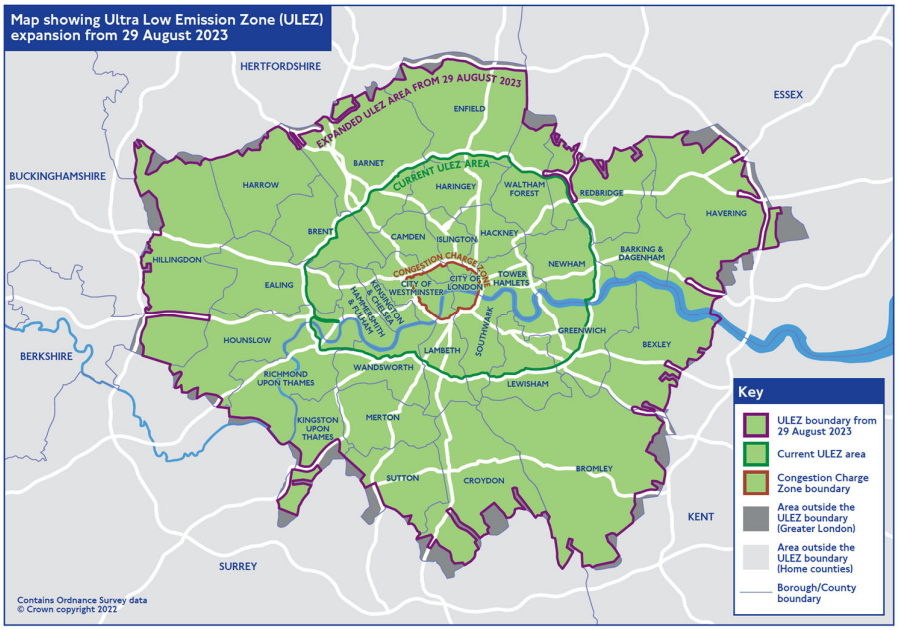
10.5 The power, conferred by Sched 23 to make a charging scheme, includes the power to vary or revoke a charging scheme: Sched 23 para 38. Read with paragraphs 8, 9 and 10, Sched 23 para 38 expressly confers power to amend a scheme, for example, by changing the "charging area" or the roads within it in respect of which charges are imposed. That is what the Amendments do.

*(b) The Emission Zone Order*

11 The Emission Zone Order implements the provisions of Sched 23 referred to immediately above. Article 2 gives effect to its Schedule. The Schedule to that Order contains a charging scheme that imposes charges (subject to various exemptions) on:

11.1 certain heavy vehicles that do not meet specified emissions standards, where they are used in what was the "Londonwide Zone" and will when the relevant Amendments commence become the "Low Emission Zone" ("**LEZ**"), which covers most, but not all, of Greater London, and which has not changed with the Amendments (Schedule Article 7(1)); and

11.2 (mostly) other vehicles[3] with combustion engines that do not meet specified emissions standards, where they are used in what was called the "Inner Zone" (the zone bounded by the North and South Circular Roads) and will become the "Ultra Low Emission Zone" (ULEZ), whose boundary will correspond to the LEZ, as shown below (Schedule Article 7(2)).




12 More specifically, with references below being to Articles of the Schedule to the Emission Zone Order:

12.1 Article 2 headed "*Charging area*" provides: "*Greater London is hereby designated as the area to which this Scheme applies.*" Article 1(d) defines "*charging area*" as "*the area designated by article 2*". The Amendments do not change this.

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3 Certain heavy minibuses/vans (Class $M_2$ and Class $N_1$ sub-classes (ii) and (iii) vehicles) are subject to both LEZ and ULEZ emissions standards and charges.

12.2 Article 1(r)–(s) and (u) previously defined "*Londonwide Zone*" (now the "*Low Emission Zone*" ie LEZ) as the area shaded within certain boundaries on plans specified in Annex A, and Article 1(m)–(o) previously defined the "*Inner Zone*" (now the "*Ultra Low Emission Zone*" ie ULEZ) in a similar fashion. The Amendments change the boundaries of what was the Inner Zone, now the ULEZ, so they are the same as what was the Londonwide Zone, now the LEZ. This means that, under Article 3 (see below), the roads in respect of which charges are imposed are, in the case of the ULEZ (Article 7(2)), all roads in that area.

12.3 Article 3 provides that charges were imposed in respect of designated roads, designates the "*Londonwide Zone roads*" as "*all roads within the Londonwide Zone*" (after amendment, the LEZ) and designated the "*Inner Zone roads*" as "*all roads within the Inner Zone*" (after amendment, "*Inner Zone*" is replaced with the ULEZ and expanded, as explained).

12.4 Articles 4–6 define a "*relevant vehicle*" as a vehicle of a specified type[4] and class[5] that is neither a "*compliant vehicle*", that is, one that meets the relevant emissions standards and is registered (see Article 4(5)–(6)), nor a "*non-chargeable vehicle*", that is, a vehicle that falls within certain exemptions (see Article 5).

12.5 Article 7 then imposes charges on relevant vehicles:

(a) Article 7(1) imposes a charge on a relevant vehicle in certain classes (which correspond to heavier vehicles)[6] for each charging day it is used on one or more LEZ roads.

(b) Article 7(2) imposes a charge on a relevant vehicle in certain (mostly) other classes (generally lighter vehicles)[7] for each charging day it is used on one or more ULEZ roads.

13 There remains, in some areas, an area between the boundary of the LEZ/ULEZ and that of Greater London, as the map above shows.

*(c) Response to the arguments advanced in support of Ground 1*

14 The first argument as to why the Amendments could not be made by a variation order appears to be that the Amendments were themselves a

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4 Broadly, vehicles with combustion engines: see Articles 4(3)–(4).

5 Article 4(2) specifies classes of vehicle. The classes are defined in Schedule Annex 2 para 4.

6 Classes $M_2$, $M_3$, $N_1$ sub-classes (ii) and (iii), $N_2$ or $N_3$, which are defined in Annex 2 para 4.

7 Class L (motorcycles), Class L (compression ignition tricycles and quadricycles), Class L (positive ignition tricycles and quadricycles), Class $M_1$, Class $M_2$ or Class $N_1$ sub-classes (i), (ii) and (iii), which are defined in Annex 2 para 4.

"charging scheme" within the meaning of Sched 23: PAP Letter ¶¶29–30. The argument, and its legal significance, are unclear, but insofar as it can be understood it is plainly wrong:

14.1 As explained, TfL has a discretion to define a charging scheme under the GLA Act, in particular Sched 23. Nothing in Sched 23 or the Act limits TfL's power to make a charging scheme in the form of the Emission Zone Order, prior to or with the Amendments. The PAP Letter does not suggest otherwise.

14.2 Nothing in Sched 23 or the GLA Act elsewhere suggests that a variation to the Emission Zone Order in the form of the Amendments cannot be made. On the contrary, Sched 23 para 38 expressly provides for variation: "*The power to make a charging scheme includes power to vary or revoke such a scheme …*". Read with paras 8–9, which expressly provide that charging authority may determine the "*charging area*" of a charging scheme and the roads within the charging area to which charges apply, and para 10(4)(c), which expressly permits one "*charging scheme*" to impose "*different charges (which may be no charge) for … (c) different parts of a charging area*", it is clear that para 38 confers power to make the Amendments. If the Parliamentary intention were to limit the kinds of variation that could be made, Sched 23 — in particular para 38 — would say so. But it says the opposite.

14.3 If the PAP Letter is contending that the Emission Zone Order with (or without) the Amendments constitutes a "charging scheme" within the meaning of the Act, that is correct. So to observe is to admit that the Emission Zone Order, with (or without) the Amendments, falls (or fell) within the power under s 295 and Sched 23.

14.4 If and insofar as the PAP Letter contends that, if there were not a pre-existing charging scheme, then provisions equivalent to the Amendments could (in and of themselves) be enacted as a standalone charging scheme, that is irrelevant, both in fact — because there was an existing charging scheme — and in law — because nothing in Sched 23 or otherwise in the GLA Act expressly or impliedly prevents a variation in that circumstance, as mentioned.[8]

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[8] The further suggestion (PAP Letter ¶30) that the Mayor accepted in MD3047 that the Amendments constitute a "charging scheme" that could not be made by variation of the Emission Zone Order (if alleged) is obviously incorrect. The only relevant statements in MD3047 ¶¶1.20–1.21 and 6.7–6.8, the passages to which you refer (PAP Letter footnote 6), appear to be those at ¶¶1.20 and 6.7. Nothing in those passages (or anywhere else in MD3047) suggests a new, separate charging scheme order is required. Moreover, the second passage (¶6.7) refers to the proposed ULEZ expansion, which at all times was proposed to be effected by a variation to the Emission Zone Order: see, eg, the Draft Variation Order for ULEZ expansion published with and mentioned in the Consultation Paper at pp 26, 51.

15 The second argument is that Sched 23 impliedly provides that a charging scheme that applies to "*an entirely new geographical area*", or that may require new signage, may not be made by a variation, due to the parenthetical in para 38 (PAP Letter ¶¶25–28). This is also plainly wrong and does not establish any arguable error of law:

15.1 The statement in PAP Letter ¶¶28–29 that the Amendments introduce a new charge to an entirely new geographical area is not a complete description:

(a) The "charging area" for the charging scheme as defined in Article 3 remains Greater London (see paragraph 12.1 above);

(b) The charge under Article 7(1) has at all times been imposed on certain vehicles used on roads in the LEZ; and

(c) The charge imposed by Article 7(2) is not new, and continues to apply (at the previous level of £12.50 per charging day: Article 9(2)) to certain vehicles used on roads in what was previously the Inner Zone.

It is however correct that, under the Amendments, the Article 7(2) charge will, from 29 August 2023, apply for the first time in respect of certain vehicles used on roads in the balance of the ULEZ that was not previously part of the Inner Zone.

15.2 The construction for which you contend leads to absurd results. The premise appears to be that there is no power to place signs (or enter land to do so) in relation to a charging scheme as <u>amended</u>. Parliament patently did not intend this: an amended charging scheme requires signs just as an un-amended scheme does. Similarly, on your construction, it is impossible to expand the roads to which a charging scheme applies by even a single road by a variation: instead, a whole new scheme must be made. Parliament did not intend such an impractical, indeed bizarre, outcome.

15.3 The only basis for the argument, the parenthetical in Sched 23 para 38, does not assist the Proposed Claimants.[9] This provides that paras 4(3)(f) and 4(6) do not apply where para 4 applies to the variation or revocation of a charging scheme. The conclusion you draw — that this somehow limits the power to vary — does not follow from, and is undermined by, the ordinary meaning, context and purpose of para 38 and Sched 23:

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9 "*The power to make a charging scheme includes power to vary or revoke such a scheme and paragraph 4 above <u>(apart from sub-paragraphs (3)(f) and (6))</u> applies in relation to the variation or revocation of a charging scheme as to the making of a charging scheme.*" [emphasis added]

(a) Nothing in the text of para 38, or otherwise in Sched 23 or the GLA Act, suggests that the roads to which a charge applies may not be expanded by a variation. And there is express contrary provision in Sched 23, as explained in paragraph 14.2 above.

(b) Unlike some procedural provisions in para 4, paras 4(3)(f) and 4(6) are freestanding powers, whose terms expressly assume that a charging scheme order has already been made and is in effect:

(i) Paragraph 4(3)(f) refers to the GLA requiring another authority "*by whom any such order is made*" to place and maintain traffic signs "*in connection with that order*".

(ii) Paragraph 4(6) provides that a "*charging authority*" (defined in para 1(1) as one that has made a charging scheme) may enter land and exercise other necessary powers to place and maintain traffic signs "*in connection with the charging scheme*".

These powers subsist once a charging scheme has been made by order and, where there is a variation, after that variation has been made by order in relation to the charging scheme as amended (because there continues to be a charging scheme).

(c) The parenthetical in Sched 23 para 38 simply recognises that it is not necessary to apply para 4(3)(f) and 4(6) to the making of a variation or revocation, just as those powers do not apply until a charging scheme order has been made in the first place (that is, they do not apply to the making of a charging scheme). They apply once the scheme, or variation, is made. Nothing in those paragraphs expressly suggests any limitation to the power to vary. Nor does the parenthetical reference to them in para 38 do so impliedly, given their meaning and purpose.

(d) The legislative history of Sched 23 paras 4 and 38 confirms this:

(i) Prior to amendment by s 199 and Sched 13 of the Transport Act 2000 (which took effect in February 2001), GLA Act Sched 23 para 4 did not contain sub-paras (4)–(6).[10] Nor did GLA Act Sched 23 para 38 contain the parenthetical, instead providing: "*The power to make a charging scheme includes power, exercisable in the same manner, and subject to the same conditions and limitations, to vary or revoke such a scheme.*"

(ii) Sched 23 para 38 as enacted provided no foothold for your argument. The argument must therefore be that the

[10] These were inserted by Transport Act 2000 s 199 and Sched 13 para 3(4).

amendments to paras 4 and 38 by the Transport Act 2000 limit the power to vary a charging scheme. However, that the para 4(6) power to enter land was inserted when the parenthetical to para 38 was inserted indicates that those provisions are linked,[11] which tends to confirm the construction above.

16 PAP Letter ¶35(a) further contends that exercising the power to vary was "*a frustration of the statutory scheme*". But apart from the argument on Sched 23 para 19 (which, as explained below, is incorrect), the PAP Letter fails to identify anything frustrated, in the *Padfield* sense, by exercise of the power to vary. Exercising the express power to vary a charging scheme does not frustrate the purpose of Sched 23 or the GLA Act.

**(2) Alleged non-compliance with Sched 23 para 19 or frustration of statutory purpose**

17 Ground 1 further contends that the Mayor failed to comply with Sched 23 para 19 or frustrated its statutory purpose by varying the charging scheme where para 19 would have applied to a new, separate charging scheme order: PAP Letter ¶35(b). The basis for this contention appears to be that para 19 bites on "*any new charging scheme, whether or not it has been brought about through a variation order*" and is an important safeguard for accountability of revenues: PAP Letter ¶32. These arguments are again incorrect, once more unarguably so. That is obvious when one looks at what para 19 says.

18 Paragraph 19 of Sched 23 provides:

> "(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
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> (b) ends with the tenth financial year that commences on or after that date.

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[11] Section 199 of the Transport Act 2000 states that the amendments in Sched 13 are made in consequence of Part III of that Act, which is the road-user charging and workplace parking levy regime applicable outside Greater London. In that Part, road signs are addressed in s 177, separately from the powers to make and vary orders in ss 168 and 170. The parenthetical in GLA Act Sched 23 para 38 thus ensures that, consistently with Transport Act 2000 Part III, powers to place signage (and enter land to do so) do not apply to the making or variation of a scheme, but once it has been made or varied. The power under Part III extends to joint schemes between London and non-London traffic authorities (ss 163(3)(c), 166), without prejudice to the powers under GLA Act Sched 23 (Transport Act 2000 s 163(6)). It is accordingly most unlikely that, as your argument implies, there is a difference between the power to vary under Transport Act 2000 s 168(2) (which is not relevantly qualified) and under GLA Act Sched 23 para 38.

(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."

19 Paragraph 19 states expressly that the requirement for a 10-year plan applies to "*the opening ten year period*", in turn expressly defined in para 19(2) to mean the period for the first ten years for which a charging scheme is in force. That plan will thus apply to any variation of a charging scheme within the scheme's "opening ten year period". But after the "opening ten year period", this provision is spent. As the Emission Zone Order was made in 2006, para 19 no longer has any application to it, including as varied.

20 The PAP Letter argues that the requirement in para 19 applies to require a (new or revised) 10-year plan as from the date of any and, seemingly, every amendment to a charging scheme. But the terms of para 19, in particular the definition of "opening ten year period" — which PAP Letter ¶32 omits to mention — show this to be wrong.

21 Nor did it frustrate the statutory purpose in the *Padfield* sense to proceed by variation. The purpose of para 19, in Sched 23, is to be ascertained from its terms and context.[12] Its terms make clear that it is concerned with the opening 10 years of a charging scheme and not the period thereafter. Moreover, the context includes (i) the discretion conferred on TfL and the Mayor (and other authorities) to formulate a charging scheme, including to impose different charges in different parts of a charging area (Sched 23 para 10(4)(c)) and (ii) the possibility of amendment at any stage (Sched 23 para 38). As explained above, TfL and the Mayor were able to proceed by the variations described in paragraphs 12 and 15 above because the Emission Zone Order was extant. It does not frustrate the purpose of para 19 or Sched 23 (or the GLA Act otherwise) to amend a charging scheme, simply because, on its own terms, para 19 no longer applies to that scheme.

22 Further and in any case, even if (*quad non*) the arguments above are incorrect, this would not lead to the quashing of the Variation Order and IoC, but merely to a mandatory order that TfL and the Mayor incorporate a new 10-year plan into the Emission Zone Order. They do not assist the Proposed Claimants in challenging the ULEZ expansion.[13]

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12 See, eg, *Peninsular & Oriental Steam Navigation Co v Revenue and Customs Commissioners* [2016] EWCA Civ 468, [2017] 1 WLR 4489 [60] (Arden LJ, Jackson and Kitchin LJJ agreeing); *R (Boskovic) v Chief Constable of Staffordshire Police* [2019] EWCA Civ 676, [2019] ICR 1315 [58] (Baker LJ, Nicola Davies LJ agreeing): "*… it is safer to discern the policy underpinning legislation from the language used rather than construe the language by reference to a broad judicial construction of the overall policy of the statutory scheme*".

13 The PAP Letter in footnote 8 states that the Secretary of State's consent to the Amendments was not sought under Sched 23 para 9(7) in relation to trunk roads. That is correct, but does not disclose an error of law. The Emission Zone Order, the relevant

## C ALLEGED GROUND 2

23 Ground 2 (PAP Letter ¶¶36–62) primarily makes various complaints about the expected compliance rates in Outer London boroughs and TfL's analysis and forecasts of this. While these are said to amount to errors of law, in substance they are either (i) misunderstandings (or misstatements) of the consultation documents and the Report to the Mayor ("**Report to Mayor**")[14] or (ii) disagreements with TfL's and the Mayor's forecasts based on their expertise, knowledge and experience, matters within their institutional competence.[15]

24 Ground 2 (PAP Letter ¶¶63–64) also makes a complaint about the information provided in the consultation and suggests that responses on a particular point have not been conscientiously considered. These allegations are also without basis and not arguable.

25 The "*[f]urther relevant facts*" in PAP Letter ¶¶36–47 are mostly tendentious and incorrect argument. However, as these appear to be the foundation for the alleged errors of law (and as you have asked), we have addressed them in detail in **Annex C**. This includes a full explanation of the process that TfL in fact undertook in relation to forecasting compliance rates without (the reference case) and with the ULEZ expansion. Annex C should accordingly be read with (and before) our responses to the alleged errors of law immediately below.

### (1) Alleged errors of law

26 It follows from the explanations in Annex C that the Mayor and TfL did not make any of the errors of law alleged in PAP Letter ¶54 — these are not properly arguable:

26.1 The suggestion in PAP Letter ¶54(a) that the Mayor failed to have regard to the forecast ULEZ compliance rates in Outer London for the reference case (ie without the expanded ULEZ) is untenable, not least

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charging scheme, has at all times imposed charges in respect of trunk roads throughout the entirety of the LEZ/ULEZ, and the Secretary of State's consent was given to the imposition of these charges when the Emission Zone Order was made: see its second recital. When the Emission Zone Order was first made in 2006, all roads within the LEZ were designated as roads in respect of which charges were imposed under what was Article 3(2). This boundary has not changed. The Secretary of State's consent was not sought for the introduction of the ULEZ in 2015, nor for its expansion in 2021. Further and in any case, even if the Secretary of State's consent were required (it is not), the failure to obtain it would result only in the Amendments ceasing to apply to trunk roads, which would not render the expanded ULEZ inoperable.

14 TfL, *Report to 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).

15 See footnote 2 above.

in light of Table 4-1 of the "**ULEZ Scheme IIA**",[16] to which you refer, which sets out both Outer London and London-wide reference case compliance rates, for cars, PHVs and LGVs. That is confirmed by TfL's analysis in the "**Consultation Paper**"[17] and Report to Mayor summarised in Annex C paragraphs C2–C3.

26.2 The suggestion in PAP Letter ¶54(b) that the Mayor proceeded on the basis of an error of fact (or was materially misled) in adopting the 91% reference case rate for cars in Outer London is incorrect, as explained in detail in Annex C paragraphs C3 and C5–C8. There is no error of fact as alleged.

26.3 The suggestion in PAP Letter ¶54(c) that it was irrational to adopt the 91% reference case compliance rate for cars in Outer London, because this was unsupported by evidence or had no rational connection to that geographical area, is incorrect. This appears to stem from your allegations that TfL illogically adopted, as the Outer London reference case compliance rate for cars, the compliance rate for all vehicles (not just cars) for Inner London one month after the 2021 ULEZ expansion. TfL and the Mayor did no such thing. The Outer London reference case compliance rate was forecast on the basis of observed ANPR data relating to Outer London cross-referenced to Driver and Vehicle Licensing Agency ("**DVLA**") vehicle record information and using certain other information (and not the bizarre assumption you suggest), as Annex C paragraphs C3 and C8 explain.

26.4 The suggestions in PAP Letter ¶¶54(c)–(d) that the Decisions were inadequately reasoned on the reference case compliance assumption are incorrect: Annex C paragraph C3 summarises the consultation documents and Report to Mayor, which give a full explanation of the basis and data used to forecast the reference case rate. In any event, that contention is not legally relevant. Because the Mayor and TfL were making a measure of general application, there is no duty to give reasons,[18] although in fact the reasons for the Decisions are well documented and full.

27 Similarly, the contentions in PAP Letter ¶¶55–59 that TfL's reference case assumes that the expanded ULEZ had already been approved, and thus

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16 Jacobs, *London-wide ULEZ Integrated Impact Assessment* (17 May 2022).

17 TfL, *Our proposals to help improve air quality, tackle the climate emergency and reduce congestion by expanding the ULEZ London-wide and other measures* (May 2022), the document to which you refer as the "Proposals Report".

18 See, eg, Lord Woolf et al, *De Smith's Judicial Review* (8th ed, 2018) [8-040]–[8-042], Craig, *Administrative Law* (7th ed, 2012) 15-016 ("*the right to a reasoned decision does not apply where the order is of a legislative character*"); *R (BAPIO Action Ltd) v Secretary of State for the Home Department* [2007] EWHC 199 (Admin) [46]–[47] (Stanley Burnton J) (no duty of fairness where order made is of a legislative character). Any failure to give reasons does not in and of itself give rise to an error of law.

factors in the effect of the announcement of the expanded ULEZ scheme, are incorrect and unarguable:

27.1 This argument is based expressly on the contentions in PAP Letter ¶47 (see PAP Letter ¶55), but they are incorrect for the reasons in Annex C paragraphs C7–C8.

27.2 Moreover, the contention in PAP Letter ¶59 that the 91% reference case figure incorrectly assumes compliance with the expanded ULEZ is: (i) inconsistent with the clear explanations provided in the ULEZ Scheme IIA where that figure is given (see Annex C paragraph C3.4) and the explanation of TfL's forecast methodology and data in the Consultation Paper (see Annex C paragraphs C3.1–C3.3); and (ii) not supported by your quotations from the ULEZ Scheme IIA in PAP Letter ¶59,[19] which each (in the text you emphasise) refer, on any fair reading, to reference case figures forecast <u>for the time when</u> the expanded ULEZ is proposed to be introduced, and not <u>with</u> (assuming) the proposed changes — figures forecast for that time obviously being the appropriate figures to compare to forecast compliance rates with an expanded ULEZ, to ascertain its effect.

28 The contention at PAP Letter ¶¶60–61 that the 85% compliance figure mentioned in the Report to Mayor supports your contention that the reference case wrongly assumes announcement of the expanded ULEZ is also incorrect and not arguable:

28.1 First, the 85% overall figure is from ANPR data cross-referenced to DVLA data for May 2022, which was the last published figure when the Report to Mayor was completed, as explained in Annex C paragraph C3.6.

28.2 Secondly, 85% is an overall figure — the figure for Outer London cars only excluding PHVs (like the 91% forecast to which you refer) was approximately 86–87 per cent for May 2022, as explained in Annex C paragraph C3.6.

29 The Mayor and TfL did not arguably make any errors of law alleged in PAP Letter ¶62. The 91% reference case figure for cars for Outer London does indeed reflect a "do nothing" forecast and does not factor in the proposed ULEZ expansion, as the consultation documents explained, clearly and coherently.

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[19] Namely, ULEZ Scheme IIA pp 4, 28 and 86. The first of these passages again directly contradicts your contention, as it correctly explains (emphasis added) that: "*The assessment has been informed by strategic traffic modelling undertaken by TfL to compare the situation in 2023 (the proposed year of implementation) <u>with and without the Proposed Scheme</u>.*"

**(2) Consultation complaint**

30 The suggestion at PAP Letter ¶63 that the consultation documents did not provide sufficient information about "*the question of expected compliance rates in Outer London (and, thereby, the expected impacts of the proposed scheme)*" is incorrect and unarguable:

30.1 As PAP Letter ¶37 itself points out, the ULEZ Scheme IIA stated expressly TfL's forecast for the reference case Outer London compliance rate for cars, PHVs and LGVs. Consultees knew, and could comment on, TfL's actual assumptions. Indeed, a number in fact did so, as PAP Letter ¶64 itself points out.

30.2 Moreover, as set out in Annex C paragraph C3, the consultation documents, in particular Consultation Paper Appendix B, provided a full (and readily intelligible) explanation of how TfL had forecast these rates, including data used.

31 PAP Letter ¶64 claims that consultees' "*comments questioning how the alleged 'do nothing' compliance rates for outer London were calculated*" were not conscientiously considered before the Mayor took the Decisions.[20] The suggestion that these or any other consultation responses were not conscientiously considered is incorrect and unarguable.

32 All consultation responses were conscientiously considered, as explained in MD3060 ¶¶4.12, 4.14, 4.40 and Report to Mayor §4,[21] and as Report to Mayor §5 and the AECOM Report[22] make evident. Both the Report to Mayor and AECOM Report (and its codeframe) were before the Mayor when he confirmed the Variation Order. Moreover, MD3060 ¶¶4.5 and 4.7–4.16 expressly drew attention to the consultation submissions and TfL's responses in Report to Mayor §5 (see MD3060 ¶¶4.11, 4.16 and 7.1).

33 TfL's direct responses in Report to Mayor to the comments you appear to rely on demonstrate that those matters were conscientiously considered, contrary to your case:

33.1 Report to Mayor ¶5.11.3 sets out Hillingdon's general view there was a lack of up-to-date data underpinning the IIA. TfL's response at ¶¶5.11.4–5.11.5 explained that the IIA was underpinned by "*the most up to date information available*", including TfL's modelling to "*compare the situation within and without the proposed scheme*", and that more information was in Appendix B to the Consultation Paper.

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20 You do not clearly identify the comments, but they appear to be those addressed at Report to Mayor ¶¶5.3.12, 5.11.3 and 5.11.9: see PAP Letter ¶46 and footnotes 12–14, which cite those passages.

21 A small number of abusive responses were excluded, in accordance with TfL's pre-existing policies, which applied to the consultation: see Report to Mayor ¶¶4.2.3–4.2.6.

22 This was a report TfL commissioned to assist in considering consultation responses.

33.2 Report to Mayor ¶5.11.9 records Barking and Dagenham's comment questioning the number of compliant vehicles and the Heathrow Strategic Planning Group's suggestion that the proportion of non-compliant vehicles may be higher than TfL considered. TfL responded directly in the same paragraph, explaining its approach to forecasting the number of non-compliant vehicles, based on Consultation Paper Appendix B.

33.3 Report to Mayor ¶5.3.12 records that Camden, Harrow and Havering expressed concern about the lack of vehicle ownership/compliance data for Outer London, which made assessing impacts more challenging. TfL's response, in that paragraph, included that information on car ownership and compliance for *inter alia* Outer London was in the "**Baseline Report**",[23] and referred to the ULEZ Scheme IIA.[24]

34 The responses above show that the Mayor and TfL did conscientiously consider the consultation submissions, including those about how "do nothing" compliance rates were calculated. Further and in any case, even if there were force in the consultation arguments (there is not), no relief should follow as a matter of discretion (and see Part F below).

## D ALLEGED GROUND 3

35 Ground 3 (PAP Letter ¶¶65–80) alleges that the Grant Decision was unlawful (and, with it, the Extension Decision) as various matters were not considered, the failure to make non-Londoners eligible for the scrappage scheme was irrational, or the decision was not adequately reasoned (PAP Letter ¶¶78(a)–(d), 79–80). PAP Letter ¶78(e) makes a further consultation complaint. Once more, these arguments are incorrect, lack any basis and are not arguable. They are in substance policy disagreements with the limitation of the scheme to Londoners. But that decision is unimpeachable on public law principles.

### (1) The development of and proposals in relation to the scrappage scheme and grant

36 The proposed scrappage scheme is, and was considered to be, the principal mitigation of detriments from the ULEZ expansion for Londoners with disabilities or on low incomes and certain microbusinesses and charities.

37 As MD3060 ¶5.6 sets out, TfL, under a delegation from the Mayor,[25] establishes, administers and operates vehicle scrappage schemes and,

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23 See Jacobs, *London-wide ULEZ and MTS Revision Baseline Report for ULEZ Scheme IIA and MTS IIA* (17 May 2022) §3.4.6 (pp 86–87) and Maps 7–8 (pp 101–102).

24 See ULEZ Scheme IIA §4 (pp 34–40).

25 See MD2661 for this delegation.

under GLA Act s 38(7), the functions delegated become TfL's functions. TfL was and is responsible for determining the scrappage scheme rules. These were not final when the Mayor took the Decision, although TfL had decided the eligibility criteria, informed by the ULEZ Scheme IIA and consultation responses (which are being kept under review). Further information on the final details of the scrappage scheme will be published imminently.

38 MD3060 ¶¶2.26–2.28 and Report to Mayor ¶¶6.1.6–6.1.13 explained key features of the proposed scrappage scheme, as developed by the time of the Decisions, as follows:

38.1 The purpose is to provide grants and other assistance to help eligible Londoners scrap (dispose of) or retrofit non-compliant vehicles, which removes older, more polluting vehicles from London's roads or reduces pollution from them.

38.2 The scheme would be "*large-scale*", "*targeted*" and aimed at supporting people with lower incomes and disabilities as well as microbusinesses and charities.

38.3 The scheme would, initially, be limited to Greater London residents and microbusiness and charities based in Greater London.[26] In particular: (i) a suggestion in consultation responses that a scrappage scheme should be available in the areas of local authorities neighbouring London was set out in MD3060 ¶4.25, but not proposed by TfL nor adopted by the Mayor; and (ii) Report to Mayor p 183 (Issue E7) addressed the consultation response that "*Scrappage scheme should be available to everyone*", and explained why TfL did not recommend this:[27]

> "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."

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[26] Report to Mayor ¶6.1.9. As PAP Letter ¶¶66–68 says, this remains TfL's intention. To be eligible, individuals must live in Greater London (one of the 32 boroughs or the City of London) and microbusinesses/charities must be registered with Companies House as an active company or VAT-registered in Greater London.

[27] Report to Mayor ¶5.6.5 reiterated this for concerns that "*residents outside Greater London would be ineligible to access funding*" and the suggestion that "*residents outside Greater London are included*".

38.4 Grants for low-income or disabled Londoners would be £1,000 for a motorcycle, £2,000 for a car or £5,000 for a wheelchair-accessible vehicle, although mobility credit packages of lower cash payments and bus/tram passes (to a higher total value) would also be offered to promote travel mode-switch to sustainable options.

38.5 Microbusinesses/charities would receive £5,000 to scrap a van and £7,000 to scrap a minibus, plus £2,500 if electric alternatives replace them (or £5,000 to retrofit).

39 TfL proposed a revenue grant of £110 million from the GLA for the scheme, including implementation, under GLA Act 1999 s 121: MD3060 ¶¶5.2, 5.6.

40 PAP Letter ¶75 asserts that the consultation materials "*failed to contain any details of the proposed scrappage scheme*" including "*eligibility requirements*". That is untrue. Consultation Paper stated (p 42, emphasis added; see also pp 45 and 79): "*For the London-wide ULEZ proposal the Mayor is considering a large-scale and targeted vehicle scrappage scheme to support Londoners, including, for example, those on low incomes, disabled people, charities and businesses.*" Consultation Paper p 18 also referred to previous scrappage schemes, explained that they had provided £61 million in phases between February 2019 and November 2021 for different vehicle types, described those targeted ("*small businesses, charities, Londoners on low incomes and disabled Londoners*"), and set out (in Table 2) the grant level per vehicle and vehicles scrapped:

| Vehicle type | Grant level | Vehicles scrapped |
|---|---|---|
| Cars | £2,000 | 9,660 |
| Motorcycles | £1,000 | 52 |
| Vans and minibuses | £7,000 to scrap, or scrap and replace with a Euro 6 vehicle<br>£9,500 to scrap and replace with an electric vehicle | 5,200 |
| HGVs, buses or coaches | £15,000 to scrap or retrofit | 123 (11 retrofits) |

In addition, ULEZ Scheme IIA §8.1.2 suggested that "*[a] new scrappage scheme for cars should continue to be targeted at on low income Londoners and people on non- means tested disability benefits*" and that "*TfL should consider greater targeting of a new scrappage scheme for vans by focusing eligibility on micro businesses (up to 9 employees) to allow more business owners to benefit*".

**(2) Alleged errors of law**

41 The assertion in PAP Letter ¶78(a) that the Mayor did not consider whether to extend the scrappage scheme to neighbouring local authorities outside of London (ie "*a reasonable 'buffer zone'*") is incorrect — whether the

scheme should so extend was considered:[28] (i) a suggestion to that effect was set out, but not recommended, in MD3060 at ¶4.25: see paragraph 38.3 above; and (ii) the Report to Mayor, which was before the Mayor, contains TfL's reasoned response to that suggestion: see paragraph 38.3 above.

42 Further and alternatively, the PAP Letter does not explain why the Mayor was required under public law to consider this specific matter, and we do not accept this. Absent any statutory requirement (none is suggested), to establish unlawfulness, the Proposed Claimants must show it was irrational for the Mayor not to have considered this.[29] PAP Letter ¶78(a) asserts only that this consideration was "*obviously material*", so apparently accepts they cannot satisfy this test (even if its factual premise were correct — it is not). Moreover, the Mayor was not the decision-maker for, and was not deciding the rules of, the scrappage scheme: by delegation, this was TfL.

43 PAP Letter ¶78(b) alleges that the Mayor failed to take into account "*how long the new proposed scrappage scheme would be able to last*" and "*how many individuals and businesses it could assist*". This complaint again lacks merit and is unarguable:

43.1 As explained in paragraphs 38–39 and 40 above, the Mayor considered: (i) the intended funding of the scheme (it was to be "*large scale*", and TfL sought and the Mayor agreed £110 million); (ii) the proposed beneficiaries; (iii) the proposed grant size for different vehicle types (and other proposed benefits); and (iv) the number of vehicles that had received grants under previous schemes (by type of vehicle), with similar grant size per vehicle, total funding of £61 million and various eligibility requirements. Further, the Mayor had previously considered (and decided to grant) additional funding for a scrappage scheme. The Mayor was able to appreciate the likely extent of benefits of the proposed scrappage scheme, in terms of the broad number of vehicles that may be scrapped or retrofitted.

43.2 Given this, where the Mayor was not the decision-maker for the scrappage scheme, the matters you identify were not of relevance. The key point is the number of non-compliant vehicles that will be scrapped or retrofitted. How long the scheme might last is simply a

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28 The effect of the Decisions is in fact that there will be a (small) "buffer zone" between the expanded ULEZ boundary and the Greater London boundary in a number of places — Greater London residents and microbusinesses/charities are eligible, including those outside the ULEZ but within Greater London: see paragraph 13 above. Your contention must therefore be, in substance, that a wider buffer zone for scrappage scheme grants should have been provided, but that is plainly a policy choice for the Mayor and TfL.

29 See, eg, *R v Secretary of State for Transport, ex parte Richmond LBC* [1994] 1 WLR 74 (QB) 95 (Laws J); *R (National Association of Health Stores) v Department of Health* [2005] EWCA Civ 154 [63]–[65] (Sedley LJ), [81] (Bennett J); *R (Friends of the Earth Ltd) v Heathrow Airport Ltd* [2020] UKSC 52, [2021] 2 All ER 967 [116]–[121] (Lord Hodge and Lord Sales); *R (Save Stonehenge World Heritage Site Ltd) v Secretary of State for Transport* [2021] EWHC 2161 (Admin) [61]–[65] and Appendix 1 [1(e)] (Holgate J).

factor of how many applications are received and granted and when that happens to occur. How many individuals and businesses might benefit does not add materially to consideration of numbers of vehicles.

43.3 Moreover, for the reasons in paragraph 42 above and given the matters the Mayor did consider, it was not irrational not to consider these specific further (at best marginal) matters. The PAP Letter says only that they were "*obviously material*", and thus again accepts that the Proposed Claimants cannot satisfy the legal test.

44 PAP Letter ¶78(c) contends that it was irrational for the Mayor to make the Grant Decision where non-Londoners were not eligible, could lawfully have been made eligible and were eligible for some but not all previous schemes. This is incorrect and unarguable.

45 As to principle, as is common ground, the legal test is whether the Grant Decision was "*irrational*", that is, beyond the range of reasonable responses open to a decision-maker.[30] But that standard is high.[31] The Mayor, an elected and accountable official,[32] has under GLA Act s 121 a broad discretion as to whether and for what purpose grants to TfL are made. That decision does not affect Convention or other rights. It involves a policy question: who should receive scarce public funds. It is well established that matters such as these are for the judgment of the Mayor (not the courts) as to how best to target limited public funds.[33]

46 On those principles, it was well within the range of reasonable responses (not irrational) to make the Grant Decision on the basis of eligibility limited, initially, to London:

46.1 PAP Letter ¶71(b) suggests there will be no eligible persons in a "buffer zone" between the expanded ULEZ and Greater London boundaries, but that is wrong: see paragraph 11 and the map above. Your contention must be that it was irrational not to have a wider buffer. But that was a policy decision for TfL and the Mayor.

46.2 PAP Letter ¶70 rightly recognises that TfL previously operated the ULEZ car and motorcycle scrappage scheme with a London residency/establishment requirement: Scrappage Report p 10. Moreover, as you point out (PAP Letter ¶70), the other previous

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30 *R v Ministry of Defence, ex parte Smith* [1996] QB 517 (CA) 554 (Sir Thomas Bingham MR).

31 See, eg, *R v Lord Chancellor, ex p Maxwell* [1997] 1 WLR 104 (DC) 109 (Henry LJ); Lord Woolf et al, *De Smith's Judicial Review* (8th ed, 2018) [11-019].

32 See generally GLA Act ss 2–4 on the election of the Mayor and the London Assembly.

33 See, eg, *R v Secretary of State for the Environment, ex parte Nottinghamshire CC* [1986] AC 240 (HL) 247, 250–251 (Lord Scarman); *R v Secretary of State for the Environment, ex parte Hammersmith and Fulham LBC* [1990] 1 AC 521 (HL). See generally Lord Woolf et al, *De Smith's Judicial Review* (8th ed, 2018) [11-099].

schemes had eligibility conditions relating to London presence or London vehicle use. You rightly do not argue that the former requirements were irrational. More generally, it is well established that it is legitimate to target mitigations at people/businesses in a charging area, for example, via residents' discounts.

46.3 The reasons in Report to Mayor p 183 (Issue E7) for not extending the scrappage scheme to non-Londoners, at this stage, set out in paragraph 38.3 above, are logical and cogent, and not irrational. They are in summary that:

(a) The GLA has finite resources available, so some limits are necessary.

(b) People/businesses within Greater London are generally less able to avoid the charge from the expanded ULEZ than those outside Greater London. Those within the expanded ULEZ cannot avoid it at all if they use a non-compliant vehicle at their residence/business. Further out of Greater London, avoidance becomes easier.[34]

(c) For those outside Greater London, the Mayor continues to encourage Central Government to provide a nation-wide scrappage scheme.

46.4 Moreover, the scrappage scheme was one of several mitigations. Those other mitigations (eg grace periods for vehicles of disabled persons) do not depend on London residency/location. The rationality of the Grant Decision must be assessed bearing those in mind.

46.5 More generally, the Mayor was not deciding on eligibility (see above) and TfL has undertaken to monitor the impacts of the ULEZ expansion and keep the expansion, and mitigations, under review: MD3060 ¶3.33.

47 PAP Letter ¶¶78(c)–(d) assert a failure to give adequate reasons. This is not arguable: you fail to identify any absent reasoning; the reasoning summarised in paragraphs 38 and 46 above is adequate; and there is anyway no duty to give reasons: paragraph 26.4 above.

48 PAP Letter ¶78(e) alleges that certain information was not provided in the consultation so as to enable an intelligent, proper and effective response, but that is not arguable because, in fact, the information was provided. The consultation included information about the extent to which the scheme would apply outside London: see Consultation Paper p 42 and ULEZ Scheme IIA §8.1.2 (summarised in paragraph 40 above: grants to be

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[34] The reasoning is not, as PAP Letter ¶74 suggests, that no people and businesses outside Greater London are particularly (or "*disproportionately*" in the language of Report to Mayor p 183) negatively impacted.

available to Londoners). That submissions were made urging extension to non-Londoners (see paragraph 38.3 above) shows that sufficient information to enable intelligent response was provided. The suggestion that no information was given about costings (and thus longevity) is also wrong: the Consultation Paper stated that the intended scrappage scheme would be "large scale", and set this in the context of the size and duration of the previous schemes (£61 million) and grants for different vehicle types (see paragraph 40 above). A respondent could make an intelligent response if they wished.

49 PAP Letter ¶¶79–80 appear to contend that the Mayor was required to exercise the power under GLA Act s 121 (in Part III — Financial Provisions) to achieve the purpose in GLA Act s 141(2) (in Part IV — Transport) or that the Mayor did not take the duty in GLA Act s 141 into account. Both contentions are incorrect and not arguable:

49.1 Section 141(2), which you quote, applies to "*powers of the Authority under this Part*", that is, Part IV (Transport), not powers under Part III (Financial Provisions). But it is Part III that contains the power to make revenue grants (s 121). Section 141 did not impose any requirement in relation to the Grant Decision.

49.2 In any case, the Mayor did take the general transport duty under s 141 into account for the Decisions. This duty is given effect via the MTS, as s 142 provides: see Annex B paragraph B2. The Mayor's attention was drawn to the MTS and its relevant provisions in MD3060 ¶¶4.42–4.46. The MTS had recently been amended to include Proposal 24.1, meaning that any decision to expand the ULEZ would be consistent with it.[35] Moreover, while not the decision-maker on scrappage scheme rules, the Mayor considered whether non-Londoners should be eligible: see paragraph 41 above.

50 In any case, the PAP Letter does not explain why, and we do not accept, that any unlawfulness affecting the Grant Decision affects the Extension Decision, where (i) TfL is the decision-maker for the scrappage scheme (and the Mayor was not deciding on eligibility) and (ii) it is common ground that a lawful scrappage scheme and grant decision can be made (on your case, one open to certain non-Londoners).

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[35] Prior to making the Decisions, the Mayor decided, as recorded in *Request for Mayoral Decision — MD3047 — Proposed Mayor's Transport Strategy Revision* of 31 October 2022 ("**MD3047**"), to amend the Mayor's Transport Strategy ("**MTS**" — see Annex B paragraphs B1–B3, B8 and B10), in order to include a new Proposal 24.1 ("**Proposal 24.1**") for *inter alia* a London-wide ULEZ.

## E ALLEGED GROUND 4

51 Ground 4 contends that the Mayor failed to have regard to a mandatory relevant consideration, or acted irrationally,[36] by not considering whether to apply HM Treasury's Green Book methodology (or considering the Green Book at all), and not having carried out a fully monetised cost-benefit analysis (PAP Letter ¶¶87–88). These contentions are incorrect and not arguable for the reasons below.

52 TfL, in particular via the ULEZ Scheme IIA, carried out, and the Mayor considered, extensive analysis of the important benefits and detriments of the Extension Decision and how they can be mitigated: see MD3060 ¶3.6. By way of summary only, the ULEZ Scheme IIA, Report to Mayor and MD3060 identified and explained, and thus enabled the Mayor to consider:

52.1 The principal environmental benefit of cleaner air, with associated long-term health benefits (ULEZ Scheme IIA §§5.1.3–5.1.6, 6.2.1–6.2.2), as well as subsidiary benefits of lower carbon emissions (helping to mitigate the climate crisis) (§§5.2.1–5.2.2, 6.2.3) and reduced impact on nature and cultural heritage (§§5.3–5.4). The IIA identified a neutral impact on the built environment and streetscape from new equipment (§5.6). The Report to Mayor (p 112 issue B7) further identified congestion benefits from reduced traffic.

52.2 Detriments that included, most importantly, the additional £12.50 charge that people/businesses using non-compliant vehicles in Outer London would have to pay, impacting in particular (for example) those on low incomes (including those whose travel straddles the boundary of the ULEZ), disabled and older people, gender/ethnic groups who tend to drive more than others, charities/community organisations and people with underlying health conditions, albeit mitigations exist for some including the scrappage scheme and exemptions (ULEZ Scheme IIA §§6.3–6.4, 8.1.1–8.1.2).

52.3 Further detriments including a negative impact on employers in Outer London, small-to-medium enterprises in Outer London who used non-compliant vehicles and Heathrow Airport (ULEZ Scheme IIA §7.2), and reduced retail spending in some areas (§7.3).

53 The ULEZ Scheme IIA considered benefits and detriments from the perspective of the environment (§5), people including those with protected characteristics (§6), and businesses (§7), within and outside Greater London. It considered potential mitigations, including the scrappage scheme: §8. MD3060 §§1, 2 and 3 summarised many benefits and detriments by reference to the IIA. Further costs were identified in MD3060 ¶¶5.2–5.3, namely, the scrappage scheme (£110 million) and

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[36] PAP Letter ¶87 refers to "*unlawful and/or irrational*", but does not refer to any other basis of unlawfulness than irrationality. We infer, from the heading to Ground 4, that the contention is that this was a mandatory relevant consideration.

implementation of the Extension Decision (£159.5 million). As you point out (PAP Letter ¶82), the ULEZ Scheme IIA (pp 74–75) monetised some health benefits. However, many benefits and detriments are by their nature difficult or impossible to reduce meaningfully to money terms.

54 The ULEZ expansion will be financed by the GLA and not by central government. The £110 million for the scrappage scheme is intended to be funded from the GLA's transport funding reserve. The implementation costs are intended to be financed by the GLA's Treasury Management function and repayment will ultimately be funded by TfL from ULEZ proceeds. Central government has stipulated, when agreeing recent funding for TfL, that their funding is not to be used for ULEZ expansion, and the Mayor and TfL will respect this requirement.

55 As to the suggestion that the Mayor was required to consider whether to apply, or take into account, the Green Book, or that it was somehow irrational not to, while the Mayor did not consider these matters, this does not disclose any public law error:

55.1 Having regard to the principles in paragraphs 42 and 45 above, the Mayor was not required by public law specifically to consider, or consider whether to apply, the Green Book (or any other specific methodology) to identify the benefits and disadvantages of the Decisions (and it was not irrational not to do so), in circumstances where the Mayor (i) was required to weigh and balance complex environmental/health and congestion benefits against economic effects (both the charge and other knock-on effects), giving effect to the MTS and having regard to the LES (see Annex B paragraphs B1–B5, B8 and B10), and (ii) the Mayor (with TfL's assistance, including via the ULEZ Scheme IIA) carefully identified and weighed those competing considerations. The courts afford considerable respect to such assessments, both in deciding the approach and striking the balance.[37] The complaint is in substance that the Mayor did not take a slightly different approach, but that was a matter within his discretion.

55.2 Moreover, the Green Book does not, on its terms, apply to the Mayor (who is part of the GLA) or TfL. As footnote 1 and ¶1.1 indicate, local authorities are not required to use the Green Book, although they may choose to do so. While the GLA and TfL are statutory corporations under the GLA Act (not the Local Government Act 1972), for financial purposes they are often treated in legislation as local authorities, and fall within this classification for the purposes of the Green Book. In particular, under Parts 1 (Capital finance etc and accounts) and Part 2

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[37] See the authorities cited in footnote 15 above, several of which relate specifically to the Mayor or TfL. The Green Book confirms this. It states in ¶1.2, to which you refer but do not quote: "*The Green Book is not a mechanical or deterministic decision-making device. It provides approved thinking models and methods to support the provision of advice to clarify the social — or public — welfare costs, benefits, and trade-offs of alternative implementation options for the delivery of policy objectives.*"

(Financial administration) of the Local Government Act 2003, the GLA and TfL are defined as "local authorities" (s 23(1) in Part 1) or treated as such (Part 2).

55.3 In any case, the Mayor's and TfL's approach, as summarised in paragraphs 52–53 above, was in substance that suggested in the Green Book: in particular, the Mayor and TfL sought to bring to account all societal benefits and costs, and to monetise them in the analysis where this was feasible and proportionate.

56 For the same reasons, it was not arguably irrational for the Mayor not to carry out a fully monetised cost-benefit analysis. As explained, it is not (proportionately) possible or meaningful to monetise each benefit and disadvantage of the ULEZ expansion. Consistently with the Mayor's approach, the Green Book does not require monetisation where the value of all costs and benefits cannot readily and proportionately be calculated: see, eg, Green Book ¶2.17.

## F NO PERMISSION/RELIEF IN ANY EVENT

57 The Mayor and TfL do not accept there is any substance to your complaints. If, contrary to our position, a court found that the Mayor had made an error of law, on your argument, this could be remedied by taking the same substantive decision in a different form and/or by further consideration by the Mayor of various matters and/or with minor modifications. Any relief should be refused even if there was an error of law: (i) because it is highly likely that the outcome for the Proposed Claimants would not have been substantially different if the alleged errors had not occurred (see Senior Courts Act 1981 s 31(2A));[38] and/or (ii) in the exercise of the general discretion as to relief.

## G DISCLOSURE AND INFORMATION SOUGHT

58 We enclose with this letter the documents listed in **Annex D**, which you may not have. While we are mindful of the Mayor's and TfL's duties of candour should a claim be issued, we do not consider that any further disclosure or information (beyond that set out in this letter) is required at this stage. As to the request for documents at PAP Letter ¶91(ii)–(v):

58.1 The PAP Letter does not attempt to justify the disclosure sought as relevant, necessary or proportionate (compare PAP Letter ¶92).

58.2 The requests are, in terms and substance, for every document generated that touches on the form and framing of the Variation Order, compliance rates, the scrappage scheme, any cost-benefit analysis, any consideration of alternative schemes and any consideration of the

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[38] This is a basis also for the refusal of permission: Senior Courts Act 1981 s 31(3C)–(3D).

Green Book. That request is not appropriate in the context of judicial review — indeed, such wide requests would not generally be granted in commercial litigation between private parties.

58.3 We are keeping under review whether any further disclosure is required, and will consider any appropriately targeted and reasoned request for disclosure, bearing in mind the principles that apply to limit disclosure in judicial review claims.

## H NEXT STEPS

59 For the reasons above, no claim suggested in the PAP Letter is arguable. We ask that, in light of this full response, you confirm by 10 February 2023 that no claim will be issued. If a claim is issued, the Mayor and TfL will resist permission and the claim (if permission is given), and reserve the right to recover their costs.

Yours faithfully

TfL Legal

## Annex A: Chronology and relevant documents issued

| Date | Event | Documents issued (where relevant) |
|---|---|---|
| 18 January 2022 | Mayor announced four possible approaches to address toxic air pollution, the climate emergency and traffic congestion in London, including expanding the ULEZ London-wide with current vehicle charge levels and emissions standards ("**ULEZ expansion**") | TfL, *Next steps for reducing emissions from road transport* (January 2022)<br>Element Energy (for GLA), *Analysis of a Net Zero 2030 Target for Greater London* (18 January 2022) |
| 4 March 2022 | Mayor asks TfL to consult on ULEZ expansion | |
| 20 May 2022 | TfL opens consultation (and publishes documents including those listed) on *inter alia* (i) modification of MTS to propose a London-wide ULEZ and (ii) ULEZ expansion<br>TfL takes steps to publicise consultation | Consultation Paper<br>ULEZ Scheme IIA<br>"**MTS IIA**": Jacobs, *Proposed Mayor's Transport Strategy (MTS) Revision Integrated Impact Assessment* (17 May 2022)<br>Baseline Report<br>Proposed MTS Revision<br>"**DPIA Checklist**": TfL, *Data Protection Impact Assessment (DPIA) Checklist* (Doc No F7526)<br>"**Draft Variation Order**": Draft Variation Order for ULEZ Expansion<br>Marked-up copy of the Emission Charging Order showing proposed amendments |
| 29 July 2022 | Consultation closes<br>57,937 responses have been received, including 342 from stakeholders<br>TfL had held over 80 meetings with stakeholders<br>TfL continues to analyse responses to consultation and consider further its recommendations to the Mayor, including engaging AECOM to assist in reviewing consultation responses | |
| 31 October 2022 | Mayor approves for publication a revision to the MTS to include Proposal 24.1 for a London-wide ULEZ, subject to compliance with the procedure in s 42B of the GLA Act. The revision takes the form of an addendum. | MD3047 with appendices, including TfL, *Report to Mayor on the MTS Revision* (October 2022)<br>Proposal 24.1 |
| | MTS Revision is laid before the London Assembly pursuant to s 42B of the GLA Act | "**MTS Revision**": Addendum to the Mayor's Transport Strategy (MTS): Proposal 24.1 |
| 17 November 2022 | The London Assembly meets to consider the MTS Revision | |
| 18 November 2022 | MTS Revision is published on the Greater London Authority's ("**GLA**") website | |
| 21 November 2022 | Variation Order for ULEZ expansion is made by TfL | |

| Date | Event | Documents issued (where relevant) |
|---|---|---|
| 24 November 2022 | Mayor makes IoC<br>Mayor confirms proposed variations to Congestion Scheme Order | MD3060 (and Figures 1 and 2)<br>Appendix 1: MTS Revision<br>Appendix 3: IoC<br>Appendix 4: Greater London (Central Zone) Congestion Charging (Variation) Order 2022 — Instrument of Confirmation<br>Appendix 2: Report to Mayor, including its appendices:<br>Appendix A: Consultation Paper<br>Appendix B: Marketing Materials and Consultation Survey<br>Appendix C: ULEZ Scheme IIA<br>Appendix D: MTS IIA<br>Appendix E: AECOM codeframe<br>Appendix F: "**AECOM Report**": AECOM, *Proposals to help improve air quality, tackle the climate emergency, and reduce congestion by expanding the ULEZ London-wide and other measures — Proposals for the Ultra Low Emission Zone expansion in 2023 and shaping the future of road user charging* (September 2022)<br>Appendix G: List of stakeholders contacted<br>Appendix H: Summaries of stakeholder responses<br>Appendix I: Stakeholder meetings<br>Appendix J: Baseline Report<br>Appendix K: Jacobs, *Proposed Mayor's Transport Strategy Revision and London-wide ULEZ: Habitats Regulations Assessment Screening* (14 October 2022)<br>Appendix L: City Intelligence, *ULEZ expansion date poll results* (July 2022)<br>Appendix M: TfL, *Proposed changes to Auto Pay and Fleet Auto Pay (for Congestion Charge and LEZ) and to PCNs (Congestion Charge) — Impact Assessment including Equalities Impact Assessment*<br>Appendix N: DPIA Checklist |

## Annex B: Relevant provisions of the GLA Act

B1 By GLA Act s 141(1), in Part IV (Transport), the Mayor has a "*[g]eneral transport duty*" to "*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*" (the "**general transport duty**"). By s 141(3), the transport facilities and services include "*those required to meet the needs of persons living or working in, or visiting, Greater London*".

B2 By GLA Act s 142(1), the Mayor must publish a "*transport strategy*" (the "**MTS**") that includes the Mayor's policies and proposals for discharging the general transport duty and, by s 142(2), "*any other proposals which he considers appropriate*".

B3 TfL, by the GLA Act s 154(3), is required to exercise its functions[39] *inter alia* for the purposes of (i) facilitating the discharge of the Mayor's general transport duty and (ii) securing or facilitating the implementation of the MTS.

B4 In addition, under GLA Act s 362(1), the Mayor is required to include in the provisions of the London Environment Strategy ("**LES**") dealing with air quality (the "**AQ provisions**") his proposals and policies for the implementation in Greater London of the policies in the national air quality strategy[40] and for the achievement of the air quality standards and objectives in regulations under Environment Act 1995 s 87(2)(a)–(b). Further, by GLA Act s 373, each of the "*functional bodies*" (which include TfL: s 424(1)) must have regard to the LES in exercising any function.

B5 Specifically in relation to road user charging, GLA Act s 295(1) (also in Part IV) gives TfL power to "*establish and operate schemes for imposing charges in respect of the keeping or use of motor vehicles on roads in its area*". Section 295(2) gives Sched 23 effect. It is apparent from this provision, and Sched 23 (as summarised below), that the GLA Act confers a discretion upon TfL (and the

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39 Both its functions conferred by the GLA Act, and those that are made exercisable by it by or under the Act (for example, by a delegation from the Mayor).

40 That is, the Secretary of State's strategy under s 80 of the Environment Act 1995.

other public authorities mentioned in s 295) to define a "*charging scheme*", including the basis and area(s) of charging.

B6 The power to make road user charging schemes, which expressly includes the power to vary them, is further defined in Sched 23. Key provisions are as follows.

B7 Schedule 23 para 1(1) defines a "*charging scheme*" 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*". "*[C]harging area*" is defined as "*an area to which a charging scheme applies*".

B8 Schedule 23 para 3 provides 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*".

B9 By Sched 23 paras 2 and 4, an order must be confirmed by the Mayor on behalf of the GLA. Specifically, para 4 currently provides relevantly as follows:

> "(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."

Paragraph 1(1) defines "*charging authority*" as the authority that made a charging scheme.

B10 By Sched 23 para 5: "*A charging scheme must be in conformity with the Mayor's transport strategy.*"

B11 Schedule 23 para 8 provides relevantly (emphasis added):

"The contents of a charging scheme

8. A charging scheme must —

(a) designate the area to which it applies;

(b) specify the classes of motor vehicles in respect of which a charge is imposed;

(c) designate those roads in the charging area in respect of which charges are imposed; and

(d) specify the charges imposed."

Thus, a charging scheme has an area (the "*charging area*", as defined in para 1(1)) and charges may be imposed in respect of certain roads within that area.

B12 Schedule 23 para 9 provides relevantly:

"The charging area and the roads

9. —

(1) The designation of —

(a) the boundaries of the charging area, and

(b) the roads in that area in respect of which charges are imposed,

shall be such as the authority making the charging scheme may determine, subject to any modifications made by the Authority.

(2) A TfL scheme may apply to an area which consists of the whole or any part of Greater London. …

(6) A TfL scheme may impose charges in respect of roads in the charging area, whether or not Transport for London is the traffic authority or the highway authority for those roads."

B13 Schedule 23 para 10(1) requires a charging scheme to "specify or describe the events by reference to the happening of which a charge is imposed by the charging scheme in respect of a motor vehicle being kept or used on a road in a charging area". Paragraph 10(4) provides: "The charges that may be imposed by a charging scheme include different charges (which may be no charge) for different cases, including (in particular) … (c) different parts of a charging area".

B14 Paragraph 38, headed "Variation and revocation of charging schemes", states:

> "The 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."

## Annex C: Response to factual allegations in relation to expected compliance rates with and without the expansion of the ULEZ (Alleged Ground 2)

C1 The Mayor and TfL accept that the forecast ULEZ compliance rates with and without the Amendments were important assumptions in estimating the impact of the Amendments. It is also correct people who use (or would use) non-compliant vehicles in Outer London, if they continue to (or would) do so, are, under the Amendments, required to pay the ULEZ where they were not previously. The imposition of that potential cost is the mechanism by which the ULEZ expansion secures the important air quality, climate crisis and congestion goals: see MD3060 ¶1.27.

C2 PAP Letter ¶37 correctly identifies that the ULEZ Scheme IIA in Table 4-1 (p 34) sets out the estimated 2023 compliance rates for the "reference case", that is, the case without the ULEZ expansion, and that for private cars excluding private hire vehicles ("**PHVs**") in Outer London the forecast compliance rate is 91%.

C3 PAP Letter ¶38 complains that "*[n]o data source is given for this figure; nor, [sic] any clear explanation in the surrounding text for how it was calculated*" (emphasis added). But as is implicit in PAP Letter ¶41–45, this complaint, while carefully worded, lacks merit, because the consultation documents, read fairly, provide a detailed explanation of how this figure was calculated, including the data relied upon, as follows:

C3.1 The Consultation Paper in §6 (especially pp 53–80) explained the forecast effects of the proposed ULEZ expansion against the reference case, including (p 53):

> "To assess the impacts of the proposed expansion, we have utilised TfL's package of strategic models, including our London highway demand model (LoHAM) and our travel demand model for London (MoTiON), as well as expertise in emissions modelling. Air pollution modelling was produced by Imperial College London in collaboration with TfL. Further detail on the methodology and sources of data can be found in Appendix B.
>
> The impacts presented here are based on a scenario that assumes travel behaviour has broadly returned to a pre-pandemic situation and a central forecast for compliance with ULEZ standards is achieved. This is reasonable as traffic levels have quickly and broadly returned to pre-pandemic levels, unlike public transport which is still supressed. Further work has been

undertaken to assess the impacts of the proposals in an uncertain future, which is increasingly important given the unprecedented events of the past two years. For example, we have assessed the impacts of the scheme against a scenario where there are longer term implications of the pandemic for travel behaviour. Different compliance rates have also been assessed, including lower and higher compliance rates and how long it takes for the compliance rate to be achieved. Taking this approach provides reassurance and ensures the robustness of the estimated scheme impacts. Details of this 'Hybrid Forecast' and compliance rate sensitivity tests are described in Appendix B."

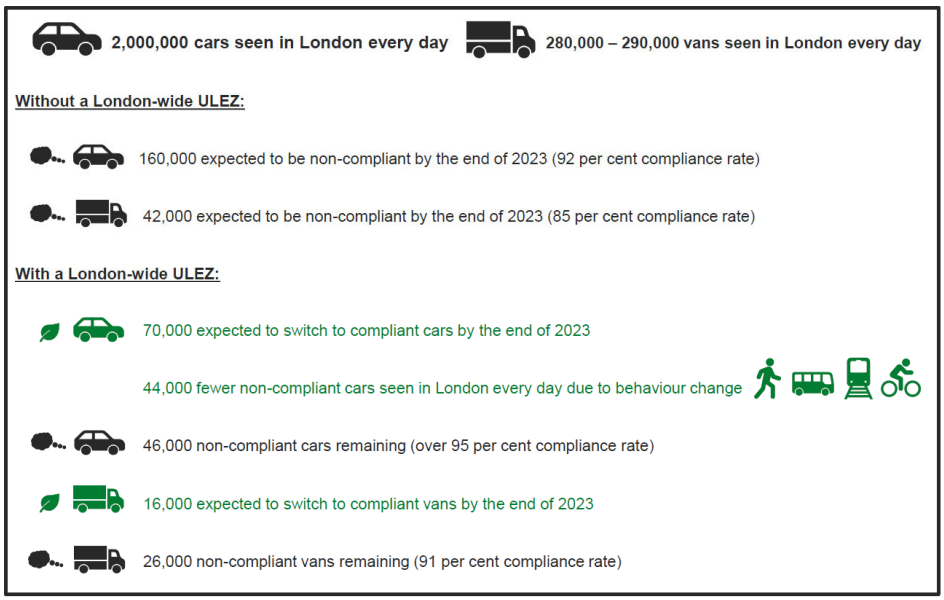
C3.2 "*Vehicle compliance impacts*" were summarised at Consultation Paper pp 55–57. As the text on p 56 and Figure 20 (p 57) make clear, the analysis compared a scenario without the proposed London-wide ULEZ expansion (the reference case) to one with the London-wide ULEZ expansion:

"We have estimated that out of around two million unique cars seen in London every day, around 92 per cent will already be compliant by the end of 2023. The introduction of a London-wide ULEZ could increase compliance to over 95 per cent in London. This equates to a reduction in the number of non-compliant cars from 160,000 to around 46,000, with around 70,000 switching to compliant vehicles and 44,000 fewer cars due to behaviour change. …

*Figure 20* shows the compliance rates for the daily vehicle population (daily unique vehicles seen) by the end of 2023, with and without London-wide ULEZ."

Figure 20 was as follows, and again made TfL's approach clear:

Figure 20 Scheme impacts on London-wide daily unique vehicles



C3.3 As p 53 of the Consultation Paper indicated, Appendix B (pp 95–100) contained a detailed explanation of TfL's compliance modelling, with and without the proposed ULEZ expansion. It explained in summary that:

(a) The impacts of the proposed ULEZ expansion were calculated on the basis of estimates for (ii) **London-wide daily unique vehicles** entering the ULEZ and (ii) **compliance rates** (Consultation Paper pp 95–96).

(b) **London-wide unique vehicle estimates** by type and area were calculated using several datasets including the London Travel Demand Survey (2019/20), EDMOND (anonymised mobile phone) data, average annual daily flow data (based on Department for Transport count data by vehicle type) and aggregated automatic number plate recognition ("**ANPR**") data from TfL's camera network, with identified assumptions (Consultation Paper p 96).

(c) Forecast **compliance rates** for 2023 were calculated based on fleet composition analysis, prepared as part of ongoing London Atmospheric Emissions Inventory work, which cross-referenced ANPR data to DVLA vehicle record information and vehicle kilometre estimates in London: Consultation Paper pp 96–97. With other identified information, this enabled TfL to estimate changes in the fleet over time. As stated on p 97: "*Together the overall compliance rate by vehicle type in 2023* [ie the reference case] *can be determined, and then this data is adjusted based on the uplift that is forecast from the TfL ULEZ vehicle response tool* [ie the expanded ULEZ case] *as described below.*" The Consultation Paper further explained (p 97) that a comparison of these compliance rates was used to understand the volumes of non-compliant vehicles that would be affected by the expanded ULEZ. More specifically:

(i) Consultation Paper pp 97–98 provided further information about TfL's ULEZ vehicle response tool: it estimated the proportion of non-compliant vehicles that might switch to

compliant vehicles based on cost of upgrade versus cost of the ULEZ charge (with an expanded ULEZ), giving details of the methodology and identifying difficulties and sensitivities in the analysis.

(ii) Consultation Paper pp 97–98 explained that TfL then applied its traffic demand and assignment models (MoTiON and LoHAM) to estimate how (with an expanded ULEZ) the remaining non-compliant vehicles might respond by changing behaviour, for example, not travelling, changing travel mode or changing destination to avoid the charge.

(iii) Consultation Paper p 98 identified key sensitivities that could affect the estimated compliance rates, and said that (on the expanded ULEZ charge scenario) London-wide estimates of 95% compliance for cars and 91% for vans three months after launch were used.

(d) Consultation Paper pp 99–100 explained the further Hybrid Forecast TfL had used (as an alternative to the reference case), the evidence on London's recovery from the pandemic that informed it, and that using the Hybrid Forecast (rather than the reference case) as the baseline was unlikely to lead to outcomes that varied significantly.

C3.4 Section 4.1 of the ULEZ Scheme IIA at p 34 (which contains Table 4-1, to which you refer) explained that it was presenting TfL's (not Jacobs') analysis using outputs from MoTiON, that it was "*comparing two forecast scenarios: ▪ The 2023 reference case representing the current ULEZ scheme ▪ The 2023 Proposed Scheme (expanded ULEZ) forecast scenario*", and that §4 "*summarises the key outputs from this analysis to provide a basis for the subsequent impact assessment*".[41] The heading to Table 4-1 includes "*2023 reference case*". The section also said that

[41] See also ULEZ Scheme IIA Section 3.2.1.2, which explains, consistently, that traffic forecasts are "*informed by strategic traffic modelling undertaken by TfL to compare the situation with and without the Proposed Scheme*".

further information was available in the Consultation Paper — an obvious reference to the information summarised immediately above.

C3.5 The analysis above is summarised in Report to Mayor ¶4.1, which explains that:

> "TfL undertook strategic traffic modelling to compare the situation in 2023 (proposed year of implementation) with and without the expansion of the ULEZ London-wide. The model outputs provided by TfL comprised of traffic demand (by mode of travel and journey purpose), road traffic emissions and air pollutant concentrations. The analysis was based on forecast rates of vehicle compliance with ULEZ for the proposed year of implementation." [emphasis added]

C3.6 Further, Report to Mayor eg at p 115 explains that TfL's estimate of compliance:

> "85 per cent of vehicles seen in outer London and 94 per cent of vehicles seen in inner London already meet the ULEZ standards meaning most drivers will not need to pay the daily 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." [emphasis added]

It may assist you to know that this estimate for overall (not just car)[42] compliance was based on TfL's ANPR data for May 2022, the last published figure before the Report to Mayor,[43] and the estimate for cars only (excluding PHVs) for May 2022 was approximately 86–87 per cent.[44] TfL's estimate of 91% compliance for cars (only) in Outer London by August 2023 without ULEZ expansion is in line with these figures.

C4 It was accordingly apparent to anyone reading the consultation documents together and fairly how TfL had estimated the compliance figures in ULEZ Scheme IIA in Table 4-1 (p 34), including the sources of data it had used.

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42 Car compliance is generally higher than that for vans and other heavier vehicles.

43 TfL, *Expanded Ultra Low Emission Zone — Six Month Report: Including Low Emission Zone — One Year Report* (July 2022) p 5.

44 The latter figure was not before the Mayor when he took the Decisions. We refer to it in response to your argument.

C5 PAP Letter ¶¶39–40 purport to disagree with TfL's analysis of the likely compliance rate for cars in Outer London without the ULEZ expansion, but do so on an incorrect basis:

C5.1 PAP Letter ¶39 (and ¶46) assert that the data in Baseline Report Maps 7 and 8 (pp 101–102) and the commentary at §3.4.6 (p 86) "*directly contradicts*" TfL's analysis explained above. This is wrong. As the text you quote in PAP Letter ¶39(b) says, and as is also apparent from the title of the source in footnote 158 and §3.4.6 (pp 86–87) of the Baseline Report more generally, Maps 7–8 show existing levels of compliance based on 2020 data "*of registered vehicles*" within the existing ULEZ boundary and in Greater London.[45] Not all vehicles that are registered to addresses in Greater London are used in Greater London: many vehicles of residents are driven infrequently or not at all, and older (less compliant) vehicles tend to be driven less frequently than newer (more compliant) vehicles. The ULEZ charge under Article 7(2), before and after amendment, applies only to vehicles used, not merely kept, on public roads.[46] Conversely, many vehicles observed in ANPR data are driven into Outer London from outside Greater London: not all observed vehicles there are those of residents/businesses there. Moreover, compliance will have increased between 2020 (the year of the location data) and December 2021 (the date of the ANPR data that formed an input into TfL's analysis explained in the Consultation Paper).

This was apparent from the consultation documents. The ULEZ Scheme IIA (p 86 and footnote 87) explained the first point (different data sources), saying immediately after the text PAP Letter ¶39(b) quotes:

> "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. …[37]

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45 Report to Mayor ¶5.3.12 also states that the information on car ownership and compliance in the IIA used the then latest car ownership data from the Society of Motor Manufacturers and Traders ("**SMMT**") (2020 data) and 2020 data from the Department for Transport for consistency.

46 Further, a charging scheme may not impose charges in respect of vehicles that are not on public roads: GLA Act Schedule 23 para 31(a).

[37] Two measures of compliance are included here. The main measure (which has fed in to TfL's modelling) is compliance by vehicle kilometres [ie the ANPR-based analysis], and this is generally higher than compliance by the location the vehicle is registered to [ie that shown in Maps 7 and 8]. This is likely due to non-compliant vehicles being used less frequently than compliant vehicles." [emphasis added]

ULEZ Scheme IIA (p 86 footnote 86) also explained the latter point (increased compliance over time), saying:

> "Compliance data used in the assessment is from 2020 and is therefore likely to be an underestimate of existing levels; it is expected that compliance rates would have increased between 2020 and 2021."

There is no inconsistency, still less contradiction, between TfL's ANPR-data based forecasts of compliance and the registered-address data.

C5.2 PAP Letter ¶40 contends that consultation responses on whether consultees' vehicles complied with ULEZ emissions standards set out in Report to Mayor Table 13 and Figure 6 (pp 46–47), including that over 40% of Outer London respondents had non-compliant vehicles, indicate "*a much higher proportion of currently non-compliant vehicles (than in the assumed 91%) [sic]*".[47] However, this data (i) again relates to vehicle ownership (not use), (ii) is not representative of residents nor necessarily accurate,[48] and (iii) does not account for vehicles of non-residents (ie those driven into Outer London). It is no substitute for TfL's data-based forecasts and observations, explained in the consultation documents and the Report to Mayor.

C6 PAP Letter ¶¶41–45 set out, or purport to summarise, parts of Appendix B to the Consultation Paper. That document speaks for itself.

C7 PAP Letter ¶47 advances a number of contentions that are, on any fair reading of the consultation documents, incorrect and not properly arguable:

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47 For the avoidance of any doubt, 91% is the forecast level of compliance (not non-compliance) for cars (excluding PHVs) in outer London.

48 As Report to Mayor ¶4.7.1 points out, while a link to a vehicle compliance checker was provided, it is possible that respondents answered the question based on their own understanding, without checking. "Don't know" responses are notably low. More generally, Report to Mayor ¶¶4.2.11–4.2.12 explained that consultation respondents were not representative of the general London population in relevant respects.

C7.1 PAP Letter ¶47(a) contends, on the basis of a fragment of a sentence taken in isolation, that Consultation Paper Appendix B under the heading "*Compliance Rates*" addresses only forecast compliance rates with the proposed changes and "*says nothing at all*" about how rates for 2023 without the proposed changes (ie the reference case) were calculated. PAP Letter ¶47(c) repeats this. These suggestions are incorrect — and unarguable — having regard to the actual explanation in the consultation documents, summarised in paragraph C3 above. In summary, TfL forecasted compliance without the ULEZ extension using ANPR data cross-referenced to DVLA vehicle records (and other identified information).

C7.2 PAP Letter ¶47(b) contends that what is said about TfL's "*ULEZ vehicle response tool*" somehow supports your contention. The opposite is true. Appendix B explains that the ULEZ vehicle response tool is one of the two tools TfL applied to adjust the reference case data in order to forecast compliance rates with the ULEZ expansion: see paragraph C3.3(c) above. This shows TfL did have a reference case.

C7.3 PAP Letter ¶47(d) complains that "*there is no differentiation between the assumed compliance rates for inner and outer London (at least on the face of the text)*" and that "*there is no explanation for how the specific assumed compliance rate of 91% for 'outer London' (as opposed to 'London-wide') has been calculated*".[49] It is not clear what "*text*" this refers to. Assuming it is Appendix B of the Consultation Paper: (i) as the PAP Letter itself points out, rates for Outer London and London-wide were reported in the ULEZ Scheme IIA (which indicates that Outer London was separately considered); and (ii) the absence of differentiation/separate explanation in Consultation Paper Appendix B reflects that compliance rates without the extended ULEZ scheme were forecast using the same methodology for

[49] PAP Letter ¶47(e)(ii) essentially repeats this complaint.

Outer London and London-wide (based on inputs including ANPR data cross-referenced to DVLA records, with certain other information).[50]

C8 In addition, PAP Letter ¶¶47(e), 49–53, while confused, appear to contend TfL assumed that the compliance rate for cars (excluding PHVs) in outer London without the extended ULEZ would be 91% because there had been a compliance rate of 91% in Inner London one month after the ULEZ was expanded in 2021 to the North and South Circular Roads, as is mentioned in ULEZ Scheme IIA §2.3 (p 23). But TfL did not reason in this way, nor is this what the consultation documents say TfL did:

C8.1 As explained in paragraph C3 above, the consultation documents explain how TfL in fact forecast compliance rates: based on observed data.

C8.2 TfL and the Mayor did not simply adopt as the compliance rate for cars in Outer London without the expanded ULEZ the compliance rate overall for Inner London after the 2021 expansion. Nor does anything in the consultation documents suggest it did so.[51] In particular, ULEZ Scheme IIA §2.3 does not say or suggest TfL proceeded in this way: it is not directed to the assumptions for the reference case for Outer London or London-wide, which are instead addressed in §4 (see paragraph C3.4 above).

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50 For the purposes of air-quality analysis, ANPR data is zone specific (based on the location of the relevant group of cameras), thus a forecast can be broken down by zones within London.

51 PAP Letter ¶47(e)(i) suggests that TfL failed to specify whether the ANPR data it used to forecast compliance rates was from only Inner London or only Outer London. But as is apparent from Appendix B, TfL used ANPR data from both Inner and Outer London, that is, ANPR data from its (full) camera network.

PAP Letter ¶47(e)(i) also refers to the assumption in Consultation Paper p 97 that "*proportions of compliant and non-compliant vehicles based on the existing camera network are suitable to estimate unique vehicles*". As is apparent from the text, this referred to the entirety of TfL's camera network (including in Outer London), and simply explains TfL's assumption, which it considered appropriate to make, that this network captures sufficient information to provide a representative picture of vehicles generally. It provides no support for your argument.

PAP Letter ¶47(e)(ii) complains that there was no separate indication in Appendix B of how the Outer London compliance rate was calculated as opposed to the London-wide compliance rate with the expanded ULEZ scheme. But as explained in paragraph C7.3, that is because both were calculated in the same manner, based on the corresponding ANPR data.

None of these matters suggests that TfL made the assumption alleged in the PAP Letter.

C8.3 Your suggestion appears to base itself exclusively on the coincidence between the figures (91%): see especially PAP Letter ¶¶50–52. This does not assist you, not least because the figures do not in fact match and are not comparable:

(a) The 2021 ULEZ expansion figure (to which ULEZ Scheme IIA p 23 refers) was 91.8%, and the figure for cars only was 93.8%.[52] These figures differ from the 91% reference case figure for cars in Outer London.

(b) The 91% reference case figure is for cars only (excluding PHVs), whereas the 2021 ULEZ expansion figure is for all vehicles; (ii) the reference case figure is for Outer London whereas 2021 ULEZ expansion figure is for Inner London; and (iii) the reference case figure is a forecast for August 2023, whereas the 2021 ULEZ expansion figure is from October–November 2021.

(c) Further, the compliance rates in May 2022 for Inner London (ie the 2021 ULEZ expansion) was 93.8% overall, and over 95.4% for cars.[53] Again, these figures differ from the 91% reference case figure for cars in Outer London. TfL did not adopt either as the reference case.

(d) Further, your contention appears to be that TfL illogically adopted the 91% 2021 ULEZ expansion compliance rate as its reference case for cars in Outer London, yet no such suggestion is made for the other estimates in Table 4-1 to the ULEZ Scheme IIA (ie for PHVs and LGVs (vans) and for Outer London or London-wide), presumably because they do not happen to coincide with other figures. The suggestion that TfL wrongly assumed just the figure for cars in Outer London, but not the other figures in Table 4-1, is not credible.

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52 TfL, *Expanded Ultra Low Emission Zone — First Month Report* (December 2021) pp 12–13 (Tables 2 and 4).

53 TfL, *Expanded Ultra Low Emission Zone — Six Month Report: Including Low Emission Zone — One Year Report* (July 2022) p 14 (Table 2). The figure for cars includes PHVs but excludes taxis.

C9 TfL has accordingly not assumed that Inner London compliance rates after the 2021 ULEZ expansion for all vehicles will apply just to cars in Outer London without the new ULEZ expansion, *contra* PAP Letter ¶49.

## Annex D: Documents enclosed with this letter

D1 The Variation Order as made by TfL on 21 November 2022 as requested in PAP Letter ¶91(i)

D2 A consolidated version of the Emission Zone Order, incorporating the variations as confirmed by the Mayor, as well as a marked-up version for ease of reference