



Neutral Citation Number: [2021] EWHC 73 (Admin)

Case No: CO/2854/2020 & CO/2995/2020

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20 January 2021

Before :

MRS JUSTICE LANG DBE

Between :

THE QUEEN

CO/2854/2020
Claimants

on the application of

(1) UNITED TRADE ACTION GROUP LIMITED
(2) LICENSED TAXI DRIVERS
ASSOCIATION LIMITED
- and -
(1) TRANSPORT FOR LONDON
(2) MAYOR OF LONDON

Defendants

THE QUEEN

CO/2995/2020
Claimants

on the application of

(1) UNITED TRADE ACTION GROUP LIMITED
(2) LICENSED TAXI DRIVERS
ASSOCIATION LIMITED
- and -
TRANSPORT FOR LONDON

Defendant

David Matthias QC and Charles Streeten (instructed by Chiltern Law) for the Claimants
Ben Jaffey QC and Celia Rooney (instructed by the Public and Regulatory Law Team,
Transport for London) for the Defendants

Hearing dates: 25 & 26 November 2020

Approved Judgment

Mrs Justice Lang :

1. This is a ruling on the admissibility of evidence in two consolidated claims for judicial review. The Claimants challenge the “London Streetspace Plan – Interim Guidance to Boroughs” (“the Guidance”) and the A10 GLA Roads (Norton Folgate, Bishopsgate and Gracechurch Street, City of London (Temporary Banned Turns and Prohibition of Traffic and Stopping) Order 2020 (the “A10 Order”). In this judgment I refer to the Guidance and the A10 Order as “the decisions”.
2. Both the Claimants and the Defendants have filed substantial amounts of evidence in support of their respective positions. Both parties have objected to the admissibility of evidence by the other. The Defendants object to the evidence of the Claimants’ witness, Mr Martin Low. The Claimants object to parts of the evidence of Mr Sam Monck, filed on behalf of Transport for London (“TfL”). Both parties agreed that I should consider the evidence *de bene esse*, and make my ruling at the conclusion of the hearing.

Mr Monck’s evidence

3. Sam Monck is the Head of Network Sponsorship at TfL. He made his first witness statement (“Monck 1”) on 23 October 2020 and his second witness statement (“Monck 2”) on 10 November 2020. Both statements were made in response to the claims.
4. The Claimants objected to parts of Mr Monck’s statement which, they submit, go beyond a factual account of the steps leading up to the decisions under challenge and seek impermissibly to supplement the reasoning in the Guidance and the report in support of the A10 Order, and to justify the decisions by reference to information which was not even in existence when the decision was taken.
5. Mr Jaffey QC referred me to the judgment of the Divisional Court in *R (Horeau & Bancoult) v Secretary of State for Foreign and Commonwealth Affairs* [2018] EWHC 1508 (Admin), on a preliminary application for disclosure and information, where Singh LJ said, at [20]:

“The duty of candour and co-operation which falls on public authorities, in particular on HM Government, is to assist the court with full and accurate explanations of all the facts relevant to the issues which the court must decide. It would not, therefore, be appropriate, for example, for a defendant simply to off-load a huge amount of documentation on the claimant and ask it, as it were, to find the "needle in the haystack". It is the function of the public authority itself to draw the court's attention to relevant matters. It is the function of the public authority itself to draw the court's attention to relevant matters; as Mr Beal put it at the hearing before us, to identify "the good, the bad and the ugly". This is because the underlying principle is that public authorities are not engaged in ordinary litigation, trying to defend their own private interests. Rather, they are engaged in a common enterprise with the court to fulfil the public interest in upholding the rule of law.....”

6. Mr Jaffey QC submitted that the purpose of Mr Monck's statements was simply to discharge the obligation described by Singh LJ. in *Horeau*.
7. Whilst it is correct to say that the Defendants in these claims had to comply with the obligations set out in *Horeau*, they must also abide by the well-established principles which prevent decision-makers from remedying weaknesses in their decisions by means of *ex post facto* evidence. The principles to be applied to "after the event" evidence by decision-makers were helpfully set out by Green J. in *Timmins v Gedling BC* [2014] EWHC 654 (Admin), at [109] – [114]:

"109. There is one final matter that loomed large in submissions that I should deal with. Lymn objected strenuously to the service and admissibility of witness statement evidence by Mr Morley on behalf of the Defendant. They submitted that his evidence was an attempt to re-write history and plug errors in the various planning reports submitted to the Planning Committee. There is no black and white rule which indicates whether a court should accept or reject all or part of a witness statement in judicial review proceedings. A witness statement might serve a number of purposes. First, it might make admissions in pursual of the duty of a public authority to act with candour and openness. Secondly, it might provide a commentary on documents which are provided by way of disclosure in pursuit of the public authority's duty to come to court with its cards face upwards on the table. Thirdly, it might provide an explanation why an authority did or did not do something. Fourthly, the statement may seek to plug gaps or lacuna in the reasons for the decision or elaborate upon reasons already given. Given the multiplicity of purposes that a statement can serve it is necessary to identify in relation to each contention the basis upon which the impugned statement is relied upon.

(ii) The reluctance of courts to allow elucidatory statements

110. In the present case a considerable portion of the statement of Mr Morley seeks to summarise and explain the reasons set out in the various reports. Mr Kimblin, for the Defendant, submitted to me that there was no need for me to have recourse to the statement where this merely served to summarise or explain the Reports. It seems to me that as a matter of first principle it should be rare indeed that a court will accept *ex post facto* explanations and justifications which risk conflicting with the reasons set out in the decision. The giving of such explanations will always risk the criticism that they constitute forensic "boot strapping". Moreover, by highlighting differences between the reasons given in the statement and those set out in the formal decision they often actually serve to highlight the deficiencies in the decision. Fundamentally, a judicial review focuses the spotlight upon the reasons given at the time of the decision. Subsequent second bites at the reasoning cherry are inherently likely to be viewed as self-serving.

111. In *Ermakov v Westminster City Council* [1995] EWCA Civ 42 the applicant came to the UK from Greece and applied to the respondent for housing under the Homelessness Provisions of the Housing Act 1985. The respondent refused the application saying that the applicant was intentionally homeless. The respondent gave reasons for its decision as required under the Act which were challenged in a judicial review. The respondent then filed supplementary evidence setting out different reasons for its decision from those originally given. A Deputy Judge accepted that evidence and dismissed the claim. The Court of Appeal reversed that decision. The Court of Appeal held that since the respondent was required to give reasons at the time of its decision and those reasons were deficient, the decision should be quashed. Hutchison LJ gave the leading judgment, with which Nourse and Thorpe LJJ agreed. At page 315h-j Hutchison LJ stated:

“The court can and, in appropriate cases, should admit evidence to elucidate or, exceptionally, correct or add to the reasons; but should, consistently with Steyn LJ’s observations in *ex parte Graham*, be very cautious about doing so. I have in mind cases where, for example, an error has been made in transcription or expression, or a word or words inadvertently omitted, or where the language used may be in some way lacking in clarity. These examples are not intended to be exhaustive, but rather to reflect my view that the function of such evidence should generally be elucidation not fundamental alteration, confirmation not contradiction. Certainly there seems to me to be no warrant for receiving and relying on as validating the decision evidence — as in this case — which indicates that the real reasons were wholly different from the stated reasons”.

112. That judgment was endorsed by the Court of Appeal in *Lanner Parish Council v The Cornwall Council* [2013] EWCA Civ 1290 at paragraphs [61] in relation to contradictory evidence. At paragraph [64] the Court stated:

“Save in exceptional circumstances, a public authority should not be permitted to adduce evidence which directly contradicts its own official records of what it decided and how its decisions were reached. In the present case the officer’s report, the minutes of the Planning Committee meeting and the stated reasons for the grant of planning permission all indicate a misunderstanding of policy H20. These are official documents upon which members of the public are entitled to rely. Mr Findlay’s submission that this is not

a “reasons” case like *Ermakov* misses the point. The Council should not have been permitted to rely upon evidence which contradicted those official documents. Alternatively, the judge should not have accepted such evidence in preference to the Council's own official records”.

113. A further indication of the reluctance of the courts to permit elucidatory statements is found in the recent judgment of Ouseley J in *Ioannou v Secretary of State for Communities and Local Government* [2013] EWHC 3945. There, the Judge was confronted with a gap plugging witness statement from an inspector who gave evidence that he did consider a particular issue in circumstances where it was not apparent from the decision letter that he had in fact done so:

“51. I add that I would strongly discourage the use of witness statements from Inspectors in the way deployed here. The statutory obligation to give a decision with reasons must be fulfilled by the decision letter, which then becomes the basis of challenge. There is no provision for a second letter or for a challenge to it. A witness statement should not be a backdoor second decision letter. It may reveal further errors of law. In my view, the statement is not admissible, elucidatory or not

52. However, if that is wrong, the question whether the statement elucidates or contradicts the reasoning in the decision letter, and so is admissible or inadmissible on *Ermakov* principles, can only be resolved once the decision letter has been construed without it. To the extent that a Court concludes that the reasoning is legally deficient in itself, or shows an error of law for example in failing to deal with a material consideration, it is difficult to see how the statement purporting to resolve the issue could ever be merely elucidatory. A witness statement would also create all the dangers of rationalisation after the event, fitting answers to omissions into the already set framework of the decision letter, risking demands for the Inspector to be cross-examined on his statement, and creating suspicions about what had actually been the reasons, all with the effect of reducing public and professional confidence in the high quality and integrity of the Inspectorate.

53. Inspectors could be required routinely to produce witness statements when a reasons challenge was brought or when it was alleged that a material consideration had been overlooked, since the

challenging advocate would be able to say that, in its absence, there was nothing to support the argument put forward by counsel for the Secretary of State, when there so easily could have been, and he must therefore be flying kites of his own devising. This is not the same as an Inspector giving evidence of fact about what happened before him, which can carry some of the same risks, but if that is occasionally necessary, it is for very different reasons”.

114. In the present case I have not had regard to Mr Morley’s statement in relation to Ground 1 save insofar as Mr Morley has made an admission as to the fact that he did not have the *Fordent* judgment available to guide him as of the date of the Reports or his oral advice to the Committee (see paragraph [47] above). This admission did not however influence my analysis of Ground 1 which is essentially a question of law. Equally, I have decided Ground 2 on the basis of the contemporaneous documents not the Witness Statement evidence. On Ground 3 I have taken account of Mr Morley’s evidence (See paragraph 107(vii) above) but it was not in any way decisive to my reasoning.”

8. The Claimants also referred to *Kenyon v Secretary of State for Communities and Local Government* [2020] EWCA Civ 302, which concerned a challenge to the adequacy of a screening opinion and decision, assessing the potential environmental effects of development. Coulson LJ said, at [27] – [30], that it was generally inappropriate for parties to seek to rely on documents which were not in existence or otherwise available to the decision-maker at the date of the decision.
9. In *Monck 1*, Mr Monck provided some background information about the role of the Defendants and their functions, and the context in which the decisions were made, which I consider to be helpful and unobjectionable. However, there was a difference of view between the parties as to which parts of the evidence fell into this category.
10. Since the Claimants’ case was, in essence, that the Defendants had failed to take into account the position of taxis and their passengers, in a lawful manner, it was crucial to identify the evidential basis upon which the two decisions were taken, and the Defendants’ reasons for the decisions. As the Defendants are both statutory public bodies, it was reasonable for me to assume that their decisions, and the reasons for them, were recorded in the contemporaneous documents.
11. *Monck 1* exhibited many documents and explained their significance. That was helpful and legitimate. However, at times Mr Monck went further and supplemented the contemporaneous documents with evidence which was not available to the decision-makers, and put his own gloss on the reasons for the decisions taken, and the justification for them, in a way which was not to be found in the contemporaneous evidence. In doing so, he impermissibly strayed into an *ex post facto* rebuttal of the Claimants’ grounds of challenge, and an attempt to bolster TfL’s defence. This was a clear example of Green J.’s fourth purpose at [109] in *Timmins*: “the statement may

seek to plug gaps or lacuna in the reasons for the decision or elaborate upon decisions already given”.

12. On Ground 1 (failure to take into account material considerations) and Ground 2 (failure to have proper regard to the public sector equality duty), I consider that the Court should take a strict approach to the admissibility of “after the event” evidence, limiting its consideration to material which was demonstrably taken into account by the Defendants when the decisions were taken.
13. On Grounds 3, 4 and 5, where the Court has to determine the issue of proportionality, I consider that the Court should adopt a more expansive approach to the admission of evidence, allowing both sides to rely *inter alia* upon legitimate “after the event” evidence about the impact of the measures taken, and the need for them.

Monck 1

14. I set out below my detailed conclusions on the challenged passages in Monck 1. Appendix 1 contains the text of Monck 1, which I have annotated by crossing through wholly inadmissible passages and putting partially inadmissible passages in bold. For the avoidance of doubt, where Mr Monck’s reference to a document has been identified as inadmissible, the document itself is also inadmissible.
15. **Para 18: Inadmissible save for the first sentence.** In the second sentence Mr Monck has inserted his own assessment on the importance of bus services, supported by a report from 2016. This potentially assists TfL’s case but there is no contemporaneous evidence that it was taken into account by the decision makers.
16. **Para 34: Partially admissible.** Admissible on Grounds 3 - 5, but not on Grounds 1 & 2, except insofar as the first sentence refers to the period up to 16 July 2020. Aside from that period, it post-dates the decisions, but is potentially relevant to the issue of the proportionality of the measures adopted.
17. **Para 39: Admissible.** This evidence is reflected in the contemporaneous documents.
18. **Para 41: Admissible.** This evidence is reflected in the contemporaneous documents.
19. **Para 43: Partially admissible.** The reference in 4th/5th line - “see, for example, the “Back to School” powerpoint from August 2020” – is inadmissible on Grounds 1 & 2, but admissible on Grounds 3 – 5. It post-dates the decisions but is potentially relevant to the issue of the proportionality of the measures adopted.
20. **Para 44: Partially admissible.** The first two sentences are admissible on all grounds. The remainder of the para is only admissible on Grounds 3 - 5, not Grounds 1 & 2. It post-dates the decisions (the data was presented in a report dated 28 July 2020 so was not available when the decisions were made). It is potentially relevant to the issue of the proportionality of the measures adopted.
21. **Para 45: Partially admissible.** This para is only admissible on Grounds 3-5, not Grounds 1 & 2. It post-dates the decisions (the data was presented in October 2020). It is potentially relevant to the issue of the proportionality of the measures adopted.

22. **Para 46: Partially admissible.** This para is only admissible on Grounds 3-5, not Grounds 1 & 2. It post-dates the decisions (the data was presented in October 2020). It is potentially relevant to the issue of the proportionality of the measures adopted.
23. **Paras 52 – 55: Admissible.** The Guidance is one of the decisions under challenge, and so is plainly a relevant contemporaneous document which Mr Monck is entitled to comment upon. I will take into account the Claimants’ submission that Mr Monck is placing an impermissible gloss on the Guidance when I evaluate the evidence.
24. **Paras 56 – 61: Inadmissible.** In para 56, Mr Monck refers to the failure to deal with the position of taxis, and in paras 57 to 61 he gives his explanation and justification for the failure to deal with them. Whilst in other contexts he is entitled to refer to the purposes and effect of the Guidance, as set out in the contemporaneous evidence, he is not entitled to put the evidence forward in this context, namely, as an explanation or justification for TfL’s failure to deal with taxis. This evidence is a clear example of an attempt to “plug the gap” in TfL’s contemporaneous evidence which did not directly address the position of taxis. It is not possible to admit these paras in evidence on Grounds 3 to 5 only, as they are presented as the answer to Ground 1, as summarised in paras 56 and 60, and so cannot be severed from Ground 1.
25. **Para 66: Admissible.** This evidence is reflected in the contemporaneous documents.
26. **Paras 71, 72, 74, 76, 79: Admissible.** The A10 Order is one of the decisions under challenge. The reasons why the A10 Order was made were summarised in a TfL document titled “Request for decision from Managing Director Surface Transport”, prepared by Mr James Marshall, a TfL officer, on 13 July 2020. It was reviewed by a number of others within TfL, including Mr Monck, before the decision was made by Mr Gareth Powell, Managing Director Surface Transport. Mr Monck’s evidence is largely to be found in the “Request for decision” document which is a relevant contemporaneous document which Mr Monck is entitled to comment upon. I will take into account the Claimants’ submission that Mr Monck is placing an impermissible gloss on it when I evaluate the evidence.
27. Monck 1 contains a numbering error: para numbers 74 to 79 appear twice. To distinguish between them, I have annotated the second set of paragraphs with the number (2).
28. **Para 79(2): Inadmissible.** In so far as this para merely repeats evidence to be found in documents created prior to the decision, namely, the Design Log in June 2020 and the Director Briefing in January 2020, it is admissible. In so far as it expresses Mr Monck’s opinions on the evidence in these documents, and adds further evidence, it is inadmissible as an impermissible “after the event” explanation and justification, which seeks to improve upon the contemporaneous evidence.
29. **Para 86: Admissible.** This evidence is reflected in the contemporaneous documents.
30. **Para 88: Inadmissible.** Mr Monck is here giving his own evidence in response to the issue in the sub-heading immediately above it, which reads “The alleged failure to take into account the special status of taxis”. This explanation/justification is not to be found in the contemporaneous evidence. It is particularly contentious as it lays the ground for Mr Jaffey QC’s submission that the exclusion of taxis from the bus lane was made in

accordance with TfL's existing policies on bus lanes. It is inadmissible as an impermissible "after the event" explanation and justification.

31. **Para 89: Partially admissible.** In the second and third sentences of this para Mr Monck goes beyond the contemporaneous documents and gives his own evidence to explain and justify "the alleged failure to take into account the special status of taxis". This is impermissible "after the event" evidence. It is not possible to admit these paras in evidence on Grounds 3 - 5 only, as they are presented as a response to Ground 1.
32. **Para 90: Partially admissible.** In respect of the Guidance, this para refers to evidence which post-dates the Guidance, and so is inadmissible on Grounds 1 & 2 as "after the event" explanation and justification, but may be relied on in support of the proportionality issue in Ground 3 – 5. However, para 90 is admissible in respect of the A10 Order, as the underlying evidence pre-dates it.
33. **Para 91: Admissible.** This evidence is reflected in the contemporaneous documents.
34. **Para 92: Inadmissible.** The A10 "Request for Decision" document did not state that it proposed to limit the hours of operation of the bus gates to mitigate the impact on taxis. The reason given (at tab 5/1511) was to align the times with the times introduced by the City of London on the neighbouring roads. The extract in para 93 (which is later on in the same document at tab 5/1513), when read consistently with the earlier text, does not support Mr Monck's evidence either. This para is inadmissible as "after the event" explanation and justification.
35. **Para 94: Admissible.** I am just persuaded that this para is not new evidence and is admissible on the basis of passages in the "Request for Decision" document, the Equality Impact Assessment for the A10 Order, and the references to the public sector equality duty in the Guidance. There is a dispute as to whether the conclusions in para 94 can be derived from this evidence, but that is a matter for argument, rather than admissibility.
36. **Para 97: Partially admissible.** I am satisfied that this para, other than the first sentence, is reflected in the contemporaneous evidence.
37. **Para 98: Admissible.** This evidence is reflected in the contemporaneous evidence.
38. **Para 99: Admissible.** This evidence is reflected in the contemporaneous evidence.
39. **Para 102: Partially admissible.** The second sentence of this para is an attempt to use "after the event" evidence to "plug the gap" in TfL's contemporaneous evidence. There is no contemporaneous evidence which records or even implies that the needs of disabled people and those with mobility issues were "very much discussed" when the Guidance was being formulated. This is contentious as the Claimants contend that TfL's focus on walking, cycling and buses did not take into account the needs of those for whom these forms of transport are not suitable.
40. **Para 103: Admissible.** This evidence is reflected in the contemporaneous evidence.
41. **Para 106: Partially admissible.** This evidence post-dates the decisions and so is not relevant to Grounds 1 & 2, but it is admissible on the issue of proportionality in Grounds 3 - 5.

42. **Paras 108, 109, 110: Admissible.** This evidence is reflected in the contemporaneous evidence.
43. **Paras 111, 112 & 113: Partially admissible.** This evidence post-dates the decisions and so is inadmissible on Grounds 1 & 2, but it is admissible on the issue of proportionality on Grounds 3 - 5.

Monck 2

44. I set out below my detailed conclusions on the challenged passages in Monck 2. Appendix 2 contains the text of Monck 2, which I have annotated by crossing through wholly inadmissible passages and putting partially inadmissible passages in bold. For the avoidance of doubt, where Mr Monck's reference to a document has been identified as inadmissible, the document itself is also inadmissible.
45. **Para 8: Admissible.** This evidence is reflected in the contemporaneous evidence. The quality of the access to Liverpool Street Station, and the extent of TfL's recognition of the importance of taxi access, is a matter for argument rather than admissibility.
46. **Para 11: Partially admissible.** The final sentence is inadmissible as Mr Monck is expressing his opinion on the adequacy of the Equality Impact Statement, which is a matter for submissions, not "after the event" evidence.
47. **Para 12: Admissible.** I accept Mr Jaffey QC's submission that Mr Monck is entitled to respond to points raised in Mr Da Costa's evidence about the damage caused to the taxi trade by TfL's policies.
48. **Para 17: Admissible.** This evidence is reflected in the contemporaneous evidence.
49. **Para 19: Partially admissible.** The first sentence is admissible. The second sentence is inadmissible as Mr Monck is expressing his own opinion which goes well beyond what is said in the contemporaneous evidence.
50. **Para 20: Admissible.** The challenge is to the final sentence. Mr Monck is entitled to respond to the points made by Mr Low. Whilst he is not an expert, he is qualified and able to give evidence about the usual practice adopted by TfL in traffic modelling. The quality of Mr Monck's evidence is a matter for submissions.
51. **Para 21: Partially admissible.** This is a challenge to the final sentence, which repeats a point made about current congestion levels in para 44 of Monck 1. As I ruled in relation to para 44, this sentence is only admissible on Grounds 3-5, not Grounds 1 & 2. It post-dates the decisions (the data relied upon was presented in a report dated 28 July 2020 so was not available when the decisions were made). It is potentially relevant to the issue of the proportionality of the measures adopted.
52. **Paras 22 & 23: Admissible.** This evidence is reflected in the contemporaneous evidence.
53. **Para 24: Partially admissible.** The first sentence is admissible as it relates to the time when the A10 Order was adopted. The evidence in the remainder of the para post-

dates the decisions and so is inadmissible on Grounds 1 & 2. It is admissible on the issue of proportionality on Grounds 3-5.

54. **Paras 31 & 32: Admissible.** Mr Monck is entitled to respond to Mr Da Costa's criticisms of TfL's modelling.
55. **Paras 36 – 39: Admissible.** Mr Monck is entitled to respond to Mr Low's criticisms of TfL's modelling. Although he is not an expert, he has sufficient knowledge and experience to give evidence about TfL's modelling. The quality of Mr Monck's evidence is a matter for submissions.

Mr Low's evidence

56. Mr Low is a chartered civil engineer with wide experience of transport in London, having worked at a senior level in several London Councils. His first report is dated 25 August 2020; his second report is dated 29 October 2020 and his third report is dated 16 November 2020.
57. The Defendants objected to his reports being admitted in evidence. In his written submissions filed at the end of the hearing, Mr Jaffey QC complained that permission was neither sought nor obtained from the Court for any of Mr Low's reports. This is incorrect. The Claimants applied for permission to rely upon the expert's reports of Mr Low, pursuant to CPR r. 35.4, in their claim forms. Sir Ross Cranston J granted the Claimants permission to rely on Mr Low's first report when he granted permission to apply for judicial review on 23 September 2019, leaving it to the Judge who heard the claim to determine the weight to be given to it.
58. Mr Jaffey QC's substantive objections to Mr Low's evidence were that they were inappropriate and of little assistance. Mr Jaffey said that they included challenges to the merits of the A10 scheme, and that points made by Mr Low were unsubstantiated.
59. Mr Low's first report set out the statutory and policy framework. He also identified concerns about the procedures adopted. However, the procedural challenge has not been pursued. His second report dated 29 October 2020 responds to the evidence in Monck 1. It queries the modelling and the figures referred to by Mr Monck. Mr Monck responded to Mr Low's comments in Monck 2. Mr Low's third report dated 16 November 2020 is in part a reply to Monck 2. Additionally, Mr Low analyses various documents produced by TfL and the Secretary of State for Transport, seeking to draw out points relevant to these claims.
60. The Claimants submit that this evidence is both relevant and admissible because of the technical nature of this challenge, and the need to consider the question of proportionality. I agree. Accordingly, I grant permission for Mr Low's second and third reports to be adduced in evidence.

Evidence on road schemes

61. In the course of the hearing, the Court admitted in evidence information from both parties about other traffic schemes which have been introduced by TfL and local Boroughs, following the Streetscape Plan and Guidance, and their impact on taxis.

Neither party contended that this information was inadmissible, and accordingly I admitted it in evidence.

Directions

62. The Defendants are to file and serve final versions of Monck 1 and Monck 2, within 28 days of the handing down of this ruling and the order. The final versions must:
- i) Refer to the order of the Court on admissibility;
 - ii) Include the bundle cross-references inserted by Ms Rooney shortly before the hearing;
 - iii) Remove the text declared inadmissible in this ruling;
 - iv) Show on the face of the statements which parts of the text are admissible only on the issue of proportionality in Grounds 3 to 5, and which parts of the text are only admissible in respect of the A10 Order. Junior counsel for the Claimants and the Defendants are requested to agree between them how this may best be achieved.

APPENDIX 1

FIRST WITNESS STATEMENT OF SAM MONCK EDITED IN ACCORDANCE WITH THE RULING ON ADMISSIBILITY

Inadmissible text: ~~crossed through~~

Partially admissible text: **in bold**

I, SAM MONCK, of Transport for London (“TfL”), 197 Blackfriars Road, London SE1 8NJ, SAY as follows:

A. INTRODUCTION

1. I am employed by TfL as the Head of Network Sponsorship. I have held this role since September 2018. My responsibilities include delivering the Transport Strategy of the Mayor of London (the “Mayor”).
2. From May 2017 to September 2018, I was seconded to head up the Oxford Street Transformation project jointly for TfL and Westminster City Council. Prior to then, I was employed as the Head of Boroughs Projects and Programmes at TfL. My team had responsibility for working with London’s Boroughs as well as for TfL’s cycling and bus priority schemes.
3. Prior to joining TfL I worked at London Borough of Camden from 1990 onwards. I have worked in transport since 1994. I was appointed the Head of Transport at the Borough in 2006 and from 2009 I was the Assistant Director responsible for transport, parking, engineering, environment services and a range of services both operational and strategic. I therefore have long experience of dealing with transport issues in central and inner London, especially in areas with significant rail termini and major retail and employment services. Consideration of the role of taxis and their access to roads in the centre of London is therefore an area I am very familiar with.
4. Since April 2020 I have been seconded internally to jointly head up the coordination and delivery of the London Streetspace programme, with a particular emphasis on working with the boroughs. My role has involved oversight of the “London Streetspace Plan – Interim Guidance to Boroughs” (the “Streetspace Guidance”) [SM1A/1] [17/138]. I have also had responsibility for the A10 Bishopsgate project, although I did not take the decision to pursue the project.
5. In this statement, I explain the decision to implement the Streetspace Guidance. As I explain further below, the Streetspace Guidance is part of TfL’s emergency response to the pandemic. It is primarily designed to provide London’s Boroughs with information on how to implement the Mayor’s “Streetspace Plan”.
6. I also explain the steps that TfL itself has taken, as a highway and traffic authority, to implement the principles in the Streetspace Guidance, including the making of various traffic management orders (“TMOs”) under section 14 of the Road Traffic Regulation Act 1984. One of those TMOs, which regulates traffic on the Bishopsgate corridor, is the subject of these proceedings. The relevant order is entitled the “A10 GLA Roads (Norton Folgate,

Bishopsgate and Gracechurch Street, City of London) (Temporary Banned Turns and Prohibition of Traffic and Stopping) Order 2020” (the “A10 Order”) [SM1A/2] [18/171].

7. My statement is structured as follows:

7.1. In Part B, I explain the role that TfL and the Mayor have in respect of traffic management in London. In doing so, I have sought to explain how each of those entities is involved in the regulation of taxis and private hire vehicles (“PHVs”) in London. I have also sought to explain the particular obligations that TfL has in respect of disabled people, and other potentially vulnerable cohorts.

7.2. In Part C, I set out the impact of the COVID-19 pandemic on traffic management in London, and some of the key challenges that TfL has faced.

7.3. In Part D, I address the Streetspace Guidance.

7.4. In Part E, I address the A10 Order. I explain its purpose and effect by reference to the key documents from the decision-making process.

7.5. In Part F, I explain the requests for exemption from the A10 Order that we received from taxi drivers, and the engagement that we had with various representative organisations for the hackney carriage industry.

7.6. In Part G, I consider the various grounds upon which the Claimants criticise the Streetspace Guidance and the A10 Order, including, in respect of each: (i) the alleged failure to take account of the legal status of hackney carriages; and (ii) the potential impact of each proposal on the disabled and elderly.

8. The facts and matters in this witness statement are within my own knowledge, except where I indicate otherwise. In such cases, I indicate the source of my belief and understanding and I believe the facts and matters stated to be true. I am duly authorised to make this witness statement for TfL as the Defendant in these proceedings.

9. There is a complex legal framework that applies to road traffic management in London. Where it assists in explaining the facts, I set out my understanding of the legislation below. However, I am not a lawyer and questions of law are for the Court, not me. My explanations of the legal framework should be read with this in mind.

10. There is now produced and shown to me (marked “Exhibit SM1”) a paginated bundle of true copy documents to which I shall refer in the course of this statement. References to page numbers of that exhibit are in the form [SM1/X/Y] where “X” denotes the document number and “Y” denotes the page number (where appropriate).

B. THE ROLE OF TfL AND THE MAYOR IN TRAFFIC MANAGEMENT IN LONDON

(1) General traffic management role

11. TfL is a statutory body created by the Greater London Authority Act 1999 (the “1999 Act”). The 1999 Act gives the Mayor of London a general duty to develop and implement policies to promote and encourage safe, integrated, efficient and economic transport facilities and services to, from and within Greater London. TfL's duties include securing the provision

of public passenger transport services (including bus services), to, from or within Greater London.

12. TfL is the traffic authority for GLA roads pursuant to section 121A(1A) of the Road Traffic Regulation Act 1984 (the "1984 Act"). Under section 1(2A) of the Highways Act 1980, TfL is also the highway authority for GLA roads. In its capacity as highway and traffic authority, TfL regulates how the public uses highways and is responsible for traffic signs, traffic control systems, road safety, and traffic reduction. TfL is also under a duty, under section 16 of the Traffic Management Act 2004, to manage its road network with a view to securing "the expeditious movement of traffic".
13. The GLA roads (which are defined and designated in accordance with sections 329(1) and 140 of the Highways Act 1980) extend to 580km and are known collectively as the Transport for London Road Network (the "TLRN") or more commonly, 'red routes'. They are, very broadly speaking, the most important and busiest roads in Greater London, carrying around a third of London's traffic despite comprising only 5% of its road network length. They include some 124km of bus lanes. Operational responsibility for other roads in London and Greater London rests with individual Boroughs, including any bus lanes on these routes (of which there are 166km on borough roads).
14. Under the 1999 Act, the Mayor is required to prepare and publish a transport strategy. The boroughs are then required to produce a Local Implementation Plan. TfL has the power to fund the delivery of Local Implementation Plans. In this way, while the boroughs remain highway and planning authorities in their own right, TfL works with the boroughs across all of London's network, and may choose to fund some of these proposals. However, it has direct responsibility over the TLRN.
15. Although the TLRN comprises only 5% of London's total road length, it contains around 38% of London's bus lanes. Bus lanes are used where bus services and their reliability are likely to be affected by traffic congestion and where a bus lane will enable better journey times and journey time reliability. Some bus lanes are also placed to improve safety for road users.
16. The use of bus lanes on the TLRN is governed by Traffic Regulation Orders (TROs) issued by TfL under powers conferred under the 1984 Act. Section 6 empowers the traffic authority for a road in Greater London to make orders for controlling or regulating vehicular and other traffic on that road, section 9 relates to the making of experimental traffic orders and section 14 provides powers to temporarily prohibit or restrict the use of roads. In its role as traffic authority for all GLA roads, TfL has made a large number of TROs designating certain traffic lanes as bus lanes (covering, as I have said, 124km of TfL-controlled bus lanes in total). Those TROs have the effect of restricting the use of the designated bus lanes to prescribed vehicles only.
17. TfL is also responsible, under section 181 of the 1999 Act, for the provision of the London bus network. The bus network in London is of critical importance to the public passenger transport system and it is the most heavily used mode of public transport in London.
18. London's buses undertook 2.2 billion passenger journey stages in 2018/19 accounting for 6.8 billion passenger kilometres [SM1/59] [40/1801]. ~~The efficient and reliable operation of London's bus network is therefore critical to the capital's transport system. For example, a study [SM1/3] [40/1276] undertaken for TfL in 2016 showed that the majority of visitors~~

~~to London town centres (in central London, inner London and outer London) use the bus to access the town centre. 35% of such visitors use London's buses, while 27% walk, 17% rely on trains or the tube network, 16% travel by private car, and 2% cycle.~~

19. To fulfil its statutory responsibilities, and to deliver integrated, efficient and economic transport facilities and services, TfL is required to balance the needs of different transport users, including motorists, bus passengers, taxi and PHV users, freight/service operators and their customers, pedestrians and cyclists. In addition, TfL must take into account the need for a clear regulatory regime that avoids confusion on the part of road users, while maintaining flexibility in its network operation to allow it to respond to changing circumstances. TfL must also ensure the safety of pedestrians, cyclists and other vulnerable road users.
20. TfL also seeks to ensure that the public transport network in London is accessible to all who wish to use it, including disabled passengers. All of London's buses are wheelchair accessible using an extendable ramp. All buses also have wheelchair parking space and priority seats for those less able to stand. A major programme of investment is also taking place on the tube network. By the end of October 2020, 80 tube stations will be step free.
21. The greater use of buses by disabled passengers has in turn required physical modifications of the associated street facilities. TfL has therefore taken steps to ensure that bus stops are accessible (by, for example, lowering kerb heights where appropriate). At present, over 90% of bus stops are accessible to wheelchair users.

(2) The regulation of hackney carriages

22. TfL is also responsible for licensing both taxis (often known as 'black cabs' or 'hackney carriages') and PHVs (commonly referred to as 'minicabs'). A total of 21,583 hackney carriage drivers and 15,972 hackney carriages were licensed by TfL as of 11 October 2020 as well as 108,799 PHV drivers and 87,352 PHVs.
23. Taxis and PHVs in London are subject to different legislation and there are important differences between taxis and PHVs. Most notably:
 - 23.1. Taxis can ply for hire (i.e. be hailed by and pick up passengers from the street without any prior booking) whereas PHVs cannot ply for hire. PHV bookings must instead be made through a licensed PHV operator and cannot be made directly with a driver. This is an important reason why taxis are permitted to use most bus lanes: to allow a taxi to drive close to the pavement and easily stop if hailed from the street, without having to change lanes.
 - 23.2. Taxis can also wait for customers at designated taxi ranks. PHVs may not use taxi ranks.
 - 23.3. When hailed or at a rank, a taxi must take the passenger anywhere that he or she wishes to go, within prescribed limits. A taxi is therefore 'compellable'. When a potential passenger seeks to book a journey through a licensed PHV operator, the operator is not obliged to accept the journey, even if the operator has a licensed PHV driver available to undertake the journey.

23.4. Taxis are required to meet prescribed standards for manoeuvrability (to ensure taxis can turn off a rank and make u-turns to pick up passengers without reversing) and accessibility for disabled passengers. The choice of vehicle used by PHV drivers and operators is not subject to the same level of vehicle specification as taxis. PHVs range from small two-seat vehicles up to 8-seat minibuses, limousines and saloon cars.

23.5. Taxi fares are regulated. All taxis must be fitted with an approved taximeter and may not charge more than the displayed fare. PHVs are not subject to fare regulation.

(3) TfL's bus lane policy

24. TfL has a policy for both taxi and PHV use of London bus lanes (TfL Public Carriage Office's Taxi and Bus Lanes: Policy Guidance (2007) or the "Bus Lane Policy") [SM1/1] [40/1272].

25. Under the Bus Lane Policy, TfL ordinarily "allows taxis in all bus lanes unless their inclusion would cause significant delay to buses or would materially worsen the safety of road users including pedestrians, and taking account of the effects on safety of excluding taxis from the bus lane". The Bus Lane Policy applies both for the purposes of driving in a bus lane and entering bus lanes to pick up and set down passengers.

26. PHVs are treated differently. The Bus Lane Policy provides for PHVs to set down and pick up passengers on red routes, including in bus lanes on red routes, but does not permit PHVs to drive along bus lanes. TfL therefore adopts a generally permissive approach to the use of bus lanes by taxis.

27. In recent years, TfL and the Mayor have increased the number of bus lanes open to hackney carriages, where it is possible to do so. The Taxi and Private Hire Action Plan 2016 [SM1/4] [40/1280] records TfL's plan to enable taxi access to 20 additional bus lanes on the TfL Road Network.

28. However, neither TfL nor the Mayor has ever had an unconditional policy providing taxis with unfettered access to London's bus lanes. Nor has any promise been made to taxi drivers to this effect. As the Bus Lane Policy itself makes clear, while TfL allow taxis to use most bus lanes, there are exceptions where permitting taxis would cause significant delay to buses or worsen road safety, including for pedestrians.

29. In consequence, as taxi drivers are well aware, there have always been a number of bus lanes across London which taxis are not permitted to use. Examples on the TLRN include:

29.1. The bus lane outside King's Cross Station on Euston Road which taxis have not been permitted to use since 2003. A very large number of buses drop off and pick up passengers in this area, so there are sound operational reasons for excluding taxis from the bus lane.

29.2. The London Road contra-flow bus lane between Elephant & Castle and St. George's Circus which taxis have not been permitted to use since 2019, in circumstances where allowing taxi access would cause congestion at the junction given the very large number of buses using the available road capacity.

- 29.3. Taxis are also not allowed to access the A12 Blackwall Tunnel southbound bus gate outside certain permitted hours to avoid blocking the main A12 route at peak times.
30. Examples on Borough roads include:
- 30.1. Two bus lanes around Trafalgar Square in Westminster. The first is the eastbound contraflow bus lane on Cockspur Street. The second is the eastbound contra-flow bus on the Strand from Trafalgar Square to Duncannon Street. Taxis are excluded from both lanes for safety reasons and given the large number of buses which pass through Trafalgar Square.
- 30.2. Bloomsbury Way in Camden. The decision to close the lane to taxis was taken for safety reasons, given the high volume of cyclists who use the route, and the nature of the street design.
31. The general approach is therefore to allow access. But decisions are made on a case by case basis, and TfL continue to exclude taxis from bus lanes for safety and operational reasons. That position was clearly stated by TfL in a letter from TfL to the various trade associations in the hackney carriage industry in December 2019: see further, [SM1/8] [40/1344].

C. RESPONDING TO THE PANDEMIC

32. In January 2020, the World Health Organisation (“WHO”) reported a cluster of pneumonia cases of an unidentified source in Wuhan in the Hubei province of China. A novel form of coronavirus (COVID-19) was subsequently identified and, on 11 March 2020, the COVID-19 outbreak was confirmed as a pandemic by the WHO.
33. On 23 March 2020, the UK government announced a UK-wide lockdown. The lockdown was accompanied by a series of restrictions on travel and contact, with the strictest measures remaining in place until 1 June 2020.
34. While there was a general loosening of restrictions between June 2020 and September 2020, **in recent weeks and months, a number of local restrictions have been reimposed and, from 17 October 2020, London has been subject to ‘tier 2’ restrictions, under which people are prohibited from socialising with anybody outside their household or support bubble in any indoor setting. The Government’s recent guidance on the tier two restrictions appears at [SM1/62] [40/1827]. In respect of travel, it states as follows.**

“Travel

You may continue to travel to venues or amenities which are open, for work, voluntary, charitable or youth services, or to access education, within a high alert level area, but you should aim to reduce the number of journeys you make where possible. If you need to travel we encourage you to walk or cycle where possible, or to plan ahead and avoid busy times and routes on public transport. This will allow you to practise social distancing while you travel...” (emphasis added)

35. TfL faced a number of issues in responding to the pandemic. This included coping with the loss in fare revenue whilst aiming to maintain services for essential journeys (for example for key workers). This involved negotiation with the Department for Transport

("DfT") for emergency funding to continue operations. As part of its direct response to the pandemic, the DfT specified £55 million of funding for emergency active travel measures, £10 million of which was for 'TfL-led' activity and £45 million of which was for 'borough-led' activity. As set out further below, that funding has in turn facilitated a number of programmes including the Streetspace Plan and the associated Streetspace Guidance.

36. Despite the additional funding received, the COVID-19 pandemic remains the biggest peacetime challenge to traffic management in London in living memory. There have been two broad phases of TfL's response: an emergency response phase, and a longer-term recovery phase.
37. One of the priorities during the initial emergency response period was to respond to concerns about pedestrian crowding in London. Until 1 June 2020, the Government's guidance on social distancing was that individuals should stay 2 metres away from one another when outside their homes. The volume of pedestrians and other road users in London meant that this it was not always possible for pedestrians to comply with the 2-metre rule, especially around transport hubs and on high streets.
38. TfL undertook an assessment of 90 high streets on TfL roads, along with all transport hubs and 13 school locations on the TLRN to evaluate both current over-crowding and future risk of over-crowding when lockdown restrictions were eased. The first location to be addressed was Brixton High Street on 6 May 2020, where temporary footway widening increased the space for people queuing for shops and waiting for buses. Those measures, which have continued throughout the pandemic, accord with the statutory guidance issued by the UK Government on 9 May 2020 (updated 23 May 2020) to local authorities "in areas with high levels of public transport use", which encouraged them to take measures to reallocate road space "to people walking and cycling, both to encourage active travel and to enable social distancing during restart": [SM1/12] [40/1391].
39. After the 'emergency response' phase, TfL had to turn its attention to the longer-term recovery period. We were acutely aware that, given the general loosening of lockdown restrictions, there would come a point when a greater number of people would be returning to work and to school but the transport network would still be subject to grave capacity constraints due to the need for social distancing. More space would also be needed for pedestrians and cyclists.
40. Since July 2020 a double decker bus has been restricted to carrying 30 passengers (down from 87), with a single decker limited to 11 or 14 passengers (down from around 60) [SM1/28] [40/1507]. TfL continues to urge those who are able to walk and cycle to do so. TfL also recommends that customers stagger their journeys, to avoid peak travel periods on public transport.
41. The reduced capacity of London's buses, and the ongoing concerns that people have in respect of transmission of coronavirus, also mean that TfL has had serious concerns about the risk of a 'car-led' recovery (whereby people eschew public transport or other forms of traffic, in preference for their private vehicles). London's road network simply does not have the capacity to accommodate a 'car-led' recovery. TfL has sought to prevent that, to an extent, by increasing the daily rate for the congestion charge and extending its operating hours, within the congestion charge zone.

42. In or around 23 June 2020, the Prime Minister announced the easing of various lockdown restrictions: [SM1/20] [40/1476]. Those measures were, in part, aimed at encouraging people back to work. As part of those measures, following a review of the guidance on social distancing, the government also announced that the '2-metre rule' was being revised to allow people to keep a social distance of 'one metre plus', which allows people to stand within 1 metre of one another so long as they adopt appropriate mitigations (e.g. a facemask) to reduce the risk of transmission of the disease.
43. On 3 July 2020 the Government announced that all children would return to school in September, and that employers would be given more flexibility on whether to bring more staff back into offices: [SM1/25] [40/1498]. TfL was required to do significant operational planning ahead of the return to school: **see, for example, the "Back to School" powerpoint from August 2020 [SM1/33] [40/1542]**. TfL has addressed the increased demand for bus travel by dedicating every other bus on certain routes during school travel hours as school buses. Following DfT's guidance, those buses are not subject to the limits on carrying capacity that apply to ordinary TfL buses, and are for school children only.
44. TfL has issued daily transport demand figures since April 2020. The traffic flow data shows that at its lowest level in early April 2020, traffic levels across London were over 60% lower than the same time in 2019. **But during July and August 2020, the proportion of private cars detected in our automatic number plate recognition (ANPR) data was around 56%, compared with 51% pre-COVID, and in central London, the proportion of private cars detected was 29% as opposed to 21% pre-COVID [SM1/32] [40/1533] (specifically, [40/1541]).** Those figures were of concern to TfL because, in circumstances where a large number of people continue to work from home, they suggest that a significantly higher number of those who are travelling are using a private vehicle to do so. The latest traffic flow report suggests that traffic levels in central London and London more generally have recovered and are currently 22% and 7.3% less than pre-COVID levels, respectively (although this may, in part, be attributable to the resurgence of coronavirus in London and the recent imposition of tier two restrictions): [SM1/43] [40/1614].
45. Similarly, TfL's "Passenger Demand Report" contains daily figures of transport demand. **Throughout the pandemic, public transport use has reduced, there has been increased use of Santander Cycle Hire bikes and traffic flow levels have increased throughout the pandemic [SM1/40] [40/1585].**

D. THE STREETSPACE GUIDANCE

46. **As noted above, the need for social distancing means that there are ongoing and severe limitations on the capacity of the public transport network in London. It was estimated that there will need to be around an 80 per cent reduction in public transport capacity in order to support social distancing [SM1/43] [40/1614].**
47. On 9 May 2020, the DfT published statutory guidance entitled "Reallocating road space in response to COVID-19: statutory guidance for local authorities" (the "DfT Guidance") [SM/12] [40/1391]. The purpose of the DfT Guidance was to encourage local authorities and highway authorities to reallocate road space towards pedestrians, cyclists and 'active travel' – something that it described as an "urgent need" in light of the reduced capabilities on the public transport network.

48. On the same day as the DfT published its guidance, both the Mayor and TfL announced the 'London Streetspace' programme. The aim of the Streetspace Plan is to give "space to new cycle lanes and wider pavements to enable social distancing", to reduce the pressure on the London transport network.
49. On 15 May 2020, TfL issued the Streetspace Guidance document itself [SM1A/1] [17/138]. The Guidance was approved by TfL by a process of gathering input and then circulating a near-final draft by email and inviting comments from TfL's relevant directors. As the Streetspace Guidance records, it aims to provide information to London's boroughs who are working together with TfL on the Mayor's Streetspace Plan. It is a 'live' document, in the sense that TfL intend to update it as and when is required in order to respond to the unfolding circumstances of the pandemic. It is therefore deliberately framed as interim guidance only. It remains subject to review and updating. A number of appendices have been added since the original publication, to share analysis, guidance etc.

50. The Streetspace Guidance says:

"As lockdown lifts, demand for travel will increase. This is likely to be phased and incremental and will pose a series of challenges:

- TfL will need to run public transport at much lower levels of capacity than pre-COVID-19 in order to continue to provide space for social distancing
- Travel by car is likely to become more attractive (initially when congestion levels are low but this may continue if people are anxious about using public transport)
- A car-based recovery has significant risks to:
 - safety (and meeting our Vision Zero aim);
 - public health (COVID-19 related, physical activity, poor air quality, etc.);
 - the environment (due to increased carbon emissions); and
 - contradicting the Mayor's Transport Strategy."

51. The Streetspace Guidance therefore recognises the need to "reconsider use of street space to provide safe and appealing spaces to walk and cycle as an alternative to car use in the context of reduced capacity on the public transport network", and to "[suppress] motorised traffic while allowing essential journeys to take place". Pursuant to those objectives, the Streetspace Guidance provides as follows.

"The Mayor's Streetspace plan will transform London's streets, by:

- Providing temporary cycle routes to extend the strategic cycle network, with London's main roads repurposed for temporary cycle lanes and wider footways so that people can safely socially distance
- Providing additional space for people walking and cycling in town centres and at transport hubs, including widening of footways on local high streets to enable people to queue safely for shops which will help facilitate local economic recovery
- Accelerating delivery of low traffic neighbourhoods and school streets by working with boroughs to reduce through traffic on residential streets, to further enable more people to walk and cycle safely as part of their daily routine" (emphasis added)

52. In accordance with the DfT's guidance, the underlying aim of both the Streetspace Plan and the Streetspace Guidance is therefore to enable social distancing on London's streets, to facilitate walking and cycling, and to avoid unnecessary use of public transport, in response to the public health crisis. Where public transport is used, it seeks to minimise overcrowding and keep journey times as short as possible, so as to minimise the exposure risk of passengers to infection. All of this also seeks to avoid a growth in motor traffic

demand which would impact severely on the efficiency of the network for necessary journeys.

53. The Streetspace Guidance identified four sub-programmes of work, which are designed to achieve the aims of the London Streetspace Plan.

53.1. The first is to promote cycling. Existing “shovel ready” projects that had previously been under development with boroughs were accelerated using temporary measures.

53.2. The second was the facilitation of social distancing through the creation of extra pedestrian space at busy spaces (such as Town Centres and transport hubs).

53.3. The third was the expansion of Low Traffic Neighbourhoods to prevent traffic moving through residential area (to encourage walking and cycling).

53.4. The fourth was the expansion of the ‘School Streets’ programme involving part time traffic restrictions at key school opening and closing times (again, to encourage walking and cycling).

54. The Guidance is required because approximately 95% of London’s streets are the responsibility of the 33 London boroughs, and because TfL was the conduit for distributing funding to boroughs. It also provides guidance to TfL on its own policies.

55. As noted above, the Streetspace Guidance is specifically designed to avoid a ‘car-based’ recovery to the pandemic. A car-based recovery would worsen congestion in London, delay buses (thus increasing journey times and exposure risks to infection), have a negative impact on businesses, the environment and public safety.

~~56. The central complaint about the Streetspace Guidance made by the Claimants is that it does not deal with the position of taxis. It is correct that the Streetspace Guidance does not refer to taxis.~~

~~57. That is because the purpose of the Streetspace Guidance was, in a novel emergency situation, to make mass public transport as safe as possible, and encouraging walking and cycling which take place outside and are lower risk activities for the transmission of coronavirus. Promoting taxi use as a means to recover from the pandemic was not TfL’s priority, essentially for the same reasons as TfL wishes to avoid a ‘car based’ recovery.~~

~~58. The guidance therefore promotes the removal of roadway to provide more space for pedestrians, those waiting for buses and for new cycle lanes. Promoting the use of taxis and other motor vehicles, especially in highly congested areas, is not in TfL’s view the best means of using scarce road space. Taxis are not mass public transport, have very limited seating capacity (especially if social distancing is observed), most taxis are still high-emission diesel vehicles and the cost of taxis means that they are not a feasible means of travel to the office or workplace for most Londoners. If taxi use increased, the risk was of increasing bus journey times in the most highly congested areas. This would expose large numbers of bus users to a higher risk of infection, because they would spend longer on buses. It would also mean that less space was available for cyclists and buses.~~

- ~~59. There are, of course, advantages to using taxis, just as there are advantages to switching to greater use of private cars. A passenger is in a sealed compartment and separate from other taxi users and the driver, just as a person driving a private car is separated from others. But if greater taxi and car use leads to increased congestion, higher pollution and congestion, others end up bearing a greater risk of infection.~~
60. I understand that it is also alleged that TfL failed to take into account the legal status of taxis in preparing the Streetspace Guidance. If what is said is that taxis have a right of to go wherever buses do, that is incorrect. I explain TfL's bus lane policy above. If it is being said that TfL was unaware of the legal regime governing taxis, including their right that is also incorrect. TfL is very familiar with the legal regime and status of taxis.
- ~~61. There are elements of the Streetspace programme from which taxis will derive a benefit. For example the temporary conversion of c80km of existing TLRN bus lane to "at any time" operation.~~

E. THE A10 ORDER

(1) The Bishopsgate Corridor and the purpose of the A10 Order

62. TfL considered how best to implement the Streetspace Guidance in respect of the roads it manages. A number of key 'red routes' were identified, particularly those with high previous movement where the current design of the street created problems. This included links to and from key transport hubs. The routes identified included (i) certain parts of Bishopsgate corridor, which had previously been identified as being at risk of severe pedestrian congestion: see further, the A10 Bishopsgate and A3 Borough High Street Briefing [SM1/9] [40/1347]; and (ii) certain roads on and around London Bridge.
63. As to the former, Bishopsgate is a key corridor in the heart of the City. There are a significant number of offices and other workplaces along its length (such that it has a significant 'employment density'). It also has a high pedestrian flow, particularly between the key main line termini stations at Liverpool Street and London Bridge. Notably, Bishopsgate is a single lane carriageway, with only one lane in each direction. In that respect, it is different to a number of other main arterial roads in the City (including the section of road at London Bridge which has also been the subject of a TMO pursuant to the Streetspace Guidance).
64. Prior to the pandemic, the majority of movement on the corridor was by foot and bus, with a growing level of cycling. Furthermore, pre-pandemic the corridor was under considerable pressure in terms of pedestrian crowding and congestion as measured by TfL's pedestrian comfort guidance: [SM1/7] [40/1303].
65. To give some basic numbers:

- 65.1. Bishopsgate is, over most of its length, a single carriageway. Except in the slightly wider northern part of Bishopsgate near Primrose Street, there is no space for a dedicated bus lane.
 - 65.2. Bishopsgate serves 21 day bus routes and 8 night bus routes, with 340 buses per hour traversing Bishopsgate during the morning and evening peaks.
 - 65.3. Pre-pandemic, 43% of vehicles on Bishopsgate were taxis, there were 6,000 cyclists per day (accounting for 25% of the c. 24,000 vehicles using Bishopsgate each day).
 - 65.4. Pre-pandemic, around 56,000 people per day walked on Bishopsgate.
 - 65.5. Bishopsgate had a high pedestrian and cyclist injury rate.
66. TfL was therefore concerned that as people returned to work after lockdown, it would not be possible to maintain social distancing. In addition, Bishopsgate is a very important bus corridor and TfL wished to minimise congestion for buses to reduce journey times and bus crowding, and therefore reduce the risk of exposure to infection whilst travelling by bus. Finally, TfL expected more cyclists as employees returned to the workplace. Bishopsgate is, for most of its length, a single carriageway and so heavy traffic along it increases the risks that cyclists are exposed to. It was also an unattractive environment for cycling, given the high levels of congestion. TfL considers it important to make key routes more attractive for cyclists to encourage greater cycle use during the recovery phase.
67. The scheme was initially presented to TfL's Road Space Performance Group. The scheme was presented twice: firstly to seek initial feedback on the approach being proposed on 3rd June and secondly, with a fully developed feasibility design, on 11th June. TfL's Traffic Manager gave approval for the scheme to proceed at this second meeting. [SM1/14-17] [40/1397-1435].
68. Following approval, a temporary traffic order (TTRO) was prepared. A paper requesting a decision in principle was provided to the Managing Director of TfL Surface Transport, on 1st July 2020 [SM1/21] [40/1481]. It was approved on 1st July 2020: see further, [SM1/22] [40/1491]. A notice of intent was published in the Islington Gazette on 3rd July 2020 [SM1/24] [40/1497]. A further paper requesting a decision to make the advertised order was submitted for approval to the Managing Director of TfL Surface Transport on 14th July 2020 [SM1/29] [40/1510]. It was approved on 15th July 2020: see further, [SM1/30] [40/1531].
69. The notice of making was published in the Islington Gazette on 16th July 2020. The TTRO was made on 16th July 2020 and came into force on 18th July 2020, but was only brought into effect on 31 August 2020, following completion of necessary engineering works and erection of signage. Notices advising the general public that the order had been made were hung on posts and columns along the length of the corridor prior to this date.
70. The Order was entitled "A10 GLA Roads (Norton Folgate, Bishopsgate and Gracechurch Street, City of London) (Temporary Banned Turns and Prohibition of Traffic and Stopping) Order 2020" [SM1A/2] [18/171]. Its stated purpose is to "address the needs arising from the public health situation and reduce pressure on public transport by encouraging the uptake of active travel modes on or near sections of the A10 Norton Folgate, Bishopsgate and Gracechurch Street because of the public health risk arising from the Coronavirus pandemic". The pressure on public transport as identified in the Order includes pressure on underground and rail, not only bus services passing through this part of the network.

71. The purpose of the Order is to reduce through traffic within the corridor due to expected increases in walking and cycling whilst Londoners avoid using public transport in their daily commute. The Order was expected to improve bus journey times and create safer and more attractive conditions for cyclists on the corridor by restricting other vehicles. Where space permits, the footway has been widened to create additional space to allow social distancing for pedestrians and to support the expected increase in walking trips. Widened footways will be in place 24 hours a day.
72. Cyclists on the corridor will remain on the carriageway but with the expected reduction in through traffic, TfL expect flows to be within the quality criteria outlined in TfL's pre-existing guidance on the levels of traffic that allow for a safer and more attractive cycling environment: see further, the guidance, entitled "Criteria 1 of the New cycle route Quality Criteria – Accompanying technical note" [SM1/61] [40/1808]. These criteria consider the degree of separation between cyclists and motorised vehicles, speed of traffic, collision risks, risks from pedestrians and HGVs.
73. The effect of the A10 Order is to introduce a number of bus gates and a series of banned turns on the Bishopsgate corridor between the Monument junction in the south to Worship Street in the north. The bus gates prevent motorised traffic, except buses, from using the corridor as a through route. The introduction of the banned turns ensures that whilst most premises are accessible to motorised vehicles at all times of the day (there are two exceptions: Middlesex Street to Liverpool Street, and Leadenhall Street to Fenchurch Street), but motorised vehicles are required to turn off Bishopsgate using side roads that adjoin the corridor at the earliest opportunity. The combined effect of these changes is to prevent through traffic.
74. The reduction in through traffic was expected to lead to reductions in bus journey times (initial data suggests it has been successful in so doing – see below). The benefit of this will be to reduce over-crowding at bus stops (as services are more reliable), minimise overcrowding on buses by ensuring services are regular and to reduce the overall time passengers are on a bus. All these are significant benefits which should limit the risk of transmission of the coronavirus.
75. 'The use of 'bus gates' allows for the removal of through traffic during peak hours whilst retaining kerbside access to the vast majority of addresses on Bishopsgate. In particular, care was taken to preserve access to and from Liverpool Street station for taxis.
76. The bus gates will operate from 7am to 7pm, Monday to Friday. These hours align with rules introduced by the City of London on their roads as part of their Covid-19 response, minimising confusion for road users and covering key periods of maximum use by cyclists and pedestrians. The hours of operation are shorter than the temporarily extended Congestion Charge hours of operation, which now operates seven days a week from 7am to 10pm. It is expected that the temporary changes to the Congestion Charge will suppress traffic demand within central London to support the Streetspace programme. Banned turns operate 24 hours a day for simplicity, to reduce driver confusion and the complexity of the traffic signal junction arrangements.
77. As a result of the locations of the bus gates and the effect of banned turns at certain side roads, there are two sections of corridor where all access, except for buses, cycles or pedestrians, is restricted during peak hours. These sections span approximately 170 metres between Middlesex Street and Liverpool Street at the northern end of the corridor

and approximately 180 metres between Leadenhall Street and Fenchurch Street at the southern end.

78. For these sections, access is available from either end, after which the final approach to adjacent properties during peak hours would need to be on bus, foot or by cycle. The maximum distance to the end destination would be 85 and 90 metres respectively from the closest side road.
79. These two sections were necessary to reduce the requirement for vehicles to turn within the confines of the road to leave in the same direction of entry. At each bus gate there is a means to leave the corridor by a prior side road, so as to avoid committing an offence by passing through the 'bus gate'. This design reduces the risks arising from drivers performing u-turns to avoid passing through the bus gates, a manoeuvre which gives rise to substantial safety risks, especially to passing cyclists. There is also a practical element as certain vehicle types that are predicted to require to undertake this type of manoeuvre, for example, supermarket delivery vehicles; would have difficulty turning in the road.

(2) TfL's modelling

74. (2) In 2019, TfL and the City of London undertook modelling of the A10 Bishopsgate Corridor for a piece of scoping work. The aim was to explore what might be possible and the potential advantages and disadvantages of different measures. This 2019 project explored how more space could be provided for people walking, cycling and using buses. The results were considered as background evidence by the TfL project team when preparing the Bishopsgate Streetspace scheme.
75. (2) The 2019 modelling used the London Highway Assignment Model (LoHAM). LoHAM is used by TfL to provide an overall impression of the impact of major highway schemes or large residential or employment developments. The model splits highway users into different vehicle types including cars (encompassing PHVs), taxis (hackney carriages), light goods vehicles (LGVs) and other goods vehicles (OGVs) as well as buses and cycles.
76. (2) LoHAM modelling is available for three time periods encompassing AM Peak, Inter Peak and PM Peak. The model base year is 2012 and future modelled year scenarios are 2021, 2031 and 2041.
77. (2) For the 2019 exploration project three scenarios were modelled. The first scenario excluded cars (including PHVs) only, the second excluded cars (including PHVs), LGVs and OGVs and the third excluded all vehicles except bus and cycles. The modelled predicted saw reducing traffic levels in response to increasing restrictions.
78. (2) Notably, the model also forecast that for the first and second scenarios, taxi (hackney carriage) traffic, which were not excluded, would increase in both directions of travel making use of the new capacity released by excluding other vehicles. The model predicts that with fewer other corridor vehicles, Bishopsgate becomes more attractive to taxis as a route.
79. (2) ~~In my judgement, the model is very likely to be correct. Taxi drivers are the most knowledgeable and sophisticated users of London's roads. If other vehicles are excluded from a corridor, that will tend to generate an increase in taxi usage, which could~~

~~undermine any beneficial outcomes expected from a reduction in traffic movements. Taxi drivers will skilfully find the most efficient routes in London and are equipped with “the Knowledge” gained from many years of training for their licence. If other traffic is removed but taxi access remains then the corridor becomes more attractive for taxi use, and this remains the case until any attracted taxi usage reaches the prior level of total traffic demand. This effect has been seen previously. For example, TfL’s removal of around 10% of buses from Oxford Street led to increasing numbers of taxis, leaving a net situation of no change in traffic levels.~~ To ensure appropriate traffic management and achieve the objectives sought in response to the impact of COVID-19 on the transport network, TfL considered it necessary to exclude taxis from passing through the ‘bus gates’ during peak hours.

F. THE REQUESTS FOR EXEMPTION MADE BY THE TAXI TRADE

80. There was no statutory requirement to consult before making the A10 Order. Nonetheless, TfL recognised the effect the proposed changes were likely to have and decided to engage with stakeholder groups. This included the hackney carriage industry. The views of the taxi trade were taken into account during the decision-making process.
81. On 2 July 2020, I attended one of the regular meetings between TfL’s Taxi & Private Hire directorate and trade bodies. I set out an overview of the Streetspace Plan, including its logic and objectives. After addressing the Streetpace Plan generally, I then addressed the group on the proposed A10 Order. I explained to the group that the proposed A10 Order was the only TfL TMO being made in response to the pandemic where it was proposed that taxis would be excluded from a bus gate. There is a typo in the internal notes of the meeting prepared by a colleague which refer to buses and taxis being permitted through the bus gates – this should read buses and cycles. The taxi trade were under no misapprehension as to what was being proposed, as was clear from the meeting and the correspondence that followed it [SM1/23] [40/1493]]. I explained that access would be retained to Liverpool Street Station and onto, off and across the Bishopsgate corridor from side roads. During the course of the meeting, I also discussed the issue of disabled access, noting that while there would be two short stretches of road which were not accessible to taxis during peak hours, TfL had designed the scheme to balance that disadvantage with the need to reduce traffic and minimise the need to make u-turns on a narrow street that would be heavily used cyclists.
82. As well as holding a meeting with representatives from the PHV industry (on 3 July 2020), myself and my colleagues held a further meeting with the hackney carriage industry on 6 July 2020. This second meeting was effectively a ‘re-run’ of the earlier meeting on 2 July 2020, for representatives of the taxi trade who had been unable to attend the first meeting.
83. On 8 July 2020, TfL received a letter [SM1/27] [40/1504] from the Licenced Taxi Drivers Association Limited (the “LTDA”) – the second claimant in these proceedings. The letter raised a number of concerns with the A10 Order, many of which had already been discussed at the earlier meetings. While the LTDA recognised the need for measures to support active travel and social distancing, it sought full access to the Bishopsgate corridor bus gates for taxis. It also expressed the LTDA’s concerns that the A10 Order would operate to the disadvantage of “disabled and vulnerable passengers”.

84. TfL responded to that letter on 6 August 2020 [SM1/35] [40/1561], addressing each of the points raised by the LTDA. In its letter, TfL noted that while the vast majority of bus lanes in London could be used by taxis, there was no blanket rule. The letter also noted that the proposed A10 Order was specifically designed to ensure that passengers can still Liverpool Street Station and the Liverpool Street taxi rank.
85. TfL also received emails from Mr Grant Davis, the Chairman of the London Cab Drivers Club, which voiced similar concerns to those raised in the LTDA's letter [SM1/27] [40/1527]. As of 29 September 2020 there were 190 comments made to the TfL Streetspace email address about the Bishopsgate project. The comments made are varied. However, there are some common themes: access for servicing, requests to permit additional vehicles, including taxis, through the bus gates, wider comments about the taxi trade, comments on congestion and the effect of the scheme on air quality. There are also a number of comments made around the requirements of those with disabilities, or on their behalf, in accessing the area, either via taxi or other modes of transport.
86. It is common for TfL to receive emails raising complaints or concerns about a traffic management order. Traffic management orders invariably operate to the benefit of some but the disadvantage of others. TfL is required to balance a range of competing interests in deciding how to proceed. All emails received are nonetheless acknowledged and passed to the project team for review and a more detailed response as necessary. As I explain below, some mitigations have been introduced as a result.

G. THE CLAIMANTS' CRITICISMS OF THE STREETSPACE GUIDANCE AND THE A10 ORDER

87. While the LTDA's letter of 8 July 2020 raised a number of complaints, I understand that the Claimants grounds have instead focused on two principal concerns, namely: (i) TfL's alleged failure to take into account the special status of taxis when formulating the Streetspace Guidance and the A10 Order; and (ii) the potential effect on the disabled and other people with mobility problems. I consider each of those issues below.

(1) The alleged failure to take into account the special status of taxis

- ~~88. TfL is well aware of the role fulfilled by the taxi trade. It is for that reason that both the Mayor and TfL have sought to maintain and enhance taxi access to bus lanes, save where there are specific safety, operational or other policy reasons not to do so.~~
89. The Streetscape Guidance, however, is strongly focussed on walking and cycling, as well as on enabling the safe use of mass transit in respect of the pandemic recovery. ~~Unlike buses, promoting taxi use was not at the forefront of TfL's pandemic response. While taxis no doubt are a convenient way to travel, they are only able to carry a small number of people at one time and, for many Londoners, their regular use is in any event prohibitively expensive.~~ The emphasis was on promoting outdoor travel (walking and cycling) and making mass public transport (especially buses) as safe as possible, which required minimising congestion and bus journey times.

90. Work was nevertheless undertaken in May and June 2020 to consider the effect of the Streetspace Plan on the London taxi industry. TfL wanted to ensure that the implementation of the Streetspace Plan took into account the needs of taxi users. This work was based on existing traffic models and focused on the impact on taxi services using taxi ranks at four London stations: Liverpool Street, London Bridge, Kings Cross St Pancras and Waterloo:

90.1. The model assessment looked at Hackney Carriage trips arriving and departing the different station taxi ranks in the morning peak periods, and a second assessment reviewed taxi flow in the PM peak. The model indicated the routes that taxis were taking to access and leave the ranks and pinpointed some key destinations. Private hire vehicles were not part of this assessment.

90.2.

The assessment was concluded in June 2020 and the results presented in a powerpoint document issued on 11 June 2020 for a high level internal meeting: [SM1/18] [40/1436]. The overall conclusion reached was that, while local circumstances might mean that it was appropriate to exclude taxis and private hire vehicles from the restrictions in certain instances, there was no basis for a general 'blanket' exclusion. Whether an exclusion was justified would depend on all the facts, and the unfolding circumstances of the pandemic.

91. In respect of the Bishopsgate corridor, I considered with my colleagues whether or not taxis could be excluded from the restrictions, so as to permit them to use the bus lanes on the corridor (these discussions are partially recorded in the TfL Design Log: [SM1/13] [40/1396]). However, as the contemporaneous documents show, extensive modelling was conducted in respect of the Bishopsgate corridor for the previous work in December 2019. The modelling indicated that over 40% of traffic on the Bishopsgate corridor was made up of taxis: [SM1/9] [40/1353]. The design team were aware of this work and noted the potential impact of such high numbers of vehicles negatively affecting the outcomes of the project: [SM1/13] [40/1396]. In those circumstances, my view and that of my colleagues was that it was not possible to achieve the aims of the Streetspace Guidance, and the A10 Order specifically, while continuing to allow taxis to use the bus lanes on the Bishopsgate corridor. The contrary views of the taxi trade and TfL's response to those concerns are set out in the decision documents.

~~92. In order to mitigate the impact of the decision on hackney carriages, however, TfL made a conscious decision to adopt 'bus gates' which restricted access only at peak times, as opposed to excluding hackney carriages and other vehicles from the Bishopsgate corridor altogether.~~

93. As the A10 Decision Document explained [SM1/29] [40/1510]:

"... through the use of bus gates and banned turns the proposal allows access by the taxi and private hire trades and the freight industry to the maximum number of properties on and adjacent to Bishopsgate and Gracechurch Street, in addition to providing access across and around the restricted area. Access to and from Liverpool Street station is maintained in the proposal. The hours of operation of the bus gates are selected both to provide benefits at key times of day and for driver comprehension in aligning with the hours of operation on adjacent City of London-managed streets. Buses are mass transit vehicles and they are the predominant road transport choice for commuters hence why they are being granted access. With overall levels of general traffic on the corridor low, and access

maintained to the majority of the corridor for all vehicles who require access, it is expected that reassignment onto alternative routes will be minimal and this will be monitored.”

(2) The potential effect of the Streetspace Guidance and the A10 Order

94. As noted above, TfL recognises the importance of ensuring that the transport network is accessible to all, including disabled passengers and other passengers with mobility issues. Hackney carriages, which are designed to accommodate wheelchairs, may be the preferred method of transport for some disabled passengers.
95. However, taxis are not the only means of transport for persons with mobility issues. As noted above, all of London’s buses accommodate wheelchairs. There are also a growing number of ‘step-free’ tube and rail stations.
96. While taxis are a convenient method of transport for some elderly or disabled people, they are not the most common form of transportation for persons with mobility problems in and around London:
 - 96.1. A far greater number of disabled people in London use and rely on buses than black cabs. Only 3% of disabled Londoners take a black cab once a week or more: [SM1/6] [40/1293] (specifically, [40/1296]). Disabled Londoners also make a significant number of journeys on foot (as to which, see [SM1/6] [40/1296]).
 - 96.2. In 2019 TfL published “Understanding our Diverse Communities” which uses the London Travel Demand Survey to understand how different members of the community might have different travel preferences. The survey found that disabled Londoners are as likely to cycle as to use a black cab weekly: [SM1/6] [40/1296].
 - 96.3. Older Londoners have a similar pattern of transport use to disabled Londoners with 87 per cent of individuals surveyed over 65 walking at least once a week. Bus is also the most popular form of public transport with 65 per cent of over 65s using the bus at least once a week. In contrast, just two per cent of older people in London use a hackney carriage at least once a week.
97. ~~That is presumably because hackney carriages may well be prohibitively expensive for day to day journeys for many disabled or older passengers.~~ While some subsidies are available, only 6% of disabled Londoners and 23% of wheelchair users hold a Taxicard, which entitles them to reduced taxi fares in London [SM1/6] [40/1301]. The maximum subsidy ranges between £8.50-£10.50 depending on the London Borough (and only 22% of members use the subsidised travel service at least once a week). In deciding whether to proceed with the Streetspace Guidance and the A10 Order, there was therefore a careful balance to be struck – not only between the competing public interests, but also between the needs of disabled passengers themselves.
98. In particular, it is important to recognise that older and disabled Londoners are likely to be more at risk of serious illness or death if they contract COVID-19. Any measure that increases bus journey times or bus congestion will expose bus users with disabilities or who are older to greater risk. The same applies to measures which enable social distancing

- they are likely to disproportionately benefit the old and disabled, because they are most at risk of serious disease.

99. Turning to the specific measures adopted, a comprehensive equality impact assessment was conducted before the making of the A10 Order and was regularly updated thereafter: [SM1/34] [40/1551-1560]. As that document records, TfL was fully aware of the potential impact of the A10 Order on those with mobility issues, including disabled passengers. By way of example, only:

99.1. The A10 Order has created two stretches of road (between Middlesex Street and Liverpool and between Leadenhall Street and Fenchurch Street) where it will be necessary to travel up to 85 and 90 metres respectively to or from premises from the closest point of motorised vehicle access at the end of the section. This was highlighted in the EqIA and it was noted that there could be a potential negative impact on groups with protected characteristics. In particular, it is noted that changes to routing as a result of the scheme may make journeys longer and potentially more expensive for those who choose to travel by taxi.

99.2. As the equality impact assessment for the A10 Order records, this presented a risk for those passengers who “may require door to door travel arrangements” and are not able to walk the approximately 85 to 90 metre stretches in question: [SM1/34] [40/1553]. However, while TfL recognised the potential impact of this on elderly and disabled passengers, the location of the relevant sections of road had been deliberately chosen to ensure that drivers did not do dangerous u-turns. Access to the relevant stretch of road was also maintained for buses. While changing from a taxi to a bus would no doubt involve a measure of inconvenience, disabled passengers were not prohibited from completing the majority of their journey in a hackney carriage and completing the final stretch by bus. Access to Liverpool Street Station was also deliberately maintained so as to mitigate the impact of the A10 Order on various groups of people, including those with mobility issues.

99.3. As the equality impact assessment records, TfL also recognised that removing the bus stop between Threadneedle Street and Cornhill in the northbound direction may have a negative impact on those with mobility problems, including the elderly and disabled (the nearest stops being 200m and 250m in the northbound and southbound directions, respectively). But TfL concluded that these temporary measures were necessary in order to widen the footway, and thus maintain social distancing, due to ongoing development work on the eastern side of Bishopsgate.

99.4. The equality impact assessment also recognised that changes to certain bus routes may negatively impact certain older and disabled people, who may, as a result, have to walk further to or from the nearest bus stop. But those changes were again in TfL’s view necessary, to ensure even distribution of bus services and thereby “reduce pressure on the footways to allow pedestrians to circulate” [SM1/36][40/1566].

99.5. Notably, taxis can continue to access the corridor outside of the times of operation for the ‘bus gates’. This may mitigate some of the impact particularly on disabled and older Londoners who may use taxis to travel to the area in the evenings or at weekends.

100. TfL therefore accepts that the A10 Order potentially has negative consequences for disabled, or elderly, passengers who routinely rely on hackney carriages to access the Bishopsgate corridor. However, the potential difficulties in this respect were outweighed by the wider benefits of the A10 Order to the community during the ongoing pandemic.
101. As for the Streetspace Guidance, the guidance document itself is not a decision document. It is instead guidance for the various London boroughs who will adopt their own traffic management orders and other decisions so as to implement the guidance. In that respect, I note that the Streetspace Guidance expressly refers to the boroughs to the public sector equality duty under section 149 of the Equality Act 2010: [SM1A/1] [17/167]. Similarly, an equality impact assessment was conducted in respect of each TfL London Streetspace Plan project and the TfL webpage on Streetspace also highlights that when deciding the future of Streetspace schemes, TfL will consider the impact a scheme has had (and could continue to have) on equality.
- ~~102. TfL did not prepare a separate equality impact assessment for the Streetspace Guidance, since the guidance document itself does not contain any specific proposals. The needs of disabled people and those with mobility issues were, nonetheless, very much discussed when the Streetspace Guidance was being formulated.~~
103. In addition, the Streetspace Guidance – implemented via the various measures adopted by TfL and London’s boroughs – has a number of advantages for disabled people, including limiting the spread of COVID-19, reducing exposure on public transport and whilst waiting for public transport. Older and disabled Londoners are particularly at risk from COVID-19 and in any event benefit from a reduction in community transmission of the virus.
104. In discussions between the designers, sponsor and myself, TfL considered an exception for vehicles displaying a ‘Blue Badge’ (the badge which allows disabled drivers and passengers to park nearer to their destination). That option was not adopted due to the high number of individuals with a Blue Badge. In England, there are 2.29 million Blue Badge holders. 227,000 Blue Badges are held in London.
105. Several of the central London boroughs (the City of London, Westminster, Kensington & Chelsea, and parts of Camden and Islington) already do not provide special dispensations to Blue Badge holders in recognition of the heavy demand for parking in central London. All these authorities operate separate additional schemes for residents and those working and studying regularly in the affected areas.
- 106. TfL nonetheless recognises the importance of making exceptions, where appropriate, to accommodate the need of vulnerable road users and passengers. For example, TfL have been approached by a disabled person who works within the Bishopsgate corridor, seeking an exemption from the restrictions in the A10 Order. Having considered this person’s circumstances, TfL intends to grant permission to this person to use the bus gates in a private car. Some limited further exemptions have also been made for heavy vehicles working on construction projects on Bishopsgate that would be unable safely to access Bishopsgate using side roads.**
107. TfL is keeping this temporary scheme under review and will give further consideration to additional exemptions as needed.

H. CONCLUSION

108. The London Streetspace programme is one part of TfL's response to the pandemic. It implements guidance from national government. There are trade-offs to be made in considering the allocation of road space during a national emergency. The measures adopted have a clear public health rationale.
109. The Streetspace Guidance was necessarily adopted at speed; responding, as it did, to the unprecedented circumstances of the pandemic. TfL have nevertheless sought to assess carefully what measures are needed where and taking appropriate steps. The provisions of the A10 Order provide a useful example of this process. But that does not mean it is possible to satisfy everyone. Choices have to be made about priorities. The measures are not permanent.
110. All measures adopted pursuant to the Streetspace Guidance are being kept under review and monitored. The underlying circumstances of the pandemic are constantly changing, which in turn necessitates a changing response. The goals of the Streetspace Guidance, and in turn the A10 Order, however, were sound at the time of their adoption, and remain so today.
111. **Initial data collected by TfL suggests that the scheme remains necessary. There has been a return of motor traffic in London far outstripping the return to public transport use across London. Latest figures in that respect show that use of London Underground is down 34%, compared to pre-COVID levels, bus patronage is 57% of normal levels, whereas traffic generally is at 91% of normal levels: [SM1/41] [40/1587]. The proportion of private vehicles on the roads has risen, suggesting that there remains a risk of a car led recovery.**
112. **On Bishopsgate itself, initial traffic flow data has been collected [SM1/42] [1593]. The data has shown that the Scheme has been successful in reducing traffic flows and achieving substantial reductions in bus journey times. Bus journey times along Bishopsgate have been reduced by 36-42% from the pre-pandemic baseline. Traffic flows are over 60% reduced from pre-pandemic levels. Importantly, this is not as a result of general reductions in traffic (as set out above, traffic levels in central London are only slightly lower than pre-COVID at the time of writing). TfL's traffic data shows that traffic on Bishopsgate reduced dramatically on 'lockdown' in April 2020, recovered steadily in June, July and August, then immediately reduced to April 2020 levels on the implementation of the Scheme in September 2020. Cyclist numbers are currently a little lower than pre-lockdown in the mornings and level with pre-lockdown usage during the day and in the evenings.**
113. **Bishopsgate remains the only Streetspace project where TfL have excluded taxis and retained bus access. This is justified because of the level of footfall expected on the corridor as people return to work and travel, as well as the need to avoid congestion for buses and promote cycling on this busy stretch of road. The project is subject to a full monitoring strategy (as to which, see further the Bishopsgate Monitoring Strategy: recent trends - 16 October 2020 [SM1/42] [40/1597]) and will remain under review. For now, however, TfL remains of the view that the A10 Order is justified.**

Statement of Truth

I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.



.....

SAM MONCK

DATED: 23 October 2020

Filed and served on 23 October 2020 by the TfL Legal Department, 5 Endeavour Square, 4th Floor, Yellow Zone, Stratford, London E20 1JN.

APPENDIX 2

SECOND WITNESS STATEMENT OF SAM MONCK EDITED IN ACCORDANCE WITH THE RULING ON ADMISSIBILITY

Inadmissible text: ~~crossed through~~

Partially admissible text: **in bold**

I, SAM MONCK, of Transport for London, 197 Blackfriars Road, London SE1 8NJ, SAY as follows:

A. INTRODUCTION

1. On 23 October 2020, I gave my first witness statement in these proceedings (“Monck 1”). This is my second witness statement. It is served in response to the document entitled ‘*Response to Detailed Grounds of Resistance on Behalf of the Claimants*’ (the “Response”), which were served by the Claimants on 30 October 2020, and the documents accompanying it, namely: (i) the first witness statement of Philip Hannah, dated 29 October 2020 (“Hannah 1”); (ii) the fourth witness statement of Richard Massett, dated 28 October 2020 (“Masset 4”); (iii) the second witness statement of Lee DaCosta, dated 28 October 2020 (“DaCosta 2”); and (iv) the supplemental report of Martin Low.
2. For the most part, these documents repeat points already made previously or which I am advised are a matter for legal submissions. I do not, therefore, propose to address every allegation in the Response, and the accompanying documents.
3. The rest of this statement is divided into five parts, each of which addresses the specific factual issues raised in: (i) the Response; (ii) Hannah 1; (iii) Massett 4; (iv) DaCosta 2; and (v) Mr Low’s supplemental report. I adopt the defined terms used in those documents, as well as in Monck 1, for ease.

B. THE CLAIMANTS’ RESPONSE

4. The Response is primarily comprised of legal argument. I am not a lawyer, and do not therefore attempt to respond to the legal arguments made in the Response. There are nonetheless six factual points in the Response which I wish to address.
5. First, it is said in the Response that there is no evidence of a proportionate justification for TfL’s decisions, in particular excluding taxis from passing and repassing Bishopsgate during peak hours (§2). However, this is dealt with in detail in my first witness statement: see Monck 1, §§62-79. The necessity for excluding taxis from using Bishopsgate as a through route during peak hours was considered in the decision documents and the scheme would not have met its objectives without this measure.
6. Secondly, the Claimants contend that taxis are prevented from using “*an entire stretch of road*” (§3), and that this is significantly more serious than “*just excluding them from a bus lane*”. However, neither taxis nor any other vehicles are excluded from Bishopsgate. Access to Bishopsgate is maintained at all times via side streets, except for two small

stretches of road. The prohibition is on using Bishopsgate as a through route: see, Monck 1, §§73 to 79.

7. Thirdly, the Claimants suggest, in respect of Bishopsgate, that “*it is difficult to think of a more important stretch of road of a more serious and harmful exclusion*” (§4). I respectfully disagree with that statement and, in my view, such hyperbole does not greatly assist sensible highways planning and management.
8. I exhibited to my first statement a PowerPoint presentation, dated 11 June 2020, entitled “*Central London: the challenging of balancing social distancing measures with essential traffic and TPH services*” (SM1/18/65) [40/1436]. Slide 32 and 33 of that presentation considers how black cabs used Central London roads prior to COVID-19. Slide 32 (SM1/19/196) [40/1467] shows that the heaviest flows are primarily on the north west section of the Inner Ring Road and certain routes through Mayfair (such as Berkeley Square), each of which carries up to 800 hackney carriages per hour. Slide 33 (SM1/18/197) [40/1468] shows that taxis represent a high proportion of the traffic on Bishopsgate, but it is not amongst the roads that carry the highest absolute numbers of taxis in Central London. In any event, the restrictions do not prevent access to Bishopsgate and only apply during peak hours. TfL does, of course, recognise the importance of taxi access to and from main line termini stations such as Liverpool Street. For that reason, access has been retained at all times.
9. Fourthly, it is suggested that my evidence that the Defendants had regard to the role that taxis play for those with mobility impairments is “*largely an attempt at ex post facto justification*” (§6). In fact, this issue was considered with care at the time, and recorded in the Equality Impact Assessment [SM1/34/282] [40/1551].
10. Specifically, as Monck 1 records (§99), the A10 Order creates two stretches of road where it is necessary to travel up to 85 to 90 metres to or from premises from the closest point of motorised vehicle access at the end of the section. The equality impact assessment for the A10 Order recognises the potential impact of this on groups with protected characteristics, noting that changes to routing may make journeys longer and potentially more expensive for those who travel by taxi. It specifically records the potential risks for passengers who “*may require door to door travel arrangements*” and have mobility issues: see further, Monck 1, §§99.1-99.2 and [SM1/36] [40/1566]. The equality impact assessment conducted in respect of the A10 Order also recognised the potential difficulties that the removal of the bus stop between Threadneedle Street and Cornhill might have on those with mobility problems, as well as the potential negative impact of the plans on the elderly and disabled who, as a result of changes to various bus routes, might need to walk further to and from bus stops: Monck, §§99.4-99.5 and [SM1/36] [40/1566].
11. Far from being an “*ex post facto justification*”, there are repeated references in the equality impact statement to the potential implications of the proposals on persons with protected characteristics, including those with mobility problems, such as the elderly and the disabled. ~~Careful consideration was given to exactly the issues of which the Claimants complain.~~

12. Fifthly, it is (correctly) said in the Response that the number of licensed taxis and drivers has reduced since the modelling was prepared in 2019. However, the reduction in the number of licenced taxis and drivers between the date of the LoHAM modelling, in 2019, and the introduction of the date of the A10 Order was relatively modest. Between 7 July 2019 and 5 July 2020, the number of licenced taxis fell from 19,174 to 18,318 – a difference of 856. Subsequent declines are likely to be attributable to the pandemic and the resulting reduction in work for taxi drivers.¹ However, the A10 Order was designed with the recovery period in mind. It is to be expected that, as the pandemic restrictions are eased, and people resume everyday activity, there will be more people using taxis and a greater number of taxi journeys in London.
13. Finally, there is criticism of the modelled figure that pre-pandemic peak traffic on Bishopsgate was approximately 43% taxis. As I explained in Monck 1, the 43% results from “LoHAM” modelling, which TfL conducted in May 2019 (§75). The modelling forecasts 2021 corridor vehicle flows, using the ‘AM peak’ (i.e. the hour between 8am and 9am). The 43% figure represents a proportion of all traffic on the Bishopsgate corridor (save for buses and cycles, which are not included, as explained further below).
14. The 43% modelling figure does not include both hackney carriages and private hire vehicles. It refers to taxis alone. Private hire vehicles are subsumed into the figures for cars.
15. The 43% figure was reached by combining the flow outputs from the LoHAM modelling for the northbound and southbound lanes on the Bishopsgate corridor, to create an average figure for the corridor that encompassed both directions of travel. The full modelled figures for both the northbound and southbound corridor, during the 2021 AM Peak Hour, are set out below:

Northbound corridor:

<u>AM Peak</u>	<u>Vehicles / hour</u>	<u>Mean</u> <u>(km)</u>	<u>Median</u> <u>(km)</u>	<u>Mode</u> <u>(km)</u>
Car IWT	35	8.6	6.5	1.5
Car OWT	29	7.7	5.5	2.5
Taxi	137	2.9	1.5	0.5

¹ The reduction in the number of licensed taxis may also, in part, be attributable to the taxi delicensing scheme which is run by TfL. In January 2019, TfL relaunched an enhanced delicensing fund that provides payments to taxi drivers who want to delicense old high-emissions taxis. As a result, many drivers have taken up the opportunity to delicense their vehicles, receiving a financial payment in return.

LGV	86	6.9	3.5	3.5
OGV	27	5.9	3.5	3.5
All vehicles	314	5.4	2.5	2.5
All Cars ²	64	8.2	5.5	1.5

Southbound corridor:

<u>AM Peak</u>	<u>Vehicles / hour</u>	<u>Mean (km)</u>	<u>Median (km)</u>	<u>Mode (km)</u>
Car IWT	24	5.0	4.5	5.5
Car OWT	33	7.3	4.5	2.5
Taxi	127	3.8	2.5	2.5
LGV	98	4.4	2.5	1.5
OGV	17	3.3	1.5	1.5
All vehicles	300	4.4	2.5	1.5
All Cars	57	6.3	4.5	2.5

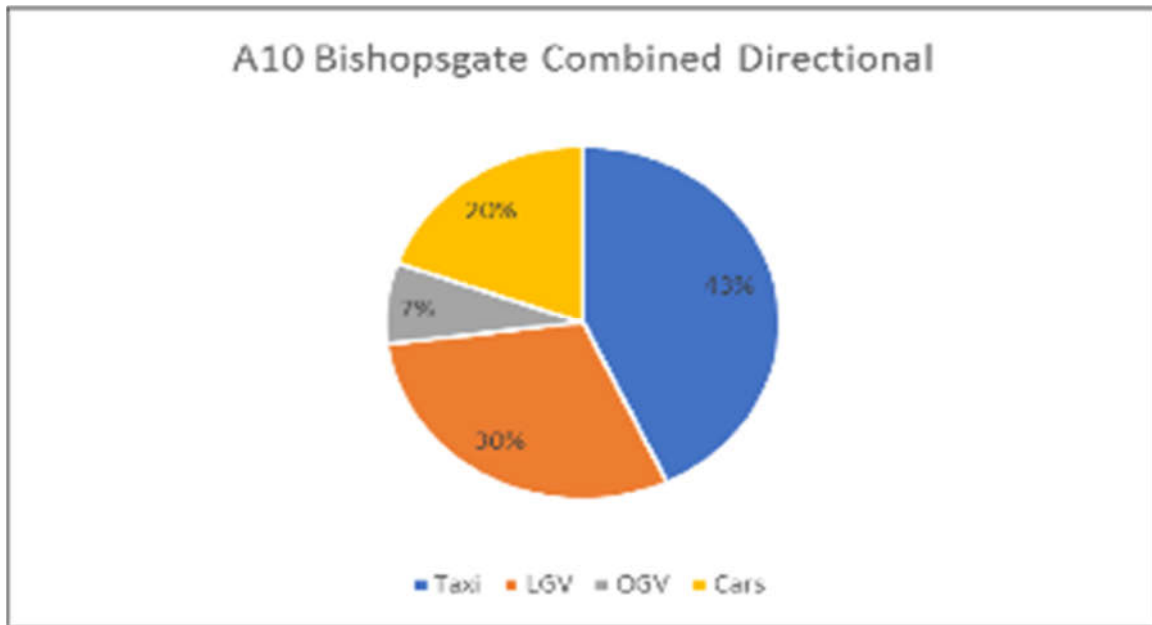
16. As can be seen, the model forecasts that the corridor will accommodate 264 taxis in the 2021 AM Peak Hour for combined northbound and southbound directions, (137 northbound and 127 southbound). That figure is comprised of hackney carriages alone, with PHV’s being included in the two car classifications: Cars IWT (In Work Time) and Cars OWT (Out of Work Time).

16.1. For the northbound direction, taxis represented 44% of total traffic. Light goods vehicles (“LGV”) and ordinary goods vehicles (“OGV”) represented 27% and 9%, while cars (including PHVs) represented 20% (where 11% of that figure was comprised of Cars IWT and 9% was comprised of Cars OWT).

16.2. For the southbound direction, taxis represented 42% of total traffic. LGVs and OGVs represented 33% and 6% of the southbound traffic, while cars (including PHVs) made up 19% of the traffic (8% IWT and 11% OWT).

² This figure is comprised of Car IWT and Car OWT.

- 16.3. As noted above, an average of the northbound and southbound figures was taken. In total, taxis represented 43% of the combined directional traffic on Bishopsgate. LGV and OGV constitute 30% and 7% of the combined directional traffic, while cars (including PHVs) constituted 20% of traffic. Those figures were summarised in the form of a pie chart in the briefing document from January 2020 (SM1/9/82) [40/1353], which is set out below for ease.



17. Further, TfL was concerned that permitting taxis to continue to use Bishopsgate would mean that *more* taxis would use the route, thus further undermining the purpose of the measures. For the A10 Bishopsgate outcome definition project, a range of corridor vehicle scenarios were tested. This work was then used to consider the impact of the 2020 temporary proposals.
18. The modelling outputs from these tests predicted that if vehicle classes such as cars, PHVs and goods vehicles were removed from the corridor, but hackney carriages were not, the number of hackney carriages using the corridor would increase. I explained this in my first statement. The results of the LoHAM modelling are set out below. A particular corridor, from Commercial Street to Cannon Street, was chosen and is referred to as "A". We considered three exclusion scenarios: option 2A, where we excluded only cars (including PHVs); option 3A, where we excluded cars (including PHVs) and goods vehicles; and option 4A, where we excluded all vehicles (including hackney carriages), except buses and cycles. 'NB' and 'SB' stand for 'northbound' and 'southbound' respectively.

-900	2A	3A	4A		2A	3A	4A
	SB				NB		
	Bishopsgate (Location 1)						
Total	-30	-150	-330		-30	-150	-330
Bus	0	0	0		0	0	0
OGV	0	-20	-20		0	-30	-30
LGV	10	-110	-110		20	-80	-80
Taxi	10	60	-120		20	50	-130
Car OWT	-30	-30	-30		-30	-30	-30
Car IWT	-20	-20	-20		-40	-40	-40

19. As can be seen from those figures, the number of taxis in both the northbound and southbound directions were expected to increase considerably if they were allowed to use the relevant stretch of road, when other vehicles were not. ~~As I explained in my first statement, that is entirely unsurprising: the very purpose of excluding the vehicles is to make the relevant stretch of road quieter and less congested. Such a stretch of road will, unsurprisingly, be more attractive to a hackney carriage driver who wishes to get his or her passenger to the destination as quickly as possible.~~
20. The figure focuses on the morning peak. The LoHAM model has three modelled time periods, representing key time periods during the day. The first is the 'AM peak', which takes place between 8am and 9am on weekday mornings. The second is known as the 'Inter Peak', and uses an average hour between 10am and 4pm. The third model is the 'PM peak' which is between 5pm and 6pm on weekdays. Those models can be used in isolation, or in conjunction, depending on the objectives, timeframes and available resources for any project. It is not unusual for only one modelled time period to be used, ordinarily the AM or PM peak.

C. HANNAH 1

21. Mr Hannah's statement makes a number of allegations, which are exaggerated. For example, Mr Hannah says that "London is almost at a standstill owing to the road closures" (§2), and relies, in particular, on alleged difficulties that the emergency services face in responding to emergency calls (§3). **In fact, as I explained in Monck 1, congestion levels in London are currently below the levels experienced before the pandemic (§44).**
22. Mr Hannah's primary complaint is that certain journeys in the Bishopsgate area will take longer for taxis. That is correct and, indeed, it was recognised as one of the specific disadvantages of the A10 Order. However, as I explained in Monck 1, while TfL was mindful of the impact of the A10 Order on taxi journey times, TfL nonetheless decided to

proceed with the order, in order to create more space at peak hours for buses and cyclists. See, for example, Monck 1, §§99.1, 100 and the equality impact assessment at [SM1/36] [40/1564].

23. Mr Hannah's statement exhibits, as an example, a recording of a particular journey which took place on 24 September 2020 (§4). The journey in question is said, ordinarily, to take around 10 minutes. In fact, Mr Hannah says it took 18 minutes (§6). TfL recognises, and recognised at the time of its adoption, that the A10 Order is capable of having an impact on the length and cost of certain journeys, but considers a longer journey is not unreasonable, when assessed in light of the objectives and benefits of the Streetspace Guidance and the A10 Order.
24. In any event, as noted above, TfL accepted at the time the A10 Order was adopted that it may result in increased taxi journey times, and that this was an acceptable trade-off. **For example, while taxi journeys may be longer, bus journey times have been reduced, with most buses now being able to complete their passage along the Bishopsgate corridor faster than they were once able to do. I give the figures in my first witness statement. That is important, given the particularly high usage of buses, as it minimises exposure of passengers to infection and maximises the efficiency of mass public transit during the pandemic.**
25. I also note that the recording appears to start before or around the time that the taxi crosses London Bridge (the driver says he would ordinarily "*go straight over that bridge and straight over Gracechurch Street...*" at around 40 seconds into the recording). The taxi nevertheless arrives at the Liverpool Street taxi rank just over 4 minutes later and therefore appears to have navigated the relevant side streets quickly and efficiently. The fact that the driver then spent several minutes finding a Network Rail member of staff is creditable and shows the standard of service often provided by the black cab trade, but that time is not attributable to the changes on Bishopsgate.

D. MASSETT 4

26. Mr Massett is the Chair of the LTDA. His statement records a journey with a wheelchair user, Charlie Peverall, and exhibits two films using hyperlinks (Masset 4, §§4 and 13). However, the links to both films have 'expired'. I have therefore been unable to review them.
27. The purpose of the journey appears to be to test the accessibility of the two stretches of road which are no longer accessible to hackney carriages or other vehicles (save for buses and cycles) during peak hours as a result of the A10 Order. According to Massett 4, the passenger was dropped off on Liverpool Street, close to the junction with Bishopsgate. He then wheeled himself from that drop off point to his destination (135 Bishopsgate) – a distance which is said to be approximately 128 metres.

28. As a preliminary matter, I note that it is not suggested by Mr Massett that the passenger was unable to complete his journey in this way. However, had the 128 metre stretch proved to be too difficult for the passenger, there were a range of alternative options. For example, the passenger could have taken a bus from London Bridge (all of which are wheelchair accessible), which would have dropped him much closer to his destination. The driver could, alternatively, have dropped the passenger off on Middlesex Street, instead of Liverpool Street. Drop off at Liverpool Street is said to have been in the passenger's best interests because the alternative route would have taken longer and been more expensive (Massett 4, §§8 and 10). However, the alternative route remained available. Further, while a test drive to Middlesex Street took longer than the route to Liverpool Street, this was because "*at the time Fenchurch Street was closed*", as Mr Massett accepts. That will ordinarily not be the case (Massett 4, §10) and is not a consequence of the Bishopsgate project.
29. Massett 4 also comments on the affordability of hackney carriages to disabled people, in particular noting the existence of the Taxicard scheme, which subsidises taxi use for wheelchair users and some others. As I explained in Monck 1, only 6% of disabled Londoners and 23% of wheelchair users hold a Taxicard (§97). The subsidy is not available to all, nor do all disabled people take it up. The subsidy arrangements are not exactly the same in all London boroughs but in most the maximum subsidy for a journey where a Taxicard member uses their card once³ is £8.50.

E. DACOSTA 2

30. Mr DaCosta's second statement, like his first, addresses the "*shrinking nature*" of the licensed taxi fleet in London, which he attributes to a "*huge failure on behalf of TfL*" (§3). Mr DaCosta's statement is mostly directed at a criticism of TfL's policies in general.
31. Mr DaCosta notes (§4) that the PowerPoint presentation of 11 June 2020 (at p. 29) [SM1/18/193] [40/1464] overstates the number of taxis in the fleet by around 10%. The presentation inadvertently refers to the number of licensed drivers, instead of the number of licensed taxis. There were 21,987 licensed taxi drivers in London in June 2020. I believe that number has been rounded up to 22,000 in the slides. However, this did not affect the modelling done, which was not based on the PowerPoint presentation. Nor does this minor error in the figures make any difference. The numbers on that slide are not taken from the modelling, nor are they the starting point for any modelling assessments referred to in this evidence. The LoHAM model considers mode choice and trip demand calculated using data from London population, land use and employment growth data, road-side and public transport surveys. This data is then imported into the highway traffic assignment model and calibrated using real-world data from manual enumeration, turning counts and automatic counters.

³ In some boroughs, Taxicard members may use their card twice for a single journey and increase the subsidy.

32. Mr DaCosta then criticises the general flow modelling of taxis in London (§4). The model, however, was not designed to provide precise figures, but to show the key routes taken. It was designed to demonstrate flows from and to zones, not exact numbers or routes. The model does not, for example, indicate that “zero movements on leaving [Liverpool Street] were possible in the morning”. It simply bands the number of hourly movements into the lower band of the range (which, of course, includes zero). The model is a simplified model and was not intended to provide a calibrated result around rail termini, as the notes in the presentation make clear.
33. At §6, Mr DaCosta notes the possibility that the size of London’s taxi fleet may decrease in the incoming year. He cites that as evidence that “TfL’s data on taxi numbers both in the cavity of the A10 corridor and generally cannot be relied upon” (§6). However, TfL relied on the best available evidence at the time, which in this case was the LoHAM modelling for the Bishopsgate corridor and expects black cab usage (and numbers) to recover.
34. Finally, it is said that the 43% figure arising from the LoHAM modelling is “disproportionately high” (DaCosta 2, §7). In particular, Mr DaCosta says that the 43% figure cannot be correct, where TfL’s evidence is that only 5.1% of traffic on the roads pre-COVID was comprised of taxis (§7): see further, the Automatic Number Plate Recognition camera data, dated 1 August 2020 [SM1/32/267] [40/1533] (specifically, [40/1538]). However, it is important to note that this is the pan-London figure. The proportion of traffic made up of taxis varies considerably across Central London and the City, and is much higher on the Bishopsgate corridor.

F. SUPPLEMENTARY REPORT OF MR LOW

35. The Claimants also rely on the Supplemental Report of Mr Low.
36. First, Mr Low is critical that the pie charts showing the results of the LoHAM model do not include buses and cycles. It is correct that the 43% figure represents a proportion of traffic on the Bishopsgate corridor other than buses and cycles. That is because the modelling in question was prepared with a view to considering the potential options for minimising traffic on the Bishopsgate corridor other than buses and cycles. The strategic importance that the bus network plays in London’s transport strategy, and the environmental benefits of promoting cycling, means that buses and cycles were not being considered for exclusion from Bishopsgate.
37. Second, Mr Low says that TfL should have done modelling on the PM Peak and the Inter Peak, as well as the AM Peak. The use of one of those models is sufficient and the AM peak was selected because it was the most critically congested period.
38. Third, Mr Low criticises TfL for not using Cynemon as a model, something he says amounts to a breach of TfL’s policy: as to which, see the document entitled “London’s Strategic Transport Models”, which is exhibited to Mr Low’s supplemental report (Exhibit

MLSR2) (the “Strategic Models Document”). However, as that document records, Cynemon is a strategic cycling model, which has been “developed as a mechanism to model and visualise cyclist route choice, as well as provide the inputs for cycle connectivity mapping” (pg. 11). It would not be appropriate for modelling taxi usage.

39. Mr Low says that, by not adopting Cynemon, TfL has failed to follow its own policy. That is because the Strategic Models Document suggests that both LoHAM and Cynemon may be appropriate forms of modelling when considering “[r]evised traffic arrangements in a town centre” (pg 16). However, the policy does not suggest that both models need to be adopted, and nor is this an ordinary traffic situation, as would have been envisaged by the policy document. Mr Low himself appears to accept that, in that he says that TfL should also have considered constructing a bespoke local model. However, that was simply not realistic in all the circumstances. This was an urgent traffic order, made in response to the ongoing pandemic to support London’s recovery. While such a model as is proposed by Mr Low may well have been adopted for a permanent scheme being delivered in normal, non-emergency conditions, these were not ordinary times. TfL could not have been created, tested and used a bespoke model the time available. In those circumstances, we chose to rely on our pre-existing models.

40. Finally, Mr Low rejects the 43% figure arising out of the LoHAM modelling. I have addressed that matter in full above.

Statement of Truth

I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.



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SAM MONCK

DATED: 9 November 2020

Served this 9th day of November 2020 by the TfL Legal Department, 5 Endeavour Square, 4th Floor, Yellow Zone, Stratford, London E20 1JN.