



Neutral Citation Number: [2021] EWHC 72 (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. In two consolidated claims for judicial review, the Claimants challenge the London Streetspace Plan (“the Plan”) and the “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”).
2. The First Claimant (“UTAG”) is a trade body formed to protect the interests of the hackney carriage industry in London. The Second Claimant (“LTDA”) is a long-established trade body representing the interests of hackney carriage drivers. For ease, I shall refer to hackney carriages as “taxis” in this judgment. They are to be distinguished from private hire vehicles, commonly known as “mini-cabs”.
3. The Second Defendant (“the Mayor”) is the directly elected Mayor of London, and exercises powers and duties under the Greater London Authority Act 1999 (“GLAA 1999”). The First Defendant (“TfL”) is a statutory body established by the GLAA 1999, which has responsibility for transport in Greater London.
4. The Mayor issued the Plan on 6 May 2020, in response to the COVID 19 pandemic. The Guidance was published by TfL on 15 May 2020. Broadly, the aim of the Plan and the Guidance is to facilitate walking and cycling by providing more dedicated road space for pedestrians and cyclists, and “suppressing” motor vehicle traffic, other than buses.
5. In his oral and written submissions, Mr Matthias QC treated the Plan and Guidance as one, and challenged both. Mr Jaffey QC interpreted the claim as a challenge to the Guidance. At my request, Mr Jaffey QC took instructions and explained that the Plan consisted solely of the Mayor’s public statement on 6 May 2020, which was set out in the Guidance. Whilst section 3 in the claim form in CO/2854/20, only identified the Guidance as the decision under challenge, in the Statement of Facts and Grounds, there were repeated references to the challenge to the Plan. Undoubtedly, the Plan and the Guidance were very closely linked. The Guidance adopted the objectives of the Plan, and its purpose was to provide advice on the implementation of the Plan. In those circumstances, I consider it is appropriate to consider the lawfulness of both the Plan and the Guidance, whilst bearing in mind the distinctions between them. As the Defendants observed, a key distinction is that only TfL issued the Guidance.
6. The A10 Order is a traffic management order (“TMO”) made by TfL on 16 July 2020, under section 14(1) of the Road Traffic Regulation Act 1984 (the “RTRA 1984”). It is a temporary measure, due to expire by 15 January 2022 at the latest. It imposes extensive restrictions on motor vehicles, other than buses, along the A10 at Bishopsgate and Gracechurch Street in the City of London, from 7 am to 7 pm on weekdays. There are limited exemptions, but not for taxis.
7. On 23 September 2019 Sir Ross Cranston, sitting a Judge of the High Court, ordered that claim CO/2995/2020, which had been commenced as a statutory challenge, should be treated as if commenced by way of judicial review and consolidated with claim CO/2852/2020. He granted permission on grounds 1 and 4 in both claims, but refused permission on grounds 2, 3 and 5.

8. The Claimants have renewed their application for permission on grounds 2, 3 and 5. Ground 6, which was a procedural challenge, is no longer pursued. On 2 October 2020, I ordered that the renewed application for permission should be listed to be heard on a rolled-up basis at the substantive hearing.
9. I have handed down a separate judgment addressing the challenges made to the admissibility of evidence (“the Admissibility Judgment”). I have ruled that, on Grounds 1 and 2, the Defendants may only rely on evidence which was in existence at the date of the relevant decision. Some of Mr Monck’s evidence was inadmissible as it was *ex post facto* evidence, which came into existence after the decisions were made, and which sought to bolster TfL’s case, for example, by giving reasons and justifications for the decisions which were not to be found in the contemporaneous evidence. However, I ruled that some of the *ex post facto* evidence, for example, traffic studies carried out after the decisions were made, could be relied upon when considering the issue of proportionality on Grounds 3, 4 and 5. Details of other traffic schemes introduced pursuant to the Plan and the Guidance were admissible by agreement between the parties, and were relevant when considering the overall impacts of the Plan and Guidance.

Grounds for judicial review

10. The Claimants’ grounds may be summarised as follows
 - i) **Ground 1:** In making and promulgating the Plan and Guidance and the A10 Order, the Mayor and TfL failed to distinguish taxis from “general traffic”. In doing so, they failed to have regard to relevant considerations, namely:
 - a) the distinct status of taxis as a form of public transport, reflected both in law and policy;
 - b) the role played by taxis in facilitating accessible public transport for those with mobility impairments.
 - c) in respect of the A10 Order only, the network management duty under section 16 Traffic Management Act 2004 (“TMA 2004”);
 - d) in respect of the A10 Order only, the extent to which the objective of facilitating space for pedestrians could still be achieved by permitting taxis (but not other forms of motorised traffic), to drive through the bus gates on Bishopsgate.
 - ii) **Ground 2:** In making the Plan and Guidance and the A10 Order, TfL and the Mayor failed to have proper regard to the public sector equality duty, pursuant to section 149 of the Equalities Act 2010 (“the 2010 Act”).
 - iii) **Ground 3:** The Plan, the Guidance and the A10 Order were a disproportionate interference, by “control of use”, with the property rights of taxi owners and drivers in breach of Article 1 of Protocol 1 to the European Convention on Human Rights (“A1P1”).

- iv) **Ground 4:** The Plan and Guidance and the A10 Order breach the Claimants' legitimate expectation to pass and repass on London's roads, and to use lanes reserved for buses.
 - v) **Ground 5:** The treatment of taxis in the Plan and Guidance and the A10 Order is irrational.
11. The Defendants' response to the Claimants' grounds may be summarised as follows.
 12. **Ground 1:** The position of taxis was considered by TfL, and they were distinguished from other vehicles. It is not correct that the Defendants failed to apply their own policy (under which taxis are permitted to use bus lanes, subject to operational and safety issues). The policy has always permitted exceptions. The Claimants' real complaint is that taxis are not being treated in the same manner as buses. But that is a considered decision made for good reason. Taxis have no automatic right to use all bus lanes. Nor should taxis automatically be equated to buses when allocating scarce and highly constrained road space during a pandemic. The great majority of bus lanes remain open to taxis. However, it was necessary to exclude taxis from using Bishopsgate during peak hours as a through route.
 13. **Ground 2:** TfL carried out a comprehensive equality impact assessment ("EqIA") of the A10 Order. The Streetspace Guidance referred to the importance of considering s.149 of the 2010 Act before taking any transport measures pursuant to the Guidance, and referred to the needs of persons with mobility issues and other disabilities and how they ought to be addressed. As the Guidance was not a decision, an EqIA was not required.
 14. **Ground 3:** It is unarguable that the use of the A10 Bishopsgate by taxis as a through route is a "possession". The A10 Order is (at most) part of a temporary package of measures controlling the use of a possession – a taxi - on particular streets during peak hours. A temporary emergency restriction on taxis using Bishopsgate as a through route as part of an urgent response to a pandemic is a modest and entirely justifiable interference. The restriction was necessary, because if taxis were permitted to continue to use Bishopsgate as a through route, the objectives of the emergency measures taken in the A10 order would not be achieved.
 15. **Ground 4:** The Claimants contend that they have three substantive legitimate expectations: (i) to "pass and repass" on London's roads, based on past practice; (ii) to use all bus lanes, based on policy; and (iii) to be "regarded as vital", based on alleged policy. The first and third of those expectations are vague and fall short of a clear, unambiguous statement. The second is wrong in fact. There have always been a number of bus lanes that are not open to taxis. That number has been reduced in recent years, where compatible with appropriate traffic management. But there is no expectation or right for taxis to use all bus lanes. There has never been any representation or promise to that effect, nor could any such policy be applicable in the context of a novel pandemic emergency. Even if there were such a legitimate expectation, an emergency measure in response to a pandemic is a paradigm example of a case where a public authority would not be bound by a legitimate expectation, for powerful reasons of public interest.
 16. **Ground 5:** The policy in the Guidance and the decision to make the A10 Order both fall well within the discretionary area of judgement open to TfL as to how to respond

to an emergency situation. These were temporary measures, which respond to the unprecedented difficulties of the ongoing global health crisis.

Facts

17. In January 2020, the World Health Organisation (“WHO”) reported that a cluster of pneumonia cases in China had been identified as a novel form of coronavirus (“COVID-19”). On 11 March 2020, WHO declared the global outbreak of COVID-19 to be a pandemic.
18. On 16 March 2020, in order to combat the rise in infections, the UK Government advised the public to avoid non-essential contact with others, to stop all unnecessary travel and to work from home wherever possible.
19. On 18 March 2020, schools were closed to the majority of pupils.
20. On 23 March 2020, the Government announced a “lockdown”, the terms of which were set out in a succession of regulations. People were required to observe a social distance of 2 metres if possible (reduced to 1 metre plus from 23 June 2020). Restrictions were placed on travel, and on leisure, business and social activities. People were required to stay at home unless they had a valid reason to go out. Some workplaces had to close altogether. Others remained open, but operated with most employees relocated to their homes, using electronic means of communication. Many employees were furloughed, and many self-employed people lost their usual sources of work.
21. The restrictions were progressively relaxed from June 2020 onwards, as infection figures reduced, but restrictions had to be tightened again from late September 2020 onwards as infection figures rose in the predicted “second wave” of the pandemic in the winter months. A regional tier system was introduced, and a 4 week national lockdown was ordered in November 2020.
22. There was a dramatic reduction in the use of buses and trains in and around London during lockdown, for several reasons. First, there was an obvious risk of infection from close contact with others in the confined space of a bus or train. The Government discouraged the use of public transport, as did the Mayor, and TfL reduced its underground train and bus services. Second, there were fewer travellers. People were either no longer working at all; or they were working from home, and no longer commuting. This resulted in a marked reduction in travellers going into central London. Very few students were attending school or college. Also, because of the restrictions on non-essential shops and entertainment and hospitality venues, there were fewer leisure travellers at evenings and weekends. Tourism declined.
23. However, even after lockdown restrictions were relaxed, from June 2020 onwards, the number of passengers on public transport remained significantly reduced compared with pre-COVID levels, especially on commuter routes into central London. Many office workers in London continued working from home, either by choice or because their offices remained closed. Customer demand for non-essential shopping and for entertainment and hospitality venues remained subdued. Schools and colleges remained closed until the autumn. There was a decline in the number of tourists.

24. Karen Proctor, a licensed taxi driver and member of UTAG, said in her first witness statement (paragraph 46) that, at a meeting she attended in July 2020, the City of London Corporation estimated that only about 25,000 people were working in the City at that time. It was also estimated that only about 125,000 out of a typical workforce of 500,000 in the Square Mile were anticipated to return by the autumn of 2020.
25. Use of public transport was still discouraged by the authorities because of the risk of infection and the need to maintain social distancing. Mask-wearing was made compulsory on trains and buses in June 2020. Passengers were asked to stagger their journeys where possible. From July 2020, the number of passengers allowed in buses was limited (30 passengers instead of 87 in a double decker and 11 or 14 passengers in a single decker instead of 60). Some overground trains also restricted passenger numbers.
26. On 3 July 2020, the Government announced that all children would return to school in September. There was an increase in private car use to take children to school, from September 2020 onwards. TfL operated school buses, without social distancing restrictions, in addition to normal services, to take children to and from school.
27. TfL produced figures for traffic flow, based on automatic number plate recognition (“ANPR”) data. The “Notes on data” explained that a “single vehicle may be picked up by several cameras throughout the day. If picked up by several cameras within a 5 minute interval, the vehicle will only be counted once, but if picked up in different areas of London, or at different times of the day, these captures will be treated separately”. Thus, aside from captures within the 5 minute interval, the figures shown for taxis and private cars represent the number of times they were captured on camera on the day, which is likely to produce a higher figure than a count of the number of taxis and private cars actually on the road. The following figures need to be read with that in mind.
28. TfL traffic flow data showed that, in early April 2020, traffic levels were over 60% lower than the same time in 2019. Traffic levels had increased by July and August 2020, but remained well below pre-COVID levels.
29. After the decisions were made, TfL compared traffic levels between the period 20 - 24 July 2020 with the period 2 - 6 March 2020, expressing the results as a percentage of the total traffic. Across the whole of Greater London, it was assessed that the use of private cars increased by 5.3% (51% to 56.3%). The increase within the congestion charge zone in London was assessed at 7.3%. (21.8% to 29.1%). The use of taxis declined by 3% in Greater London (5.1% to 2.1%) and in the congestion charge zone by 9 % (17.8% to 8.8%).
30. At the date of Mr Monck’s first witness statement, on 23 October 2010, the most recent traffic flow report suggested that traffic levels in central London were 22% less than pre-COVID levels, and in Greater London, 7.3% less than pre-COVID levels (paragraph 44).
31. A snapshot of transport use can be seen from a Passenger Demand Report which assessed modes of transport used on 13 October 2020, against a base line of “normal demand”, based upon data for the same day in the previous year, 2019. The headline figure were as follows:

- i) Underground travel was 34% of normal demand;
- ii) Bus journeys were 57% of normal demand;
- iii) Traffic (all types) on main strategic routes throughout Greater London was 91% of normal demand. Breaking that figure down by area:
 - a) Traffic counts in central London were 79% of normal demand;
 - b) Traffic counts in inner London were 92% of normal demand;
 - c) Traffic counts in outer London were 94% of normal demand.
- iv) Rail passengers recorded entering and exiting different station types were as follows:
 - a) Airport: 16% of normal demand.
 - b) City: 22% of normal demand.
 - c) Inner suburb: 40% of normal demand.
 - d) Outer suburb: 45% of normal demand.
 - e) Shopping: 36% of normal demand.
 - f) Terminus: 28% of normal demand.
 - g) Tourist: 25% of normal demand.

The Streetspace Plan and Guidance

- 32. According to the evidence of Mr Sam Monck, who is Head of Network Sponsorship at TfL, after the emergency response phase, TfL turned its attention to the longer-term recovery period.
- 33. On 27 April 2020, TfL produced a power point presentation titled “Recovery Strategy – Active travel & the healthy streets approach” which I consider in more detail below.
- 34. On 6 May 2020, the Mayor and TfL issued the Plan, which comprised a public statement that was released to the media. It said, in part:

“Mayor’s bold new Streetspace plan will overhaul London’s streets

06 May 2020

The Mayor of London, Sadiq Khan, and TfL have today unveiled their ‘London Streetspace’ programme which will rapidly transform London’s streets to accommodate a possible ten-fold increase in cycling and five-fold increase in walking when lockdown restrictions are eased.

With London's public transport capacity potentially running at a fifth of pre-crisis levels, millions of journeys a day will need to be made by other means. If people switch only a fraction of these journeys to cars, London risks grinding to a halt, air quality will worsen, and road danger will increase.

To prevent this happening, TfL will rapidly repurpose London's streets to serve this unprecedented demand for walking and cycling in a major new strategic shift.

.....

TfL, working with London's boroughs will make changes - unparalleled in a city London's size – to focus on three key areas:

The rapid construction of a strategic cycling network, using temporary materials, including new routes aimed at reducing crowding on Underground and train lines, and on busy bus corridors.

A complete transformation of local town centres to enable local journeys to be safely walked and cycled where possible. Wider footways on high streets will facilitate a local economic recovery, with people having space to queue for shops as well as enough space for others to safely walk past while socially distancing.

Reducing traffic on residential streets, creating low-traffic neighbourhoods right across London to enable more people to walk and cycle as part of their daily routine, as has happened during lockdown.

.....

The temporary schemes will be reviewed by TfL – and could become permanent.”

The statement made no mention of taxis.

35. On 9 May 2020, the Secretary of State for Transport issued additional statutory guidance titled “Traffic Management Act 2004: network management in response to COVID-19” which said:

“When the country gets back to work, we need them to carry on cycling and to be joined by millions more. With public transport reduced, the roads in our largest cities, in particular, may not be able to cope without it.

We also know that in the new world, pedestrians will need more space. Indications are that there is a significant link between

COVID-19 recovery and fitness. Active travel can help us become more resilient.

That is why towns and cities in the UK and around the world are making or proposing radical changes to their roads to accommodate active travel.

We recognise this moment for what it is: a once in a generation opportunity to deliver a lasting transformation in how we make short journeys in our towns and cities....

....”

36. The Secretary of State’s guidance asked local authorities to introduce measures swiftly, and set out a list of proposals, which included restricting access to motor vehicles and designating roads for pedestrian, cycle and bus use only. It did not mention taxis.
37. On 15 May 2020, the Mayor and TfL issued a further public statement which repeated points made in the previous statement, and added:

“The Mayor of London, Sadiq Khan, and Transport for London (TfL) have today announced plans to transform parts of central London into one of the largest car-free zones in any capital city in the world. This is necessary to enable safe social distancing on public transport in London as lockdown restrictions are eased, and will help support increased walking and cycling and improve the city’s air quality.

.....

The plans will create more space for social distancing when walking and cycling, ensuring that the people who have no choice but to return to work in central London can do so as safely as possible.

Some streets will be converted to walking and cycling only, with others restricted to all traffic apart from buses, as part of the Mayor’s latest bold Streetspace measures. Streets between London Bridge and Shoreditch, Euston and Waterloo and Old Street and Holborn may be limited to buses, pedestrians and cyclists to help boost safe and sustainable travel as our city starts to gradually emerge from national Covid-19 restrictions. Access for emergency services and disabled people will be maintained, but deliveries on some streets may need to be made outside of congestion charging hours.”

Waterloo Bridge and London Bridge may be restricted to people walking, cycling and buses only, with pavements widened to enable people to safely travel between busy railway stations and their workplaces. TfL is looking into providing Zero Emission

Capable taxis with access to both these bridges, and other areas where traffic is restricted.

.....

As a temporary measure and to support the transformation of London's streets, it is proposed that the Congestion Charge will increase to £15 next month and the hours of operation extended as part of a package of temporary changes. These changes will be monitored and form part of a wider review of the Congestion Charge as agreed with the Government as part of the TfL funding deal. Proposals include increasing the Congestion Charge to £15 and extending its hours of operation to 7am to 10pm, seven days a week, from 22 June. This would encourage Londoners not to make unnecessary car journeys, and is expected to reduce journeys within the Congestion Charge zone by a third. This would significantly reduce air pollution in central London compared to pre-Covid levels and help tackle the climate emergency."

There was no mention of taxis in the statement.

38. On 15 May 2020, TfL issued the Guidance. Its purpose was to provide guidance to the Boroughs to implement the Plan, and to distribute Government funding (£45 million) to Boroughs. TfL also intended to apply the Guidance when considering schemes on the roads for which it was responsible. TfL's Guidance was said to "complement and follow on" from the additional statutory guidance issued by the Department for Transport. The Guidance was intended to be a "live document" which would be kept under review as the pandemic developed.

39. The Guidance described the Plan in the following terms:

"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."

40. The Guidance described the "background" to the Plan as follows:

“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.

We therefore need to urgently 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. Suppressing motorised traffic while allowing essential journeys to take place is key to ensuring we manage our road and public transport network to maximise our ability to keep people moving safely.”

41. The Guidance identified the following benefits to the Plan:

“Realising London’s COVID-19 recovery ambitions will have a range of benefits for London and Londoners:

- Restored confidence in public transport, by providing sufficient space for social distancing, prioritising use for the groups who need to travel (e.g. key workers who cannot work from home) and those who are unable to travel by alternative modes (e.g. those with reduced mobility)
- Economic regeneration of local high streets and town centres, by supporting Londoners to shop locally ...
- Improved health and wellbeing, by enabling all Londoners to achieve the 20 minutes of walking or cycling each day recommended for good health and wellbeing (which will reduce risks of diabetes and heart

disease, both of which are risk factors for severe COVID-19 disease) as well as by reducing exposure to air pollution (which is also thought to be associated with increased deaths from COVID-19)

- Opportunity for Londoners to experience the benefits of reduced car use

Locking in this behaviour change and associated benefits in the short-term ‘restart’ phase will set us up in the right way for the more significant strategic policies that may be needed in the longer term ‘recovery’ phase, in response to a range of future scenarios.”

42. The Guidance stated that, after lockdown, Londoners were likely to change their travel behaviour for health reasons, stating “a recent YouGov poll found around 40% of Londoners say they will use public transport less once lockdown measures are relaxed, with 50 per cent of those saying they will walk instead, 17 per cent saying that they will cycle instead. A worrying 41 percent saying they plan to drive instead.”
43. The Guidance advised that there would need to be around 80% reduction in public transport capacity because of COVID-19. Instead of public transport, people should be encouraged to walk or cycle, by schemes which adapted main roads, residential neighbourhoods and town centres for use by cyclists and pedestrians, in place of cars.
44. The Guidance emphasised the importance of protecting existing bus services, and the need to avoid service disruption to buses, which could lead to high volumes of passengers waiting on pavements.
45. Under the heading “General Principles”, the Guidance advised that “the requirements of all road users should be considered and particularly those with mobility and visual impairments”.
46. There was no mention of taxis in the Guidance.
47. On 12 June 2020, Helen Cansick, Head of Network Performance, issued guidance to TfL officers on the need for “a range of temporary, trial and permanent changes ... to be made to London’s streets” to achieve a recovery from the COVID-19 lockdown which maintained social distancing and prevented a car-based recovery.

Schemes associated with the Plan and Guidance

48. Ms Proctor’s fourth witness statement exhibited a schedule she prepared during the hearing (“the Proctor schedule”) which listed by borough the schemes associated with the Streetscape Plan and Guidance which restricted access by taxis (e.g. bus lane and bus gate restrictions, banned turns, and restricted access to streets in Low Traffic Neighbourhoods). TfL were given time to check the entries and comment on them. The Claimants then replied. The final version of the Proctor schedule is appended to my judgment as Appendix 1.

49. The Proctor schedule only includes schemes which restrict access by taxis. The total number of schemes introduced in 2020 may be summarised as follows:
- i) 86 km of Transport for London Road Network bus lanes changed to “at all times” operation. Those bus lanes (save for a small number of exceptions) permit taxis.
 - ii) 89 km of new cycle routes (of which 66 km are on borough roads).
 - iii) 2 traffic schemes in central London (the A10 Order and London Bridge). The London Bridge scheme permits taxis at all times.
 - iv) 88 Low Traffic Neighbourhoods.
 - v) 322 School Streets.
 - vi) 181 social distancing schemes.

The A10 Order

50. The A10 Order restricts traffic along Norton Folgate, Gracechurch Street and Bishopsgate in the City of London, from 18 July 2020 to 15 January 2022 (or when the social distancing measures are no longer required, whichever is the sooner). These streets form part of the A10, which is a major highway running from London to Norfolk. The A10 Order prohibits through traffic except for buses and cyclists from 7 am to 7 pm on weekdays. All other motor vehicles, including taxis, are prohibited from using Bishopsgate as a through route during those times.
51. Some access to Bishopsgate (and the Liverpool Street station taxi rank) is maintained via side streets, but 24 hour banned turns have been introduced to force vehicles off Bishopsgate as soon as possible. Two sections of Bishopsgate have been designated as bus gates, which means that only buses (and exempted vehicles such as emergency vehicles) can pass along them. The first section runs between Middlesex Street and Liverpool Street, in front of Liverpool Street Station. It is approximately 170 metres long. The second section runs between Leadenhall Street and Fenchurch Street and is approximately 180 metres long. Vehicle access to properties in those sections is prohibited, save for buses and exempted vehicles (emergency vehicles and those who have been granted an exemption).
52. The statement by the Mayor and TfL on 15 May 2020 included proposals for corridors, to be limited to buses, cyclists and pedestrians, across strategic routes in central London, including links to and from key transport hubs. One of the routes identified was London Bridge Station to Shoreditch, which included what TfL described as “the Bishopsgate corridor” in the City.
53. In fact, the proposal to restrict traffic in the Bishopsgate corridor, because of heavy use by vehicles and pedestrians, pre-dated the pandemic by several years. In 2017 TfL prepared a study, at the request of the City of London, and in April 2019 it undertook modelling of potential corridor scenarios, which were considered in December 2019. In January 2020, the “A10 Bishopsgate and A3 Borough High Street Director Briefing” was produced.

54. Concerns were expressed about congestion, air quality and road safety. The pre-COVID modelling in 2019 identified that the corridor served 21 daytime bus routes, and was traversed by over 340 buses per hour during peak times. Bishopsgate was a single carriage way in each direction, and so there was no space for separate bus and cycle lanes. Approximately 24,000 motor vehicles used the corridor each day, and about 6,000 cyclists. It was also used by up to 56,000 pedestrians per day, causing crowding in some areas, such as outside Liverpool Street Station.
55. It was estimated that, excluding buses and cycles, taxis constituted 43% of the traffic on the Bishopsgate corridor. The remaining 57% comprised goods vehicles (37%) and cars (20%). These figures were calculated using the London Highway Assignment Model (“LoHAM”), which takes an average of the northbound and southbound lanes, using the so-called ‘AM Peak’ (a one-hour period between 8 am and 9 am on a weekday morning).
56. The Claimants challenged the reliability of the 43% figure, contrasting it with the much lower figures in TfL’s statistics based on ANPR data (e.g. taxis comprising 17.8% of all vehicles in the congestion charging zone from 2 – 6 March 2020, and only 5% of all vehicles across Greater London over the same period). Moreover, as I observed above, ANPR is likely to capture the same taxi on more than one occasion during a single day.
57. Mr Martin Low, the Claimants’ transport expert, criticised the modelling for failing to include buses, powered two wheelers and pedal cycles which would have given a better representation of the predicted changes to all modes of transport. It would also have provided a more accurate representation of taxis as a percentage of total traffic, and reduced the percentage from 43%.
58. Mr Low also criticised the data capture as inadequate as it relied solely on data from one hour in the AM Peak (8.00 am – 9.00 am). TfL should also have assessed the Inter Peak (10.00 – 16.00) and the PM Peak (17.00 -18.00) to provide a more accurate picture of traffic volumes throughout the day. Mr Low observed that the results might have shaped the period when the restrictions should apply to taxis, perhaps only during the AM Peak, and not during the Inter Peak or PM Peak.
59. The Director Briefing stated that a scheme which excluded all vehicles except buses and taxis was forecast to “significantly increase corridor (black) taxi numbers as the latter takes advantage of newly released capacity”. It was also predicted that, if only cars were excluded, taxis and goods vehicles would use any spare capacity on the road, described as “capacity infilling”. However, the modelling concluded that a scheme which excluded all motorised traffic except buses would reduce traffic flow volumes.
60. This modelling and analysis was relied upon by TfL as a central part of the evidence, reasons and justification for the making of the A10 Order.
61. On 13 May 2020, TfL produced a Plan Brief for the A10 Bishopsgate to become a bus/cycle/walk corridor as proposed in the Mayor’s announcements. It stated:

“As picked up in work done in outcome planning and definition the thinking is that taxis would need to be covered by the restricted access.”

62. Mr Monck, in his first witness statement at paragraph 90, described work undertaken by TfL in May and June 2020 to consider the effect of the Streetspace Plan on the London taxi industry and 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. The model assessment looked at taxi 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.

63. Mr Monck said, at paragraph 91 of his first witness statement:

“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.”

64. The A10 Bishopsgate proposal was considered by TfL’s Road Space Performance Group at two meetings, on 3 June¹ and 11 June 2020, along with many other proposals.

65. At the meeting on 3 June 2020, a presentation was given titled “Bishopsgate bus/cycle/walk corridor – principles”. The first objective listed was:

“Create bus/walk/cycle only corridor in line with Mayoral direction to create wider car-free zone in Central London.”

Taxis were referenced only in the context of making access arrangements. The proposal was approved.

66. At the meeting on 11 June 2020, the results of the assessment undertaken by Mr Monck and his colleagues were given in a power point presentation titled “Central London The Challenge of balancing social distancing measures with essential traffic and TPH²

¹ The document at 5/1397 mistakenly shows the date as 3 May instead of 3 June 2020

² “TPH” means taxi and private hire services.

services”. The assessment was limited to taxi routes to and from the taxi ranks at four main stations: Waterloo, Kings Cross/St Pancras, London Bridge and Liverpool Street.

67. The introduction stated:

“The Streetspace programme presents a challenge in achieving a balance between providing more space for people walking and cycling, and access to essential traffic

.....

Some traffic is essential in central London: freight, servicing, emergency services, construction

Taxi, private hire and private cars enable mobility for those unable to use active modes³ or PT⁴

TfL is now looking at the emerging Streetspace proposals in order to ensure we retain a viable network for essential traffic, and that access to premises is enabled at certain times of day.

The focus of this deck will be *[to]* consider impacts on taxi and private hire services.”

68. On my reading, taxi services were not categorised as “essential” traffic, contrary to Mr Jaffey QC’s submission.

69. The “TPH Context” was described as follows:

- “- There is a need to restrict traffic in central London in order to achieve social distancing and cycling objectives.
- Taxis make up a very high proportion of the flow on some routes (including Bishopsgate)
- Traffic modelling suggests that if taxis aren’t restricted, they may take up any road space created by restricting other traffic
- Current feedback from the Trade includes a preference for full access for all TPH and potential options for fixed fares to mitigate impact to passengers
- We are proposing to engage with the taxi trade in order to explore ways of ensuring that there is sufficient access for the trade whilst achieving the objectives of a sustainable recovery.”

³ “Active modes” means walking and cycling.

⁴ “PT” means public transport.

70. Under the heading “ZEC⁵ taxis”, it was noted that there were around 4,000 ZEC taxis out of a fleet of 22,000 but taxi emission targets were being missed. TfL had introduced payments of “up to £10K” to delicense older diesel taxis and reduced taxi age limits to 12 years by 2022. It suggested that managing taxi access to road within the new car free zones by restricting access to ZEC taxis could incentivise take up of ZECs and improve air quality. But this suggestion was not adopted.
71. The A10 Bishopsgate proposal was approved at the meeting (though not the other proposed schemes). The minutes confirmed that in the two bus gate sections “there will be no access to motorised vehicles, except buses. Journey would have to be continued by foot at these locations to a maximum of 80 or 90 m respectively if the destination is in the middle of both sections”. Taxi access to Liverpool Street station was confirmed as follows:
- “Taxis leaving the rank on Liverpool St will only be able to turn right and the left turn exception to taxis that exists now will no longer apply. ... Northbound access to Liverpool St will remain unchanged, however taxis travelling southbound will not be able to travel beyond Liverpool St on Bishopsgate as a result of the bus gate – these taxis will have to U-turn if they are dropping passengers off at this location.”
72. On a date in June 2020, the Design Log (referred to by Mr Monck above) recorded a decision not to exempt taxis from the proposed bus gates in A10 Bishopsgate:
- Design/Decision Assumption.** Black cabs not exempted from bus gate restrictions.
- Reason.** The Design Brief stated that the goal of this scheme is to limit traffic on Bishopsgate/Gracechurch Streetcreating a bus, walk and cycles only corridor. This forms part of the Mayor’s measures in Central London to create one of the largest car-free areas of any major city in the world. Information from City Planning suggested that taxis currently comprise just under 45% of the traffic flow on Bishopsgate. Modelling from City Planning forecast that corridor closures to all motorised traffic except buses and taxis would significantly increase corridor (black) taxi numbers as they take advantage of newly released capacity. To ensure lower traffic volumes taxis were therefore not exempted from bus gate restrictions.
- Action.** Proceed as designed and monitor.
- Risk (Programme, Cost etc.).** Opposition from the taxi trade may lead to legal challenges and delays”
73. On 1 July 2020, Mr Gareth Powell, Managing Director Surface Transport, approved a decision to proceed with the proposal for the A10 Bishopsgate, on the basis of a “Request for decision” report summarising the objectives and details of the scheme. It

⁵ “ZEC” means zero-emission capable.

explained that four bus gates would operate between 7 am and 7 pm, Monday to Friday for use by buses and cycles only. All other vehicles, including taxis, would be prohibited. The timings had been chosen to align with timings of restrictions on neighbouring City of London roads. It explained the arrangements for access from side roads, including for taxis to the taxi rank at Liverpool Street station. Banned turns would operate 24 hours a day, to avoid driver confusion. Pavements would be widened where it was feasible to do so, to allow for social distancing and the anticipated increase in the number of pedestrians. The report gave a brief account of the findings of the EqIA. The report made no mention of the difficulties which the proposed scheme would create for taxis and their passengers.

74. Following Mr Powell's approval, a statutory notice of intent to make the A10 Order was published in the Islington Gazette on 3 July 2020.
75. Mr Monck met with representatives of the taxi trade to inform them of TfL's decision to make the A10 Order. TfL did not consult the taxi trade prior to making its decision. There was no statutory obligation to do so in the case of a temporary, as opposed to a permanent order.
76. On 2 July 2020, Mr Monck attended one of the regular meetings between TfL's Taxi & Private Hire directorate and the taxi trade. He gave an overview of the Plan, and addressed the meeting on the proposed A10 Order. There was a further meeting with the taxi trade on 6 July 2020, for those who were unavailable on 2 July. Mr Monck held a similar meeting with representatives of the private hire vehicle industry.
77. On 8 July 2020, the LTDA sent a letter to TfL setting out its concerns with the A10 Order.
78. On 15 July 2020, Mr Powell approved the decision to make the A10 Order on the basis of a "Request for decision" report summarising the objectives and details of the scheme. The report repeated much of the text from the previous report, setting out the objectives and details of the proposed scheme. The report referred to further guidance from the Department of Transport, dated 29 June 2020, on the conditions for making a temporary order under section 14(1) RTRA 1984 for purposes connected with coronavirus, and explaining how the conditions were met.
79. The report attached the letter of 8 July 2020 from the LTDA and commented upon it as follows:

"There is no statutory consultation required for the making of Section 14 (1) Orders in the same way that a permanent traffic order is and it is proposed that this order is made urgently on a temporary basis for purposes connected to the coronavirus, but we have taken into account the concerns raised by the LTDA, as well as the London Cab Drivers Club set out below.

TfL recognise that there are some potential negative impacts around the increased time and distance, and therefore associated cost, for some journeys, but consider that there is a clear public health imperative to reduce motor traffic to be able to reallocate road space to encourage walking and cycling and to protect

limited public transport capacity in the wider Central London area as described above. This has been made clear in the engagement with both the LTDA and wider taxi trade representatives that TfL has undertaken.

TfL recognises that the taxi trade plays a role in providing access for some people with mobility issues. The design of the scheme carefully balances the need to reduce overall levels of motor traffic on the corridor to allow for the reallocation of space for the purposes set out in this report. However, 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.

A monitoring strategy that will help assess the overall impacts, both the extent to which the objectives of the temporary scheme are being achieved and its wider impacts, forms part of the project. A number of variables will be monitored to understand both the qualitative and quantitative impacts of the scheme. This will, to some extent, need to use certain indicators as a proxy for interpreting the impacts on taxi passengers and drivers. Feedback from the public, businesses in the City and wider stakeholders, including the taxi and freight industry, will also be sought.

....

It is considered that the project already takes into account the concerns raised by both the LTDA and the LCDC. This is reflected in the design of the proposals, and the equalities considerations pursuant to TfL's obligations under the Equality Act 2010 as set out in the appended EqIA."

80. The report then went on to summarise the findings of the EqIA, as follows:

"This acknowledges that there will be some impact on members of the public with certain protected characteristics arising from changes to bus stop locations, certain bus route stopping

locations and localised access changes. Retaining as much access to premises along the corridor, both for freight and servicing and for taxi and private hire, has been a key principle from the outset of the design process. The locations of the bus gates have been considered to maintain as much accessibility as possible. Overall, it is felt that the positive impacts in terms of new pedestrian space and improvements to conditions for cyclists and bus users as a response to the public health imperatives warrant continuing with the scheme as designed.”

81. On 16 July 2020, the notice of making of the A10 Order was published in the Islington Gazette. It came into force on 18 July 2020, but the scheme was only implemented on 31 August, after completion of the necessary works.
82. On 6 August 2020, Mr Monck wrote to the LTDA, responding to its letter of 8 July 2020. By that date, there had already been correspondence between the Claimants’ solicitors and TfL’s solicitors, in connection with this claim. Therefore, I consider it likely that Mr Monck was writing in anticipation of a legal challenge. I note that the risk of a legal challenge to the A10 Order by the taxi trade had been recorded in the Design Log in June 2020. Mr Monck referred to the Bus Lane policy stating that the “decision not to permit access in some locations is driven by clear safety or operational reasons, which apply in the case of the temporary bus gates on this route”. I am not aware of any evidence that TfL considered the Bus Lane policy, or sought to apply it, prior to the decision to make the A10 Order.
83. Traffic flow data was collected on Bishopsgate on 19 October 2020. According to paragraph 112 of Mr Monck’s first witness statement, the traffic flows were reduced by some 60%, and bus journey times were reduced by 36% to 42%, from the pre-pandemic baseline. Cyclist numbers were lower than pre-lockdown in the mornings, and level with pre-lockdown during the rest of the day.

Statutory framework

Management of London’s transport

84. The Greater London Authority was established as a body corporate by section 1 GLAA 1999. Section 8 GLAA 1999 provides for the election of the Mayor. TfL was established under section 154(1) GLAA 1999.
85. Pursuant to schedule 10 to the GLAA 1999, members of TfL’s management board are appointed by the Mayor, and the Mayor is the Chair of TfL.
86. Section 260 GLAA 1999 inserted a new section 14A into the Highways Act 1980 (“HA 1980”), which enables the Secretary of State for Transport to designate highways or proposed highways as so-called “GLA roads”, for which TfL is the highway authority and traffic authority. The GLA Roads, commonly known as red routes, comprise London’s major roads, and are known collectively as the Transport for London Road Network (“TLRN”). The London Boroughs are the highways and traffic authorities for all other London roads, save for the motorways within London which are the responsibility of the Secretary of State for Transport and the Highways Agency.

Additionally, TfL has responsibility for all traffic lights, the congestion charging zone and the Ultra Low Emissions Zone.

87. Section 141 GLAA 1999 Act imposes a “general transport duty” which requires the Mayor to develop and implement transport policies, facilities and services. It provides:

“141. General Transport duty

(1) The Mayor shall develop and implement policies for the promotion and encouragement of safe, integrated, efficient and economic transport facilities and services to, from and within Greater London.

(2) The power of the Authority under this Part shall be exercised for the purpose of securing the provision of the transport facilities and services mentioned in subsection (1) above.

(3) The transport facilities and services mentioned in subsection (1) above include facilities and services for pedestrians and are

—

(a) those required to meet the needs of persons living or working in, or visiting, Greater London, and

(b) those required for the transportation of freight.”

88. The Mayor is obliged to prepare and publish a document known as the “Transport Strategy”, containing the policies identified under section 142(1) GLAA 1999 and the proposals for discharging his general transport duty. The transport strategy must contain the Mayor’s proposals for the provision of transport which is “accessible to persons with mobility problems” (section 142(2)(a) GLAA 1999), and must specify a timetable for the implementation of any such proposal. In addition, it may contain “any other proposal which [the Mayor] considers appropriate” (section 42(2)(c) GLAA 1999).

89. The Mayor produced a Transport Strategy in 2018, which is referred to in more detail below.

90. The Boroughs and TfL are to have regard to the transport strategy (section 144(1)(c) GLAA 1999). The Boroughs will also prepare their own local implementation plans (section 145(1) GLAA 1999), the delivery of which may be funded by TfL on behalf of the Mayor, where appropriate.

91. TfL is required by section 154(3) GLAA 1999 to exercise its functions:

- i) in accordance with such guidance or directions as may be issued to it by the Mayor;
- ii) for the purpose of facilitating the GLA’s duty to secure the provision of transport facilities; and
- iii) for the purpose of securing or implementing the Mayor’s Transport Strategy.

92. By section 155 GLAA 1999, the Mayor may issue guidance, and either general or specific directions to TfL on the exercise of its functions. Such guidance or directions must be issued in writing and notified to the nominated officer of TfL.

Traffic management

93. The powers given to traffic authorities, such as TfL, are primarily set out in the RTRA 1984 and the TMA 2004.
94. Section 16 TMA 2004 imposes a general duty on local traffic authorities to manage their road network (the “Network Management Duty”):

“16 The network management duty

(1) It is the duty of a local traffic authority ... (“the network management authority”) to manage their road network with a view to achieving, so far as may be reasonably practicable having regard to their other obligations, policies and objectives, the following objectives –

(a) securing the expeditious movement of traffic on the authority’s road network; and

(b) facilitating the expeditious movement of traffic on road networks for which another authority is the traffic authority.

(2) The action which the authority may take in performing that duty includes, in particular, any action which they consider will contribute to securing –

(a) the more efficient use of their road network; or

(b) the avoidance, elimination or reduction of road congestion or other disruption to the movement of traffic on their road network or a road network for which another authority is the traffic authority;

and may involve the exercise of any power to regulate or co-ordinate the uses made of any road (or part of a road) in the road network (whether or not the power was conferred on them in their capacity as a traffic authority).

(3) In this Part “network management duty”, in relation to a [network management] authority, means their duty under this section.”

95. Under the powers in the RTRA 1984, traffic authorities may make a permanent or temporary traffic regulation order to regulate traffic. In the Greater London area, such an order is commonly referred to as a TMO.

96. A temporary TMO may be made pursuant to section 14 RTRA 1984 which provides as follows.

“14 Temporary prohibition or restriction on roads

(1) If the traffic authority for a road is satisfied that traffic on the road should be restricted or prohibited –

(a) because works are being or are proposed to be executed on or near the road; or

(b) because of the likelihood of danger to the public, or of serious damage to the road, which is not attributable to such works; or

(c) for the purpose of enabling the duty imposed by section 89(1)(a) or (2) of the Environmental Protection Act 1990 (litter and cleaning) to be discharged,

the authority may by order restrict or prohibit temporarily the use of that road, or of any part of it, by vehicles, or vehicles of any class, or by pedestrians, to such extent and subject to such conditions or exceptions as may consider necessary.

(2) The traffic authority for a road may at any time by notice restrict or prohibit temporarily the use of the road, or of any part of it, by vehicles, or vehicles of any class, or by pedestrians, where it appears to them that it is—

(a) necessary or expedient for the reason mentioned in paragraph (a) or the purpose mentioned in paragraph (c) of subsection (1) above; or

(b) necessary for the reason mentioned in paragraph (b) of that subsection,

that the restriction or prohibition should come into force without delay.

.....

(4) The provision that may be made by an order or notice under the foregoing provisions is –

(a) any such provision as is mentioned in section 2(1), (2) or (3) or 4(1) of this Act, or

(b) any provision restricting the speed of vehicles;

but no such order or notice shall be made or issued with respect of any road which would have the effect of preventing at any time access for pedestrians to any premises situated on or

adjacent to the road or any other premises accessible for pedestrians from, and only from, the road.

...”

97. Orders made under section 14(1) RTRA 1984 are temporary. The duration of any such order is ordinarily limited to 18 months (section 15(1)(b) RTRA 1984). A person who contravenes an order made under section 14(1) is guilty of an offence (section 16(1) RTRA 1984).
98. In exercising its powers under RTRA 1984, a traffic authority is under the general duty set out in section 122 RTRA 1984, which provides:
- “(1) It shall be the duty of every strategic highways company and local authority upon whom functions are conferred by or under this Act, so to exercise the functions conferred on them by this Act as (so far as practicable having regard to the matters specified in subsection (2) below) to secure the expeditious, convenient and safe movement of vehicular and other traffic (including pedestrians) and the provision of suitable and adequate parking facilities on and off the highway or, in Scotland, the road.
- (2) The matters referred to in subsection (1) above as being specified in this subsection are—
- (a) the desirability of securing and maintaining reasonable access to premises;
- (b) the effect on the amenities of any locality affected and (without prejudice to the generality of this paragraph) the importance of regulating and restricting the use of roads by heavy commercial vehicles, so as to preserve or improve the amenities of the areas through which the roads run;
- (bb) the strategy prepared under section 80 of the Environment Act 1995 (national air quality strategy);
- (c) the importance of facilitating the passage of public service vehicles and of securing the safety and convenience of persons using or desiring to use such vehicles; and
- (d) any other matters appearing to the strategic highways company or the local authority to be relevant.”
99. An authority making an order under s.14(1) RTRA 1984 is also obliged to comply with certain procedural requirements, which are set out in the regulation 3 of the Road Traffic (Temporary Restrictions) Procedure Regulations 1992 (the “1992 Regulations”), and have been modified in light of the pandemic by the Traffic Orders Procedure (Coronavirus) (Amendment) (England) Regulations 2020 (the “Coronavirus Regulations”).

Ground 1

100. The Claimants submitted that, in making and promulgating the Plan and Guidance and the A10 Order, the Mayor and TfL failed to distinguish taxis from “general traffic”. In doing so, they failed to have regard to relevant considerations, namely:
- a) the distinct status of taxis as a form of public transport, reflected both in law and policy;
 - b) the role played by taxis in facilitating accessible public transport for those with mobility impairments;
 - c) in respect of the A10 Order only, the network management duty under section 16 TMA 2004;
 - d) in respect of the A10 Order only, the extent to which the objective of facilitating space for pedestrians could still be achieved by permitting taxis (but not other forms of motorised traffic), to drive through the bus gates on Bishopsgate.
101. The Defendants submitted that the position of taxis was considered by TfL, and they were distinguished from other vehicles. It was not correct that the Defendants failed to apply their own policy, under which taxis are permitted to use bus lanes, subject to operational and safety issues. The policy has always permitted exceptions. The exclusion of taxis from the bus gates in the Bishopsgate corridor was a considered decision made for good reason.

Legal principles

102. It is a well-established principle of public law that “a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider”: per Lord Greene M.R. in *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation* [1948] 1 KB 223, at 229.
103. In *Tesco Stores v Secretary of State for the Environment* [1995] 1 WLR 759, Lord Keith said, at 764G-H:
- “It is for the courts ... to decide what is a relevant consideration. If the decision maker wrongly takes the view that some consideration is not relevant, and therefore has no regard to it, his decision cannot stand and he must be required to think again. But it is entirely for the decision maker to attribute to the relevant considerations such weight as he thinks fit, and the court will not interfere unless he has acted unreasonably in the *Wednesbury* sense”
104. In deciding which considerations are relevant, the courts have frequently applied the judgment of Lord Scarman in *Re Findlay* [1985] AC 318, at 334, where he adopted the dictum of Cooke J. in *CREEDNZ Inc v Governor General* [1981] 1 NZLR 17, at 183:

“What has to be emphasised is that it is only when the statute expressly or impliedly identifies considerations required to be taken into account by the authority as a matter of legal obligation that the court holds a decision invalid on the ground now invoked. It is not enough that a consideration is one that may properly be taken into account, nor even that it is one which many people, including the court itself, would have taken into account if they had to make the decision . . . [However] there will be some matters so obviously material to a decision on a particular project that anything short of direct consideration of them by the ministers . . . would not be in accordance with the intention of the Act.”

105. It cannot be assumed that a failure to refer to a relevant consideration in a decision document means that it has not been taken into account, since the duty to give reasons does not require every relevant consideration to be mentioned, no matter how insignificant. (See *Village Action Group v Secretary of State for Communities and Local Government* [2015] EWHC 2729 (Admin), per Lang J. at [14] – [21], citing *Bolton MDC v Secretary of State for the Environment* (1996) 71 P & CR 309, per Lord Lloyd at 313-314 and *Secretary of State for the Environment, Transport and the Regions v MJT Securities Ltd* [1998] 75 P & CR 188, per Evans J at [198]).
106. A decision-maker’s own policy will generally amount to a relevant consideration, if and insofar as it is engaged. A policy should generally be followed, and a departure from a policy ought to be justified: *R (Kambadzi) v Secretary of State for the Home Department* [2011] 1 WLR 1299, at [36].
107. In *R v Secretary of State for the Home Department, ex parte Urmaza* [1996] COD 479, which concerned the application of a departmental immigration policy, Sedley J. held:

“.... the modern approach to a departmental policy document, whether published or not, ought to be as follows:

(a)The legal principle of consistency in the exercise of public law powers (see *Kruse v Johnson* [1898] 2 KB 91 and *de Smith, Woolf and Jowell, Judicial Review of Administrative Action*, 5th ed., paras 13-036 to 13-045) creates a presumption that in the ordinary way the Secretary of State, through his officials, will follow his own policy. This presumption corresponds with the practical purpose of such an internal policy, which is precisely to secure consistency of approach . . . If there is to be a departure from the policy, there must be good reason for it (*British Oxygen Ltd v Minister of Technology* [1971] AC 610). The impact of the departure in a case otherwise within this particular policy is almost certainly such as to demand that reasons be given (*R v Secretary of State for the Home Department, ex p. Doody* [1994] 1 AC 531.

(b)In this situation the meaning of policy cannot be a matter for the Secretary of State to decide subject only to the broad limits of rationality. Where, as is nowadays almost always the case, it

is couched in ordinary English, it is not open to the Secretary of State to give it other than its plain and ordinary meaning. In the case of an unpublished policy, to do otherwise would be to invite inconsistency of application where the principal purpose is to produce consistency....

.....”

The Plan and Guidance

Legal status of taxis

108. It was common ground between the parties that taxis are a form of public transport: see *R v Oxfordshire County Council ex p. Measor* CO/4139/96 (4 July 1997 unreported, Popplewell J.)
109. Hackney carriages were first regulated by Royal Proclamation in 1635. The regulation of hackney carriages in London was subsequently contained in the London Hackney Carriages Acts 1831-1853 and the Metropolitan Public Carriage Act 1869 (“the 1869 Act”). The 1869 Act regulated both stage carriages (i.e. buses) and hackney carriages. As the title “Public Carriage Act” imply, both modes of transport were treated as public transport.
110. Historically, buses and hackney carriages were the only vehicles authorised to ply for hire in London. The position remains the same to this day. Hackney carriages are defined in section 4 of the 1869 Act as “any carriage for the conveyance of passengers which plies for hire within the limits of this Act”. Sections 6 and 8 of the 1869 Act provide for the grant of “hackney carriage licences” and drivers’ licences, within the limits of the Act, defined in section 2, as the metropolitan police district and City of London.
111. The Public Passenger Vehicles Act 1981 (“the 1981 Act”) created a new definition of “public service vehicle” as a motor vehicle adapted to carry more than eight passengers used for carrying passengers for hire or reward or a vehicle not so adapted used for carrying passengers for hire or reward at separate fares in the course of a business of carrying passengers (i.e. a bus but not a hackney carriage). Section 64 of the 1981 Act exempted public service vehicles from the application of the 1869 Act and the London Cab and Stage Carriage Act 1907.
112. The 1869 Act (and the London Cab Order 1934⁶ made under it (“the 1934 Order”)) remains the principal hackney carriage legislation in London.
113. Because of their legal status as public transport, taxis and their drivers are subject to a different legislative scheme from private hire vehicles, which are not a form of public transport, and not authorised to ply for hire.

⁶ SI 1934/1346

114. The legislation subjects hackney carriages and their drivers to onerous regulatory requirements and restrictions, including the following:
- i) Taxis are subject to “compellability”, that is to say where a taxi at a rank or having been hailed accepts a passenger, it must take the passenger anywhere that they wish to go within a prescribed distance or up to a prescribed journey time (see section 35 of the London Hackney Carriage Act 1831 and section 7 of the London Hackney Carriage Act 1853).
 - ii) Taxis must comply with the strict Conditions of Fitness (made pursuant to paragraphs 7 and 14 of the 1934 Order) which contain a number of standards, prescribing for instance, a turning circle of 8.535 metres, a partition separating passenger from driver, an overall length of no more than 5 metres, and a flat floor in the passenger compartment for which there are minimum height limits. For this reason, there are only a small number of particularly expensive vehicle models capable of being licensed as taxis.
 - iii) All taxis must be wheelchair accessible, as well as providing sight patches and induction loops to assist passengers with disabilities (see conditions 3.2, 15, and 16 of the Conditions of Fitness).
 - iv) Taxis must be fitted with an approved taximeter (see paragraph 35 of the 1934 Order) and are required to only charge set fares (see section 1 of the London Cab and Stage Carriage Act 1907 and paragraph 40ff of the 1934 Order).
 - v) Prospective taxi drivers must pass “The Knowledge” which has been a requirement since 1865. The Knowledge requires lengthy study and considerable personal investment. It is based upon knowing and being able to navigate by road the shortest route between two points. There are two types: the All London Knowledge entitles drivers to ply for hire anywhere in the Greater London Authority area, whereas the Suburban Knowledge only permits drivers to ply for hire in one of the nine sectors in the suburbs of the Greater London Authority area. The All London Knowledge involves learning approximately 25,000 streets and 30,000 landmarks and places of interest within a six-mile radius of Charing Cross plus an overview of suburban areas. Suburban drivers need to learn a similar level of detail for whichever suburban area they wish to be licensed for. On average, it takes an All London driver approximately four years to complete the Knowledge and a Suburban driver approximately two years.
 - vi) Taxi drivers must hold a taxi driver’s licence, valid for only 3 years. The fee is currently £300. It is granted subject to compliance with the provisions of the 1869 Act, the London Cab and Carriage Act 1907 and any orders made thereunder. An Enhanced DBS Check, at a cost of £52, is required. Taxi drivers also have to obtain an annual vehicle licence at a cost of £110.
115. Taxis also enjoy benefits as a result of their status. Only licensed taxi drivers are authorised to ply for hire. Thus, only taxis may solicit or wait for passengers without a prior booking i.e. be hailed from the road or wait at taxi ranks. Furthermore, only taxis have been permitted to use carriageways, in particular bus lanes, otherwise reserved for buses. The Claimants’ evidence indicates that, without those benefits, there would be

insufficient incentive for anyone to become a taxi driver, because of the particularly demanding and expensive regulatory requirements.

116. For those at high risk from COVID-19, taxis are significantly safer than any other form of public transport. For this reason, during the pandemic, taxis have provided key services, at the request of the NHS. There is a fixed partition between the driver's compartment and the passenger's compartment, such that drivers and the passengers need have absolutely no physical contact. They are kept 2 metres apart and will communicate through an intercom system. The passengers can pay by card on a payment terminal located within the passenger's compartment, and unlike other forms of public transport the passengers are not obliged to share their compartment with other people.

Taxi policies

117. Because of the particular status of taxis, TfL (and its predecessors) have historically treated taxis differently from private hire vehicles and other forms of private transport. For example, taxis have been permitted to travel along bus lanes, whilst private hire vehicles have not.
118. In *Eventech Ltd v The Parking Adjudicator & Ors* [2012] EWHC 1903 (Admin), which concerned a challenge by private hire vehicles to the policies operated by TfL and the London Boroughs which permitted taxis to travel along bus lanes, but not private hire vehicles. Burton J. set out the terms of TfL's Bus Lane Policy at paragraph 13:

“13. TfL's Bus lane Policy has been in place since before its own creation in 2000, and the TfL Public Carriage Office Taxi and Bus Lanes Policy (2007) records that the policy is to “*allow for 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*”. This latter aspect relates to the fact that taxis (black cabs) can be hailed by pedestrians from the pavement – according to the 2009 survey ..., 52% of taxi journeys result from passengers hailing them in the street.”

119. Although the full text of the Bus Lane Policy was not available to this Court, Mr Monck set out the key wording in his first witness statement which was the same as the policy wording recorded in *Eventech* in 2012. Mr Monck said:

“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.”

120. In *Eventech*, Burton J. dismissed the claim, and his decision was subsequently upheld by the Court of Appeal and the Court of Justice of the European Union. He accepted TfL’s justification for the policy, namely:

“60. ...

i) There is to my mind a clear distinction between the need of black cabs (and their passengers and the public) for them to be in the bus lanes, by way of visibility and availability of, and access to, black cabs for those hailing a cruising taxi. I do not reach this conclusion simply or mainly by reference to the disabled – though there are many people who are disabled, but are not in wheelchairs, and, even on the identification of disabled with wheelchair users and accepting Mr Griffin’s premise set out in paragraph 51(iii) above, there would still be 21% of wheelchair users who may not pre-book. I am certainly not persuaded that the problem for the disabled of hailing a taxi which is not in a lane adjacent to the pavement is “vanishingly small”. In any event, from the point of view of the public generally, I consider it makes entire good sense for black cabs to be travelling in bus lanes. Minicabs just do not have the need to use the bus lane, and black cabs do.”

121. It is striking that, although the Bus Lanes Policy remains in force, TfL’s support for taxi use of the bus lane, to enable passengers safely to hail taxis from the pavement, does not feature in the decisions under challenge in this claim.

122. TfL’s “Taxis and Bus Lanes: Policy Guidance” (“the Policy Guidance”) published by the Public Carriage Office in 2007 states:

“1. Taxi access to bus lanes reflects the recognition in the Mayor’s transport strategy that taxis are “a vital part of London’s integrated transport network, fulfilling demands that cannot be met by the bus, train or tube”.

2. The Mayor has stated that TfL’s general policy should be to allow taxis in all bus lanes except where specific safety or bus operational issues made this impractical.

3. This policy applies for the purposes of taxis driving in bus lanes as through-routes and entering bus lanes to pick up and set down. ‘Pick up’ and ‘set down’ mean that there is an intended passenger waiting at the kerbside or that an existing passenger wishes to be set down.”

123. In 2016, the Mayor and TfL issued the “Taxi and Private Hire Action Plan”. It states as a commitment in Policy 13:

“The continued use of bus lanes – a right which we have previously defended successfully in court – to support quick and convenient journeys by black cab, as well as enabling access to

additional bus lanes that taxis have previously not been allowed to enter. This includes:

- a. Allowing taxis to access an additional 20 bus lanes on the TfL Road Network for the first time by the end of 2016. See appendix 1
- b. Writing to the London boroughs asking them to consider access for taxis to over 40 further bus lanes located on roads they control.”

124. In his Mayoral Manifesto in 2016 the Mayor had made promises in the following terms:

“As the world’s greatest city it is absolutely right that we have, and continue to have, the best and most qualified cabbies in the world. London’s black taxi drivers are highly trained and properly checked to a high safety standard, driving wheelchair accessible vehicles, with the incredible geographical recall and sense of direction that only those with The Knowledge have. With people like this at the wheel, it’s understandable that the London black cab is an icon known around the world and a source of pride for Londoners.

I will:

- Ensure that the markets for licensed taxi drivers and for private hire drivers are fair - with special privileges built in, as they always have been, for those who become a licensed London taxi driver.
- Ensure that driver safety standards are rigorously enforced across the black cab and private hire industries.
- Retain the exclusive right of licensed black taxi drivers to use bus lanes and ply for hire.”

125. At Mayor’s Question Time, on 5 June 2017, the Mayor was asked “Do you believe the exclusive right of licensed black taxi drivers to use bus lanes and ply for hire is currently under threat?”. He replied:

“No, the exclusive right of licensed black taxi drivers to use bus lanes and ply for hire is not under threat. To date, TfL has given taxi drivers access to 15 additional bus lanes on its road network and will be writing to London boroughs to consider access to over 40 more on roads they control. In my Taxi and Private Hire Action Plan, published in September 2016, I committed to a number of initiatives to ensure a fair market place for our taxi and private hire trades, with special privileges built in, as they always have been, for those who become licensed London taxi drivers. This includes ensuring that taxi drivers are able to continue using bus lanes.”

126. The Mayor's extant "Transport Strategy 2018" stated in Policy 20:

"The Mayor, through TfL and the boroughs, and working with stakeholders, will seek to ensure London has a safe, secure, accessible, world-class taxi and private hire service with opportunity for all providers to flourish."

127. The supporting text on taxis stated:

"London's taxis provide a reliable and trusted service to Londoners, tourists and business people from home and abroad, offering customers safety and convenience, aided by drivers' extensive knowledge of the capital's streets. Taxis are particularly important in central London, occupying 17 per cent of the road space on an average weekday, with a further 10 per cent occupied by Private Hire Vehicles (PHVs).

...

Taxis can expand travel horizons for those requiring safe, accessible travel options. High-quality accessible taxi ranks across the capital are vital to this. New safety, equality and regulatory knowledge assessments for PHV drivers will be introduced by TfL by 2018. As Night Tube expands, new and improved taxi ranks at stations will provide safe and accessible options for onward journeys.

Taxis also have a key role to play in tackling London's air quality challenge. From 2018, taxi electric charging points will be provided to support the roll-out of zero emission capable taxis as outlined in the Ultra Low Emission proposals in Chapter three.

It is essential that the iconic London taxi brand is maintained and enhanced as its environment continues to change. This means continuing to monitor service standards, facilitating customer feedback, further improving the customer experience using technology (such as including taxi options in TfL's Journey Planner), and exploring new ways to reduce the barriers to becoming a black cab driver without compromising the quality of service offered."

128. In its "Healthy Streets" policy, the Transport Strategy 2018 advocated a shift away from private car use to public transport, cycling and walking, as a way of improving air quality and health, and reducing congestion. However, it did not signal a departure from previous policy on the use of bus lanes or any intention to restrict access for taxis in London. On the contrary, it acknowledged the important role played by taxis, and indicated that taxi services would be enhanced, and become part of a green public transport network, with the move to ZEC taxis.

129. As recently as 26 March 2020, at Mayor's Question Time, the Mayor said:

“Under my mayoralty, taxis have been an important part of London’s transport offer. I made this clear both in my Transport Strategy and in my Taxi and Private Hire Action Plan published shortly after I was elected. I have taken a number of steps to help the taxi industry thrive. TfL has introduced mandatory card and contactless payment. I have ensured taxis can continue to access bus lanes, enabling taxi access to a further 18 lanes at key locations on its road network. TfL has also written to the boroughs requesting taxi access to bus lanes on the roads they control. I have increased the number of taxi ranks. TfL is promoting the benefits of being a London taxi driver by raising the profile of The Knowledge and TfL has opened up a further 20 bus lanes to taxis on the TfL Road Network (TLRN), meaning that taxis can now access 95% of bus lanes on the TLRN, and 93% of all bus lanes across London.”

Taxis and the disabled

130. The Inclusive Transport Strategy published by the Department for Transport in 2019 stated at paragraph 4.17 that taxis “play an essential role in enabling disabled people to complete door-to-door journeys where other forms of transport may not be available or accessible”.
131. Because of the important role taxis play in facilitating day to day transport for the disabled, there is a scheme for subsidising the use of hackney carriages by those with disabilities in London, known as “Taxicard”, which provides a subsidy of up to £10.50 for a single use, with some boroughs permitting the card to be used twice for a single journey (making the total available £17.00). During the year 2019/2020, under the Taxicard scheme alone, there were 915,469 trips taken of which 100,033 were taken by residents of the City of London, Tower Hamlets, Southwark and Islington. TfL’s own statutory Transport Strategy recognises a “pressing need” to deliver this service more reliably.
132. The evidence adduced by the Claimants confirmed the essential role which taxis play in supporting the transport needs of disabled people: see the witness statements of Florence Mulshaw, Pamela O’Connor, Sam Reneke, Patrick Montgomery, and Mik Wallace. It is no exaggeration to say that, without taxi services, many disabled people simply could not make trips which are important to them.
133. The restrictions in the A10 Order have created difficulties and delays for taxi drivers in taking passengers to and from Liverpool Street Station: see the witness statement of Philip Hannah; second witness statement of Karen Proctor. TfL suggested during the hearing that taxi drivers carrying disabled passengers could use the disabled access to station platform 10 which is reached via Primrose Street. However, access to and from Primrose Street has been made immensely slow and difficult from the south, because of road restrictions and the bus gates⁷.

⁷ See the Claimants’ Reply dated 27 November 2020.

134. The fourth witness statement of Richard Massett attached a video of a wheelchair user, Charlie Peverall, wheeling himself to premises within the bus gate at 135 Bishopsgate, after a taxi dropped him off in Liverpool Street, close to the junction with Bishopsgate. The distance was about 128 metres, and it was raining. Mr Peverall had a small suitcase on his knees, he had to overcome hazards on the pavement, such as building works, hoses left across the footway, and a drainage gully running along the centre of the pavement, and he had to cross a side road. I consider it is unlikely that a frailer or less confident wheelchair user could have undertaken this journey. TfL observed that he could have been dropped off at the junction with Middlesex Street, which would have been only about 50 metres to his destination. But, as Mr Massett explained, Mr Peverall was coming from the south (London Bridge), and so it would have taken much longer for his taxi to drive further north, around the bus gate, avoiding various road closures and banned turns, to reach Middlesex Street, and the fare would have been considerably higher. Mr Massett calculated the difference as 7 minutes 18 seconds, at a cost of £7.60, to Liverpool Street, compared with 20 minutes 26 seconds, at a cost of £15.40, to Middlesex Street.
135. Understandably, the increase in taxi fares caused by road and/or bus lane closures, banned turns, and displacement congestion on neighbouring streets, is a real difficulty for disabled people, many of whom are heavily reliant upon taxis, and may be on limited budgets.
136. The repeated submission by TfL in this case that disabled people can use public transport, especially buses, instead of taxis is contradicted by its own evidence in the recent case of *R (Independent Workers Union of Great Britain v Mayor of London and Transport for London* [2020] EWCA Civ 1046, where Christina Calderato, TfL's Head of Transport Strategy and Planning, said:

“The difficulties faced by wheelchair users in moving around London using public transport

225 Many disabled people and those with a long-term health conditions face a number of barriers to travelling. While many issues are the same for disabled and non-disabled Londoners, some barriers relate specifically to the physical infrastructure of public transport, as well as less tangible issues such as reduced confidence in travelling independently.

226 TfL has undertaken and commissioned a large body of research to identify the barriers faced by London's communities in accessing transport. In September 2015, the existing evidence was consolidated and summarised in a published report entitled *Travel in London: Understanding Our Diverse Communities....* I draw upon the conclusions of this research in the following section of my statement.

227 In respect of the London Underground, the accessibility difficulties can be seen in the Tube map.... This map highlights all stations where it is possible to travel from the platform to the street step free or to change between lines step-free. Stations where this is not possible are show in light grey on the map

228 Wheelchair users (approximately 2% of Londoners, circa 133,000 people) experience particular accessibility difficulties, despite TfL's efforts and investment to make more stations accessible. Fifty eight per cent of wheelchair users say that it is impossible to use the Tube without help, and a further 21% say that it is difficult but not impossible

229 The bus network is more physically accessible, but TfL's research indicates that 58% of Londoners who report that their travel is limited because they are disabled consider it either impossible to use the bus without help (23%) or difficult but not impossible to use the bus (35%). Wheelchair users experience greater difficulties, despite all buses being equipped with low flooring and wheelchair ramps. Fifty-seven per cent of wheelchair users surveyed say that it is impossible to use the bus without help, and a further 25% say that it is difficult but not impossible

230 These accessibility issues are longstanding and, accordingly, when the Congestion Charge Scheme was originally conceived, an exemption was proposed for taxis but not PHVs. The taxi rationale was as follows (February 2002 Report 5.2.48 and 7.12.13 ...):

“TfL considers that licensed taxis make an important contribution to London's public transport system, enabling a wide variety of users (including the disabled) to make short trips efficiently and providing a vital alternative to private car use. ...

Taxis are a vital part of London's integrated transport network. They form a unique link between other forms of transport, fulfilling needs that cannot be met by the bus, train or tube. They have a significant role in the proposed scheme by providing an important means of moving around central London. ... Taxis also have an important role in providing door to door transport for disabled people, especially through the Taxicard scheme. London taxis are the only form of social transport that is 100% wheelchair accessible.”

Conclusions

137. I turn now to consider whether, in making the Plan and the Guidance, the Mayor and TfL failed to distinguish taxis from “general traffic” and in doing so, failed to have regard to relevant considerations, namely:

- a) the distinct status of taxis as a form of public transport, reflected both in law and policy; and

- b) the role played by taxis in facilitating accessible public transport for those with mobility impairments.

138. In making the Plan, the Mayor was exercising the general transport duty in section 141 GLAA 1999, which required him to “develop and implement policies for the promotion and encouragement of safe, integrated, efficient and economic transport facilities and services to, from and within Greater London”. By section 155 GLAA 1999, the Mayor may issue guidance to TfL. In making the Guidance, TfL was exercising its duties under section 154(3) GLAA 1999, which include exercising its functions in accordance with guidance given by the Mayor; facilitating the discharge of the GLA’s duties under section 141 GLAA 1999; and securing or facilitating the implementation of the Mayor’s transport strategy.
139. Whilst these statutory powers and duties confer a broad discretion on the Mayor and TfL, I am satisfied that, in making policy statements and issuing guidance on road use, they were required to take into account the potential impact of the proposed scheme on the existing rights of all classes of road users, including taxi drivers and their passengers. These were “matters so obviously material” that a failure to take them into account “would not be in accordance with the intention of the Act” (per Cooke J. in *CREEDNZ*, adopted by Lord Scarman in *Re Findlay*).
140. The only evidence of the Mayor and TfL’s deliberations prior to the announcement of the Plan was the power point presentation titled “Recovery Strategy – Active travel & the healthy streets approach” (“the Recovery Strategy”), dated 27 April 2020, produced by TfL. Its recommendations were (1) strategic corridors along priority routes to be transformed for use by cyclists, pedestrians and buses; (2) high street walking and cycling schemes; and (3) low traffic neighbourhoods, reducing vehicle access and parking facilities. These proposals were subsequently incorporated into the Plan and the Guidance, and so this presentation was significant.
141. In the Recovery Strategy, the trigger for introducing such changes immediately was said to be the concern about managing the exit from lockdown. It noted that capacity on public transport would remain reduced because of social distancing requirements. People should be encouraged to cycle and walk instead, and the likely car-based recovery would result in congestion and increased air pollution, and discourage cyclists and pedestrians. It concluded that, although road traffic levels had been reduced, they were beginning to rise again.
142. The Recovery Strategy relied on the following evidence in support:
- “Traffic levels on the TLRN have been down typically 40-45% on weekdays, 60% at weekends, however traffic across London has started to increase. Comparing 13 April to 20 April, central, inner and outer London traffic increased by 16%, 18% and 12% respectively”.

No supporting data was provided so it was not possible to check how the percentages were calculated. As 13 April 2020 was Easter Bank Holiday Monday, one would expect traffic levels to have been lower than usual. As both dates were within the lockdown period, they could not provide much insight into traffic levels after lockdown. The other evidence relied upon was “increasing traffic also being seen in other areas inc.

Greater Manchester and Merseyside”; “China had seen congestion return to 90% of the previous level already” and “recent survey data suggests that people will be less likely to want to use public transport (48% nationally) and that 56% of UK driving licence holders who don’t own a vehicle now considering one”. The data relied upon in support of these assertions was not referenced. In my view, the evidence presented here was superficial and inadequate.

143. The Recovery Strategy stated its short term objective for the “Restart” was “limiting space for motorised traffic and reallocating space for significantly more trips by active modes”. Its medium term objective for the “Recovery” was to embed new habits of walking and cycling to create a healthy, sustainable and attractive city. Elsewhere it expressed the aspiration that London could “lead the way, working with other like-minded cities to be bold in shaping a new normal defined by more active travel, cleaner air, healthier streets and citizens and action on climate change.” From the way in which these proposals were described, it appears to me that TfL expected that these changes would become permanent.
144. In considering the options and reaching its conclusions, the Recovery Strategy did not refer at all to the long-established status and role of taxis as a form of public transport, distinct from other cars, reflected both in law, and in the policies and Mayoral statements which I have referred to above. These considerations were clearly relevant, as the proposals would affect the right of taxis to ply for hire across London, and to use bus lanes. Nor did it refer to the travel needs of those people for whom cycling or walking or taking a bus was not a reasonable option, and who wished to take a taxi. Reading the Recovery Strategy fairly, and as a whole, I consider it is reasonable to infer that TfL did not take these matters into account. Given their importance, I consider that they would have been mentioned if they had been taken into account.
145. The Mayor’s announcement of the Plan, on 6 May 2020, promised to “overhaul”, “transform” and “repurpose” London’s streets to accommodate a ten-fold increase in cycling and a five-fold increase in walking, and to “prevent” people using cars in place of public transport. In a supplemental statement, on 15 May 2020, the Mayor announced “plans to transform parts of central London into one of the largest car-free zones in any capital city in the world” with main routes and bridges restricted to all traffic, apart from buses. The Plan did not mention taxis but it is apparent that its restrictions on “cars” were intended to include taxis.
146. The Plan did not recognise the long-established status and role of taxis as a form of public transport, distinct from other cars, reflected both in law, and in the policies and Mayoral statements. These considerations were clearly relevant, as the proposals would affect the right of taxis to ply for hire across London, and to use bus lanes. The proposals were inconsistent with TfL’s Bus Lane Policy which allowed access to all bus lanes by taxis, unless their “inclusion would cause significant delay to buses or would materially worsen the safety of road users including pedestrians”. The same exception was formulated slightly differently in the Policy Guidance - “except where specific safety or bus operational issues made this impractical”. In my view, the proposals for bus/cycle corridors plainly went far beyond the limited exception in paragraph 2, which has only been applied for specific space/safety reasons in a small number of locations, on a case by case basis (see Mr Monck’s first witness statement, paragraph 29 and 30). As the Mayor stated on 26 March 2020, the policy of the Mayor and TfL has been to increase access to bus lanes. As a result, taxis can now access 95%

of bus lanes on the TLRN and 93% of all bus lanes across London (including the Boroughs). Yet the Plan did not even acknowledge the Bus Lanes Policy, let alone apply it, nor did it give reasons for departing from it, contrary to the well-known principles, summarised in *Urmaza*.

147. The Plan did not refer to the importance of taxis to those people, such as the elderly or disabled, or those with heavy luggage, who could not cycle or walk or take public transport, despite the acceptance in the Bus Lane Policy that taxis are “fulfilling demands that cannot be met by the bus, train or tube”. Furthermore, their needs were not considered in any impact assessment pursuant to the public sector equality duty in section 149 of the Equality Act 2010 before the Plan was announced.
148. Reading the Plan fairly, and as a whole, I consider it is reasonable to infer that the Mayor and TfL did not take these matters into account. In my view, the status and role of taxis was of such importance to the viability of the proposals and their impact on taxi drivers and the public, that if these considerations had been taken into account, they would have been mentioned, either in the Plan itself or in other contemporaneous documents setting out the terms of the Plan.
149. The Guidance was supplementary to the Plan, providing information and guidance on the reasons for the Plan; its objectives and its implementation. In consequence, the Plan’s failure to consider the position of taxis was replicated in those sections of the Guidance. The Guidance identified “significant risks” to a car-led recovery and advised:

“We therefore need to urgently 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. Suppressing motorised traffic while allowing essential journeys to take place is key to ensuring we manage our road and public transport network to maximise our ability to keep people moving safely.”
150. The objective of “suppressing motorised traffic” by restricting road access was applied to taxis in the same way as it applied to private cars, private hire vehicles and commercial vehicles. There was no exemption for taxis.
151. The Guidance made no reference to taxis, although the proposals potentially restricted taxi journeys, both in the central London strategic routes and the town centres and low traffic neighbourhoods in the Boroughs. The Guidance failed to acknowledge the role of taxis as a part of London’s public transport provision, though unlike buses and trains, their capacity to take passengers had not been diminished by COVID-19, and taxis were recognised by the NHS and many individuals as a safer way to travel than buses or trains.
152. Although the Guidance advised Boroughs in some detail on potential road schemes, including those involving bus lanes, no mention was made of the long-established status of taxis and the policies which allowed taxis to use bus lanes. The Guidance stated:

“Bus routes have a key function in enabling local access so must be protected as part of temporary LTN proposals with a general

presumption to bus routes and stop locations remaining as they are. Consideration should be given to bus gates to protect bus networks whilst removing general traffic.” (emphasis added)

In effect, the Guidance treated taxis as part of the “general traffic” which was to be “suppressed”.

153. In my view, the proposed restrictions on taxis which would suppress their use were inconsistent with the Bus Lanes Policy, for the reasons already given. As with the Plan, the Guidance did not even acknowledge the Bus Lanes Policy, let alone give reasons why it considered it was acting in accordance with it, or give reasons for departing from it.
154. Although the Guidance included a section on “Equalities, accessibility, security and inclusion”, its focus was on the risks of COVID-19 to vulnerable people. There was no mention of the essential role played by taxis in enabling disabled people to complete door-to-door journeys. TfL did not carry out any form of impact assessment before issuing the Guidance, on the basis that it could be carried out when specific schemes were under consideration. I consider the lawfulness of this approach in more detail in Ground 2.
155. In its introduction, the Guidance explained that it was intended to complement and follow on from the Secretary of State’s additional statutory guidance on 9 May 2020, which urged local authorities to make radical changes to the use of road space, encouraging walking and cycling. Although the proposals included restricting access to motor vehicles, and designating roads for buses and cycles only, it made no reference to taxis at all. However, it was nationwide guidance, and it was the responsibility of local traffic authorities to consider factors which were specific to its area, such as London taxis.
156. In my view, the status and role of taxis was of such importance to the viability of the proposals and their impact on taxi drivers and the public, that if these considerations had been taken into account, they would have been mentioned in the Guidance. Reading the Guidance fairly, and as a whole, I consider it is reasonable to infer that TfL did not take these relevant considerations into account.
157. For these reasons, I conclude that the Mayor acted unlawfully in making the Plan and TfL acted unlawfully in issuing the Guidance.

The A10 Order

158. The Claimants submit that, in making the A10 Order, TfL failed to distinguish taxis from “general traffic” and in doing so, failed to have regard to relevant considerations, namely:
 - a) the distinct status of taxis as a form of public transport, reflected both in law and policy;
 - b) the role played by taxis in facilitating accessible public transport for those with mobility impairments;

- c) the network management duty under section 16 TMA 2004;
- d) the extent to which the objective of facilitating space for pedestrians could still be achieved by permitting taxis (but not other forms of motorised traffic), to drive through the bus gates on Bishopsgate.

Statutory powers and duties

159. Section 16(1) TMA 2004 imposes a duty on a local traffic authority to manage the road network, so far as reasonably practicable, with a view to securing the expeditious movement of traffic on its road network. By subsection (2), the authority may take any action which they consider will contribute to securing (a) the more efficient use of their road network; or (b) the avoidance, elimination or reduction of congestion.
160. The statutory “Network Management Duty Guidance” explains the scope of the duty, as follows:

“Section 31 of the Act specifically states that the term “traffic” includes pedestrians. So the duty requires the LTA to consider the movement of all road users: pedestrians and cyclists, as well as motorised vehicles – whether engaged in the transport of people or goods.

11. The road network means the network of roads for which the authority is the traffic authority under the Road Traffic Regulation Act 1984 (c.27).

12. The overall aim of the “expeditious movement of traffic” implies a network that is working efficiently without unnecessary delay to those travelling on it. But the duty is also qualified in terms of practicability and other responsibilities of the authority. This means that the duty is placed alongside all the other things that an authority has to consider, and it does not take precedence. So, for example, securing the expeditious movement of vehicles should not be at the expense of an authority’s road safety objectives. But, the statutory duty reflects the importance placed on making best use of existing road space for the benefit of all road users.”

161. The Secretary of State issued additional statutory guidance in response to COVID-19 on 9 May 2020.
162. I consider that TfL was subject to the network management duty when making the A10 Order (Ground 1(c)).
163. TfL made the A10 Order pursuant to section 14 RTRA 1984, which empowers a traffic authority to restrict or prohibit traffic on the road where it is satisfied that it is necessary to do so because of *inter alia* “the likelihood of danger to the public”.
164. When exercising its powers under section 14 RTRA 1984, TfL was under the general duty set out in section 122(1) RTRA 1984 to secure, so far as practicable, “the

expeditious, convenient and safe movement of vehicular and other traffic (including pedestrians)...”, having regard to the factors set out in subsection (2), which include securing and maintaining reasonable access to premises.

165. The duty set out in section 122 RTRA 1984 has been considered in a number of authorities which were reviewed by Sir Ross Cranston, sitting as a Judge of the High Court, in *Trail Riders Fellowship v Hampshire CC* [2018] EWHC 3390 (Admin) and summarised at [37]. The Court of Appeal [2019] EWCA Civ 1275 at [39] approved the Judge’s summary, except for the last part of [37](iv). Omitting that part, the summary approved by the Court of Appeal is as follows:

“It seems to me that on the current state of the authorities, the position with section 122 is as follows:

(i) The duty in section 122(1) when exercising functions conferred by the Act to secure the expeditious, convenient and safe movement of traffic extends not only to vehicles but includes pedestrians;

(ii) The duty of securing the expeditious, convenient and safe movement of traffic is not given primacy but is a qualified duty which has to be read with the factors in section 122(2), such as the effect on the amenities of the area and, in the context of making a traffic regulation order, with the purposes for this identified in section 1(1) of the Act;

(iii) The issue is whether in substance the section 122 duty has been performed and what has been called the balancing exercise conducted, not whether section 122 is expressly mentioned or expressly considered;

(iv) In the particular circumstances of a case compliance with the section 122 duty may be evident from the decision itself.”

166. In my judgment, in the exercise of its statutory powers and duties under the TMA 2004 and the RTRA 1984, TfL was required to take into account the potential impact of the proposed scheme on the existing rights of all classes of road users, including taxi drivers and their passengers. These were “matters so obviously material” that a failure to take them into account “would not be in accordance with the intention of the Act” (per Cooke J. in *CREEDNZ*, adopted by Lord Scarman in *Re Findlay*).

Conclusions

167. The sections of my judgment on the Plan and the Guidance, headed “Legal status of taxis”, “Taxi policies” and “Taxis and the disabled”, also apply to the A10 Order, in respect of sub-paragraphs (a) and (b) of Ground 1.
168. The steps leading up to the making of the A10 Order are set out at paragraphs 52 to 82 above.

169. During this period, TfL assessed the transport issues in the A10 Bishopsgate corridor, and tried to anticipate what the post-COVID transport issues might be, and how they might be resolved. TfL considered alternative options, such as allowing only taxis and buses along Bishopsgate, but decided in favour of the bus/cycle/pedestrian corridor along Bishopsgate, with some limited access for vehicles, except in the bus gates. Taxi access to and from Liverpool Street Station was assessed. The EqIA assessed the impact of the scheme on protected groups, in particular, the difficulties of gaining access to Liverpool Street Station and premises within the bus gates, where vehicle access would be banned.
170. The Claimants' criticisms of the quality of TfL's assessments and decision-making will be considered under the other Grounds. For the purposes of Ground 1, which is limited to the question of what TfL took into account, I conclude that:
- i) TfL did consider the option of allowing only taxis and buses along the Bishopsgate corridor, and therefore Ground 1(d) is not made out.
 - ii) The assessments, modelling and deliberations by TfL were sufficient to discharge the network management duty, and therefore Ground 1(c) is not made out.
 - iii) Although I have found the EqIA to be inadequate, I accept that it did have regard to the impacts of the scheme on the disabled and elderly travelling to the area by car, typically a taxi, and was considered before the final decisions to proceed were taken on 1 and 15 July 2020. The role which the taxi trade played in providing access for people with mobility difficulties was expressly stated to have been taken into account in the "request for decision" report leading to the approval on 15 July 2020. Although I have found that the public sector equality duty was not properly performed, I accept that there is sufficient evidence of consideration of this issue by TfL to rebut the allegation that it was not taken into account. Therefore, Ground 1(b) is not made out.
171. Prior to receipt of LTDA's letter of 8 December 2020, there is no evidence that TfL took into account the distinct status of taxis as a form of public transport, reflected both in law and policy. The assessment and modelling was focussed on how best to overcome the identified problems of congestion, air quality and road safety. The position of taxis was only considered in the context of providing access to Bishopsgate and Liverpool Street Station. However, the status of taxis and policies were drawn to TfL's attention by the LTDA letter and the letter was considered by officers before TfL made its final decision. Although there is no evidence that they applied their minds to the significance of the Bus Lanes policy, or gave effect to its terms, it was drawn to their attention. Therefore Ground 1(a) is not made out.
172. For the reasons set out above, Ground 1 does not succeed in respect of the A10 Order, but it does succeed in respect of the Plan and the Guidance.

Ground 2

173. The Claimants submitted that, in making the Plan and the Guidance and the A10 Order, TfL and the Mayor failed to have proper regard to the public sector equality duty,

pursuant to section 149 of the 2010 Act. In response, the Defendants submitted that TfL carried out a comprehensive EqIA of the A10 Order. The Guidance referred to the importance of considering s.149 of the 2010 Act before taking any transport measures pursuant to the Guidance, and referred to the needs of persons with mobility issues and other disabilities and how they ought to be addressed. As the Guidance was not a decision, an EqIA was not required.

174. Section 149 of the 2010 Act provides:

“149. Public sector equality duty

(1) A public authority must, in the exercise of its functions, have due regard to the need to –

(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;

(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

(2) The relevant protected characteristics are-

age;

disability;

.....

(3) Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to –

(a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;

(b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;

(c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

(4) The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled

include in particular, steps to take account of disabled persons' abilities.

(5) Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to –

(a) tackle prejudice, and

(b) promote understanding.

(6) Compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act.

...”

175. The relevant principles were summarised in *Bracking v Secretary of State* [2013] EWCA Civ 1345, [2014] Eq LR 60, per McCombe LJ, at [26]:

“(1) As stated by Arden LJ in *R (Elias) v Secretary of State for Defence* [2006] 1 WLR 3213; [2006] EWCA Civ 1293 at [274], equality duties are an integral and important part of the mechanisms for ensuring the fulfilment of the aims of anti-discrimination legislation.

(2) An important evidential element in the demonstration of the discharge of the duty is the recording of the steps taken by the decision maker in seeking to meet the statutory requirements: *R (BAPIO Action Ltd) v Secretary of State for the Home Department* [2007] EWHC 199 (QB) (Stanley Burnton J (as he then was)).

(3) The relevant duty is upon the Minister or other decision maker personally. What matters is what he or she took into account and what he or she knew. Thus, the Minister or decision maker cannot be taken to know what his or her officials know or what may have been in the minds of officials in proffering their advice: *R (National Association of Health Stores) v Department of Health* [2005] EWCA Civ 154 at [26 – 27] per Sedley LJ.

(4) A Minister must assess the risk and extent of any adverse impact and the ways in which such risk may be eliminated before the adoption of a proposed policy and not merely as a “rearguard action”, following a concluded decision: per Moses LJ, sitting as a Judge of the Administrative Court, in *Kaur & Shah v LB Ealing* [2008] EWHC 2062 (Admin) at [23 – 24].

(5) These and other points were reviewed by Aikens LJ, giving the judgment of the Divisional Court, in *R (Brown) v Secretary*

of State for Work and Pensions [2008] EWHC 3158 (Admin), as follows:

- i) The public authority decision maker must be aware of the duty to have “due regard” to the relevant matters;
- ii) The duty must be fulfilled before and at the time when a particular policy is being considered;
- iii) The duty must be “exercised in substance, with rigour, and with an open mind”. It is not a question of “ticking boxes”; while there is no duty to make express reference to the regard paid to the relevant duty, reference to it and to the relevant criteria reduces the scope for argument;
- iv) The duty is non-delegable; and
- v) Is a continuing one.
- vi) It is good practice for a decision maker to keep records demonstrating consideration of the duty.

(6) “[G]eneral regard to issues of equality is not the same as having specific regard, by way of conscious approach to the statutory criteria.” (per Davis J (as he then was) in *R (Meany) v Harlow DC* [2009] EWHC 559 (Admin) at [84], approved in this court in *R (Bailey) v Brent LBC* [2011] EWCA Civ 1586 at [74–75].)

(7) Officials reporting to or advising Ministers/other public authority decision makers, on matters material to the discharge of the duty, must not merely tell the Minister/decision maker what he/she wants to hear but they have to be “rigorous in both enquiring and reporting to them”: *R (Domb) v Hammersmith & Fulham LBC* [2009] EWCA Civ 941 at [79] per Sedley LJ.

(8) Finally, and with respect, it is I think, helpful to recall passages from the judgment of my Lord, Elias LJ, in *R (Hurley & Moore) v Secretary of State for Business, Innovation and Skills* [2012] EWHC 201 (Admin) (Divisional Court) as follows:

(i) At paragraphs [77–78]

“[77] Contrary to a submission advanced by Ms Mountfield, I do not accept that this means that it is for the court to determine whether appropriate weight has been given to the duty. Provided the court is satisfied that there has been a rigorous consideration of the duty, so that there is a proper appreciation of the potential impact of the decision on equality objectives and the desirability of promoting them, then as Dyson LJ in *Baker* (para [34]) made clear, it is for the decision maker to decide

how much weight should be given to the various factors informing the decision.

[78] The concept of ‘due regard’ requires the court to ensure that there has been a proper and conscientious focus on the statutory criteria, but if that is done, the court cannot interfere with the decision simply because it would have given greater weight to the equality implications of the decision than did the decision maker. In short, the decision maker must be clear precisely what the equality implications are when he puts them in the balance, and he must recognise the desirability of achieving them, but ultimately it is for him to decide what weight they should be given in the light of all relevant factors. If Ms Mountfield's submissions on this point were correct, it would allow unelected judges to review on substantive merits grounds almost all aspects of public decision making.”

(ii) At paragraphs [89–90]

“[89] It is also alleged that the PSED in this case involves a duty of inquiry. The submission is that the combination of the principles in *Secretary of State for Education and Science v Tameside Metropolitan Borough Council* [1977] AC 1014 and the duty of due regard under the statute requires public authorities to be properly informed before taking a decision. If the relevant material is not available, there will be a duty to acquire it and this will frequently mean that some further consultation with appropriate groups is required. Ms Mountfield referred to the following passage from the judgment of Aikens LJ in *Brown* (para [85]):

‘...the public authority concerned will, in our view, have to have due regard to the need to take steps to gather relevant information in order that it can properly take steps to take into account disabled persons' disabilities in the context of the particular function under consideration.’

[90] I respectfully agree....”

176. This passage in *Bracking* was approved by Lord Neuberger in *Hotack v Southwark LBC* [2015] UKSC 30, [2016] AC 811, at [73], who added, at [75]:

“75. As was made clear in a passage quoted in *Bracking*, the duty “must be exercised in substance, with rigour, and with an open mind” (per Aikens LJ in *R (Brown) v Secretary of State for Work and Pensions* [2008] EWHC 3158 (Admin), [2009] PTSR 1506, para 92. And, as Elias LJ said in *Hurley and Moore*, it is

for the decision-maker to determine how much weight to give to the duty: the court simply has to be satisfied that “there has been rigorous consideration of the duty”. Provided that there has been “a proper and conscientious focus on the statutory criteria”, he said that “the court cannot interfere ... simply because it would have given greater weight to the equality implications of the decision”.”

177. Even where express reference is made to the duty that is not, of itself, sufficient to demonstrate compliance. In particular, a failure to discharge the duty of inquiry led to a breach of the duty in *R (Ward) v London Borough of Hillingdon* [2019] EWCA Civ 692, per Underhill LJ at [71] – [74]. See also *R (JM) v Isle of Wight Council* [2011] EWHC 2911 (Admin), in which I held that the Council did not gather sufficient information to enable it to discharge the public sector equality duty (at [122], [123], [140]).

The Plan and Guidance

178. Section 149 of the 2010 Act applied to the Mayor and TfL, as public authorities. The public sector equality duty applies to the exercise of all public functions by public authorities. Therefore, in my judgment, the duty should have been applied to the development of the Plan, before it was announced by the Mayor, and to the development of the Guidance, before it was issued by TfL.
179. There is no evidence that the public sector equality duty was applied prior to the announcement of the Plan. In my judgment, the proposals to prevent or restrict vehicular access widely across London’s streets plainly had potential adverse impacts upon people with protected characteristics, namely, the elderly and disabled, who rely on taxis and private cars to make door-to-door journeys, and could not reasonably be expected to cycle, walk or use public transport. The evidence in this case, summarised at paragraphs 130 – 136 above, demonstrates this. There should have been a conscientious assessment of the “risk and extent of any adverse impact and the ways in which such risk may be eliminated before the adoption of a proposed policy....” (*Bracking*, at [26(4)]).
180. I appreciate that this was a high-level policy statement, and that the duty would again apply at implementation stage. However, once the Plan was announced, it was embedded in the Guidance to all traffic authorities in London, who were expected to accept, and act upon, the broad proposals which it set out. Thus, it was important that any potential adverse equality impacts had been assessed and taken into account when the Plan proposals were still at a formative stage. Otherwise, there was a risk that local traffic authorities would act upon Plan proposals that discriminated unfairly against the elderly and the disabled.
181. The Guidance referred to the public sector equality duty, in the terms set out below:

“Equalities, accessibility, security and inclusion

COVID-19 has disproportionately affected vulnerable populations, including those living in more deprived areas.

Londoners living in more deprived areas are already more likely to be impacted by exposure to higher levels of air pollution and road danger. Low-income Londoners are also more likely to work in frontline key-worker roles, which mean they cannot work from home and are less likely to be car-owners, so will be most affected by the reduced capacity on public transport.

The Streetspace Plan, which provides safe space for walking and cycling and enables social distancing on public transport for those who need to use it most, is therefore an essential part of protecting vulnerable Londoners. Providing additional space for walking and cycling will help support those who are less mobile and those who may be new to cycling.

Walking is one of the easiest forms of physical activity that is suitable for Londoners of all ages and abilities. Our plans - which provide space for people to exercise in areas where there is less access to public or private outdoor space such as parks and gardens - are an important part of supporting the health and wellbeing of the most vulnerable.

It is however important that any interventions to support walking and cycling are designed holistically to ensure that all Londoners can move around in safety. When making any changes to street layouts, boroughs are asked to use existing guidance to ensure that these changes don't detract from current accessibility levels and enhance them wherever possible.

Section 149 of the Equality Act 2010 (the Public Sector Equality Duty) provides that, in the exercise of their functions, public authorities must have due regard to the need to:

- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Part 3 of the Equality Act 2010 gives disabled people a right of access to goods, facilities, services and premises and makes it unlawful for service providers to treat disabled people less favourably than non-disabled people for a reason related to their disability.

.....

Officers should ensure that all impacts on protected characteristics will be considered at every stage of the programme. This will involve anticipating the consequences on these groups and making sure that, as far as possible, any negative consequences are eliminated or minimised and opportunities for promoting equality are maximised. The creation of an inclusive environment is one of the key design considerations of projects and it is expected that the overall effect on equality target groups will be positive.”

182. It is clear that this section of the Guidance was intended to provide guidance for those who were considering the implementation of specific schemes. It is contained in Part 4 of the Guidance, titled “Guidance and knowledge sharing”. Part 4 is introduced in the following way:

“This section shares existing information TfL holds that could aid the effective delivery of measures required for the LSP.”

183. Paragraph 86 of the Defendants’ “Detailed Grounds of Resistance” stated:

“86. The Streetspace Guidance therefore brought the public sector equality duty to the attention to [*sic*] relevant decision makers in the London boroughs who, working with TfL and the Mayor, would implement the guidance. No separate EqIA was required for the guidance, as opposed to decisions implementing it. The stage at which a useful EqIA can be carried out is once there is a specific proposal capable of analysis.”

184. The statutory duty is to have due regard to the equality duties set out in section 149(1) of the 2010 Act. I accept Mr Matthias QC’s submission that the duty should be applied rigorously at the point of formulating policies and guidance of wide application, because they are setting the trajectory for future decision making, and will be important material considerations when future decisions on individual schemes are taken. As the duty had not been applied before the Plan was announced, I consider that it was all the more important that it was applied before the Guidance was issued.

185. There is no statutory duty to undertake an EqIA, though it is generally recognised as good practice, as it encourages a structured assessment to be made. The manner in which the duty is undertaken will depend upon the particular context, and the nature of the function which is being performed (see, by way of illustration, *R (Fawcett Society) v Chancellor of the Exchequer* [2010] EWHC 3522 (Admin) per Ouseley J. at [10]).

186. TfL submitted that the passages in the extract above, and at internal page 6 of the Guidance, which referred to the benefits of the Plan in protecting the vulnerable against COVID-19, were “an assessment of the equality effects of the Guidance itself (to the extent that was possible)” (Defendants’ skeleton argument, paragraph 128). If this was indeed intended to be a discharge of the public sector equality duty, it fell far short of the detailed and conscientious scrutiny which was required. It amounted to a mere justification of the decision already taken. The specific needs of the elderly and disabled which were not capable of being met by public transport or active travel, and were met by taxis instead, were well known to TfL – see the Bus Lanes Policy and

TfL's evidence in the *IWU* case, at paragraph 136 above. However, these needs were not assessed in the context of a policy which described "suppressing motorised traffic" including taxis as a key objective. Prior to issuing the Guidance, there was no investigation or consideration of the adverse impacts that restricting road use by taxis could cause to those with the relevant protected characteristics. Therefore TfL did not pay due regard to the equality duties in section 149(1) of the 2010 Act.

The A10 Order

187. The A10 Order was preceded by an EqIA, published on 9 July 2020.
188. The EqIA considered *inter alia* the impact of the bus gates which closed two stretches of Bishopsgate to all vehicles, other than buses, between 7 am and 7 pm. Impacts were separately identified, by number. The residual risks were colour coded, as follows:
- i) *Red*: This impact will have a significant effect on the identified group of people. This may create a barrier that prevents someone from completing their journey. This could result in discrimination due to the disproportionate impact on the identified group.
 - ii) *Orange*: This impact is likely to have a negative effect on the identified group although it is unlikely to prevent access to or completion of the journey. It is likely to result in a greater inconvenience when measured against someone who does not have the same protected characteristic. This may result in discrimination.
 - iii) *Blue*: It is not possible to eliminate all negative impacts but TfL has assessed the risk of the negative impact and determined that the change needs to be made and/or the mitigations reduce the risk to an acceptable level.
 - iv) *Green*: No negative impacts or mitigations will ensure that people are not put at greater inconvenience to others who do not have the same protected characteristics.
189. Impact no. 7 was assessed as negative. It identified the "main risk" was for "people who may require door to door travel arrangements and will not be able to access the two areas that will be restricted to pedestrians, buses and cycles". It was envisaged that such persons may have to walk "up to 85 and 90 metres respectively to or from premises from the closest point of access at the end of the section". It did not address the position of those with protected characteristics who could not walk that distance. Other than pointing out that it was still possible to access the taxi rank in Liverpool Street, and there were alternative shops nearby, neither the mitigation nor the implementation/explanation columns proposed any solution for people in protected groups who were not able to walk from a taxi drop-off point to their destination. By way of implementation/explanation, it stated that access would become easier for those on foot, cycle or bus. That may be so, but the adverse impact on the people with protected characteristics ought to have been addressed as well. The residual risk code was orange. If the position of people who could not walk to their destination had been properly taken into account, then the assessment of residual risk may have been that they would be unable to make the journey at all, meeting the criterion for code red.

190. Impact no. 11 was assessed as negative. It stated “[t]his will impact on those who require dropping off close to their destination. If they are unable to be dropped off close enough then they may not be able to make the trip”. The proposed mitigation was for them to be dropped off in the side street closest to their destination to reduce the overall distance to walk. Obviously this would not assist those who were incapable of completing the journey on foot. The implementation/explanation column was simply left blank. This was an unacceptable omission. The residual risk code was green, denoting no negative impact, which I found inexplicable as it had concluded that those who could not be dropped off close enough might not be able to make the trip, which was the criterion for code red, the most serious risk.
191. Impact no. 13 was assessed as negative. It stated “[t]his will potentially impact on taxi and private hire vehicle drivers to facilitate suitable journeys and drop-off or pick-ups for their customers, requiring greater use of pre-booking services or changes to routing that may make journeys longer and potentially more expensive. Locations, hours of operation and restrictions introduced by the bus gates and banned turns will affect the existing access routes using Bishopsgate corridor”. There was no mention of the fact that additional cost would probably elevate the cost of journeys above the level of capped subsidy under the Taxicard scheme. The proposed mitigation was to permit access through bus gates for taxis and private hire vehicles or remove the bus gates. The implementation/explanation rejected the proposed mitigation simply by re-stating the policy of reducing levels of through traffic and improving conditions for cyclists, pedestrian and bus passengers. There was no rigorous consideration of the equality duty at all. The residual risk code was orange, but the degree of impact on those with protected characteristics may well have justified a risk code of red, in the absence of any mitigation.
192. Impact no. 15 considered the impact of the new layouts for road and pavement users. It was assessed as negative. It stated that new layouts can be confusing for those with sensory impairments, neurodegenerative conditions and poor mental health. They can create confusion, anxiety and inability to travel. The mitigation proposed was to consider how local groups could be assisted and the implementation/explanation was for TfL to inform stakeholders of the new layouts and offer meetings to explain the changes. As Mr Matthias QC submitted, these proposals do not suggest that conscientious consideration was given to the disorientating effect for, say, a blind passenger being dropped off 100 metres from their destination, without any ability to find it. The residual risk code was orange.
193. In my judgment, the EqIA did not meet the required standard of a “rigorous” and “conscientious” assessment, conducted with an open mind. The mitigation entries (save for impact 13), and the implementation/explanation entries were perfunctory or non-existent, and failed to grapple with the serious negative impacts and high level of residual risks which emerged from the assessment. The residual risk assessment was inconsistent and irrationally understated the risks. Most worryingly of all, the EqIA read as if its purpose was to justify the decision already taken.
194. The EqIA post-dated the meeting of the Road Space Performance Group on 11 June 2020, which approved the scheme, as recorded in the Design Log. It was available to Mr Powell when he approved the scheme on 1 and 15 July 2020. The summaries of the EqIA’s findings in the two “request for decision” reports did not give details of the negative impacts and residual risks that the EqIA had identified, nor did they consider

how they might be mitigated or avoided. The option of better access arrangements for taxis carrying the disabled was not even considered. In my view, the weaknesses in the EqIA were not addressed and remedied by a conscientious and genuine consideration of the equality duties by TfL. The reports read as if the EqIA was merely a formality, and the outcome was a foregone conclusion.

Conclusion

195. For the reasons set out above, I conclude that the Mayor and TfL did not have proper regard to the public sector equality duty in making the Plan, the Guidance and the A10 Order. I grant permission to apply for judicial review on Ground 2, and Ground 2 succeeds.

Ground 3

196. The Claimants submitted that the Plan, the Guidance and the A10 Order were an interference by “control of use” with the property rights of taxi owners and drivers under A1P1 which was disproportionate. The Defendants submitted that the A10 Order was (at most) part of a temporary package of measures controlling the use of a possession – a taxi - on particular streets during peak hours. A temporary emergency restriction on taxis using Bishopsgate as a through route as part of an urgent response to a pandemic was necessary and justifiable interference, to meet the policy objectives.

Legal principles

197. A1P1 provides:

“1. Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

2. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

198. The case law on A1P1 was summarised by the Grand Chamber in *Depalle v France* (2010) 54 EHRR 535, at 559:

“77. The court reiterates that, according to its case law, article 1 of Protocol No. 1, which guarantees in substance the right of property, comprises three distinct rules: (see, inter alia, *James v United Kingdom* (1986) 8 EHRR 123, para. 37): the first, which is expressed in the first sentence of the first paragraph and is of a general nature, lays down the principle of peaceful enjoyment of property. The second rule, in the second sentence of the same

paragraph, covers deprivation of possessions and subjects it to certain conditions. The third, contained in the second paragraph, recognises that the contracting states are entitled, amongst other things, to control the use of property in accordance with the general interest. The second and third rules, which are concerned with particular instances of interference with the right to peaceful enjoyment of property, are to be construed in the light of the general principle laid down in the first rule (see *Bruncrona v. Finland*, no. 41673/98, §§ 65-69, 16 November 2004, and *Broniowski v. Poland* [GC], no. 31443/96, § 134, ECHR 2004-V).”

199. The Supreme Court has therefore recognised that there is a “material distinction” between the second rule, relating to the deprivation of possessions, and the third, relating to the control of the use of property: *Cusack v Harrow LBC* [2013] 1 WLR at 2034, at [35]. In either case, the Court must assess: (i) whether there has been an interference with the peaceful enjoyment of property; (ii) whether the interference was “in the general interest”; (iii) whether the interference was “provided for by law”; and (iv) the proportionality of any interference.
200. In the context of A1P1, the proportionality analysis requires the Court to assess “whether the interference with the applicants’ right to peaceful enjoyment of their possessions struck the requisite fair balance between the demands of the general interest of the public and the requirements of the protection of the individual’s fundamental rights, or whether it imposed a disproportionate and excessive burden on them”: *Thomas v Bridgend County Borough Council* [2012] QB 512, per Carnwath LJ at [49], citing *Bugajny v Poland* (Application No. 22531/05), para. 67.
201. In *Bank Mellat v HM Treasury* [2013] UKSC 39, Lord Sumption reviewed the authorities on proportionality, at [20], and set out the test to be applied:

“Their effect can be sufficiently summarised for present purposes by saying that the question depends on an exacting analysis of the factual case advanced in defence of the measure, in order to determine (i) whether its objective is sufficiently important to justify the limitation of a fundamental right; (ii) whether it is rationally connected to the objective; (iii) whether a less intrusive measure could have been used; and (iv) whether, having regard to these matters and to the severity of the consequences, a fair balance has been struck between the rights of the individual and the interests of the community. These four requirements are logically separate, but in practice they inevitably overlap because the same facts are likely to be relevant to more than one of them.”

Possession

202. The economic benefit that derives from a licence to carry on a particular economic activity constitutes a “possession” within the meaning of A1P1: see *Simor*: “*Human Rights Practice*” at 15.012. In *Crompton (t/a David Crompton Holdings) v Department*

of Transport of North Western Area [2003] RT 34, which concerned the revocation of a haulier’s licence, Kennedy LJ said, at [19]:

“(2) An operator’s licence is a possession for the purposes of Art. 1 of the First Protocol....

(3) In *Traktorier Aktiebolag v Sweden* (1989) 13 E.H.R.R 309, para 49, it was said by the European Court of Human Rights that a licence such as this (in that case a restaurant liquor licence) can be revoked lawfully in pursuit of a legitimate aim, but the action must be proportionate....”

203. By analogy with those authorities, taxi drivers hold a “possession” in the form of a licence for the taxi and a licence for the driver, both of which have economic benefits. “Hackney carriages” are defined in section 4 of the 1869 Act as “any carriage for the conveyance of passengers which plies for hire within the limits of this Act”. By section 6 of the 1869 Act, TfL has the function of licensing hackney carriages “to ply for hire within the limits of this Act”. Licences granted under section 6 are for 1 year’s duration. Section 8 is titled “Hackney carriages to be driven by licensed drivers” and provides in subsection (2):

“No hackney carriage shall ply for hire within the limits of this Act unless under the charge of a driver having a licence under this section from Transport for London.”

Licences granted under section 8 are for three years’ duration.

204. The term “Limits of Act” is defined in section 2 of the 1869 Act:

“2. Limits of Act

The limits of this Act shall be the metropolitan police district, and the city of London”

The definition of the metropolitan police district has changed from time to time. Since 2000, it has been coterminous with Greater London, excluding the City of London and the Temple.

205. The effect of these provisions is that a licensed driver of a licensed “hackney carriage” is entitled to ply for hire throughout Greater London and the City of London. A taxi may ply for hire on the street or on a taxi rank. Although the licences are time-limited, owners and drivers have a reasonable expectation, based on custom and practice, that the licences will be renewed for as long as the licence conditions are met. As the evidence in this case illustrates, taxi drivers remain licensed for many years.

Control of use

206. Control of use is a form of interference with the peaceful enjoyment of property. In order for a measure to amount to a control of use, it must be a legislative measure since paragraph 2 refers to “.... such laws as [the state] deems necessary to control the use of the property ...” (see *Simor*: “*Human Rights Practice*” at 15.027). The A10 Order is a

legislative measure for this purpose, and so too are the other TMOs made pursuant to the Plan and the Guidance. The Plan and the Guidance are not legislative measures, and so cannot amount to a “control of use”.

207. Mr Matthias QC relied in particular upon the case of *Paponette v AG of Trinidad and Tobago* [2010] UKPC 32, [2012] 1 AC 12, where the applicants, a state-regulated taxi company, were required by the government to re-locate their taxi rank to a site controlled by a competitor company, but were assured that they would not be under the control or management of the competitor and management would be handed over to them within months. In breach of their legitimate expectation, the competitor imposed fees on them - \$1 per exit – which other operators were not required to pay. A majority of the Board held that the interference with the applicants’ business infringed their right not to be deprived of the enjoyment of their property under the Constitution, as the government had not justified the interference as being in the public interest. Lord Dyson said:

“23. The infringement must, however, reach a certain level of significance. The regulation cases such as *Traktörer* should be applied with some care. In many of the cases relied on by the Court of Appeal, the principle that was being applied was not that a regulatory restriction could not of itself involve the taking of property. Rather it was that, as Lord Hoffmann put it in *Grape Bay Ltd v Attorney General* (1999) 57 WIR 62, at p72:

“It is well settled that restrictions on the use of property imposed in the public interest by general regulatory laws do not constitute a deprivation of that property for which compensation should be paid.”

24. Indeed, in *Traktörer* the ECtHR said at para 55 that the withdrawal of the licence to serve alcohol “constituted a measure of control of the use of property, which falls to be considered under the second paragraph of article 1 of the Protocol”. The court then considered the lawfulness and purpose of the interference. It concluded that the withdrawal of the licence was done in the public interest in furtherance of the social policy of controlling the sale of alcohol.

25. It was not necessary for the appellants in the present case to show that the effect of what the PTSC did pursuant to the 1997 Regulations was to deprive them of their businesses altogether. There is no warrant for interpreting section 4(a) of the Constitution in this way, any more than article 1 of Protocol No 1 of the European Convention on Human Rights is to be so construed. The interference with their businesses was substantial. They had previously managed and controlled their own affairs. Now they were subjected to the control and management of their competitor, who, pursuant to the authority conferred by the 1997 Regulations, charged them a fee for every exit journey and decided whether they were “fit and proper” persons to be granted a permit to use the City Gate facility at all.

Prima facie, therefore, there was an infringement of the members' section 4(a) rights. In these circumstances, it was for the government to justify the interference as being in the public interest. If they failed to do so, the breach was established.”

208. The taxi licence and the taxi driver’s licence authorise the owner/driver to ply for hire throughout the City of London and Greater London. TMOs which prohibit access to certain streets and bus lanes “control the use” of the licences by limiting the places in which the owner/driver can ply for hire. Obviously some road restrictions for genuine operational reasons are to be expected. But if the restrictions are widespread and significant, the owner/driver is likely to suffer an economic loss.
209. TMOs which prohibit access to certain streets and bus lanes make taxi journeys slower and more expensive, which deters customers, and ultimately reduces the volume of business until it becomes uneconomic to continue operating, bearing in mind the cost of the overheads. As Ms Proctor explained in her first witness statement:

“29. However, our understanding and expectation that we will be able to travel and ply for hire throughout London’s road network including along carriageways and around turns otherwise reserved for buses, is being frustrated by the Streetspace Plan in a way that will inevitably work to the very considerable detriment of the Licensed Taxi trade. Our road journeys will become longer and more tortuous as we are forced to seek out ways around the road closures, which will in turn make our journeys slower and significantly more expensive for all our passengers, and that will inevitably deter many people from using black cabs in future.

30. If TfL and the Mayor wish to maintain a Licensed Taxi service in London, they must take into account the economic viability of the service, and must recognise that the service will become non-viable if taxi drivers are unable to access infrastructure, and are prevented from taking the most efficient route between two points, and from avoiding congestion by being able to travel along carriageways and take turns otherwise reserved for buses and from which other motorised vehicles are excluded.”

210. See also the first statement of Lee Da Costa, at paragraphs 10 and 11.
211. The difficulty is that the Claimants’ challenge has not been brought in respect of the legislative measures introduced under the Plan and the Guidance. The Proctor schedule, which was only introduced during the hearing, provides insufficient evidence about their effects. In my view, the Claimants cannot succeed in establishing a control of use resulting in economic loss on the basis of the A10 Order alone; they must demonstrate the widespread nature of the restrictions in order to succeed. It is perhaps possible that a challenge to the Plan and the Guidance could be made under paragraph 1 of A1P1, as an interference with the peaceful enjoyment of property. However, the case was neither pleaded nor presented in that way.

212. Furthermore, the Claimants have not filed specific evidence about a downturn in customers and income, resulting from the restrictions rather than the pandemic, to support the general evidence of Karen Proctor and Lee Da Costa. So in my view, the owner/drivers have not established an interference with peaceful enjoyment of their possessions by control of use in this particular claim.
213. However, in case there is no appetite for further litigation, it may assist the parties if I go on to consider proportionality on a hypothetical basis, as if the evidence in the witness statements of Ms Proctor and Mr Da Costa had been established, in respect of a representative sample of taxi drivers, as a result of the range of legislative measures challenged.

In accordance with law

214. Restrictions imposed pursuant to a TMO will be in accordance with law.

The “general interest” and proportionality

215. The “general interest” relied upon by the Mayor and TfL, given in the Guidance, was the need to “urgently 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”. Mr Jaffey QC submitted that this was “a paradigm example of a case where the general public interest, as assessed by the decision maker, permits appropriate controls over private property interests in order to protect the public and promote the public interest”.
216. Applying the conditions in *Bank Mellat*, at [20], I consider that the first two conditions would be met. However, I am not persuaded that the third and fourth conditions would be met. In my judgment, the proposals in the Plan and the Guidance to implement “radical changes” and a “lasting transformation” of London streets by suppressing all motorised traffic, except buses, went far beyond what was necessary in response to the pandemic. Particularly since the public’s response to the pandemic has been to stay at home where possible, and the number of people and vehicles in central London have remained below pre-COVID levels. Less intrusive measures could have been used which focussed on the specific problems identified e.g. widening pavements to improve social distancing and increasing road space for cycles, where needed. On the A10 Bishopsgate corridor, where there is not space for two lanes in each direction, through traffic could have been limited to buses and taxis only, to reduce traffic volume. The reduction in traffic, in response to the pandemic, called into question the pre-COVID modelling on traffic volumes in 2019. These trends were already apparent by July 2020 when the A10 Order was made. Thus, if the taxi drivers were able to demonstrate that they had suffered economic loss in consequence of unnecessary road restrictions, in addition to the loss of custom due to the COVID-19 pandemic, I would conclude that the measures had not struck a fair balance between the rights of taxi drivers and the general interest, and were disproportionate. This is, however, a hypothetical conclusion only.

Conclusion

217. For the reasons set out above, A1P1 is engaged but the Claimants have failed to establish an interference with their possessions by control of use. Ground 3 was arguable, and so permission to apply for judicial review is granted. However, after close consideration, Ground 3 does not succeed, because of the way in which the claim has been formulated, and insufficient evidence.

Ground 4

218. The Claimants submitted that the Plan, the Guidance and the A10 Order breached the Claimants' legitimate expectation to pass and repass on London's roads, and to use lanes reserved for buses. In response, the Defendants submitted that the Claimants had not identified any clear unambiguous statement upon which a legitimate expectation could be founded. Even if there were such a legitimate expectation, an emergency measure in response to a pandemic was a paradigm example of a case where a public authority would not be bound by a legitimate expectation, for powerful reasons of public interest.

Legal principles

219. In *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374, Lord Fraser held, at 401B:
- “Legitimate...expectation may arise either from an express promise given on behalf of a public authority or from the existence of a regular practice which the Claimant can reasonably expect to continue.”
220. In order to found a claim of legitimate expectation, the promise or practice relied upon should be “clear, unambiguous and devoid of relevant qualification” (*R v Inland Revenue Comrs, Ex p MFK Underwriting Agents Ltd* [1990] 1 WLR 1545, per Bingham LJ at 1569G; *United Policyholders Group v AG of Trinidad and Tobago* [2016] 1 WLR 3383, per Lord Neuberger, at [37]).
221. A legitimate expectation may be enjoyed by an individual or a class. A substantive legitimate expectation will ordinarily only arise where any representation constitutes a “specific undertaking directed at a particular individual or group, by which the relevant policy's continuance is assured”: *R (Niazi) v Secretary of State for the Home Department* [2008] EWCA Civ 755, per Laws LJ at [43].
222. Detrimental reliance on a promise or practice is not necessary. It is a relevant consideration to take into account when deciding whether the adoption of a policy in conflict with the promise would be an abuse of power (see *R (Bancoult) v Secretary of State for Foreign and Commonwealth Affairs (No. 2)* [2008] UKHL 61, [2009] 1 AC 453, per Lord Hoffman at [60]).

223. Substantive legitimate expectation is the third of the three categories of legitimate expectation analysed by the Court of Appeal in *R v North and East Devon HA* [2001] QB 213, per Lord Woolf, at [57]:

“(c) Where the court considers that a lawful promise or practice has induced a legitimate expectation of a benefit which is substantive, not simply procedural, authority now establishes that here too the court will in a proper case decide whether to frustrate the expectation is so unfair that to take a new and different course will amount to an abuse of power. Here, once the legitimacy of the expectation is established, the court will have the task of weighing the requirement of fairness against any overriding interest relied upon for the change of policy.”

224. In *Paponette v AG of Trinidad and Tobago* [2010] UKPC 32, [2012] 1 AC 1, Lord Dyson applied the test in *Coughlan* and went on to say:

“36. The critical question in this part of the case is whether there was a sufficient public interest to override the legitimate expectation to which the representations had given rise. This raises the further question as to the burden of proof in cases of frustration of a legitimate expectation.

37. The initial burden lies on an applicant to prove the legitimacy of his expectation. This means that in a claim based on a promise, the applicant must prove the promise and that it was clear and unambiguous and devoid of relevant qualification. If he wishes to reinforce his case by saying that he relied on the promise to his detriment, then obviously he must prove that too. Once these elements have been proved by the applicant, however, the onus shifts to the authority to justify the frustration of the legitimate expectation. It is for the authority to identify any overriding interest on which it relies to justify the frustration of the expectation. It will then be a matter for the court to weigh the requirements of fairness against that interest.

38. If the authority does not place material before the court to justify its frustration of the expectation, it runs the risk that the court will conclude that there is no sufficient public interest and that in consequence its conduct is so unfair as to amount to an abuse of power. The Board agrees with the observation of Laws LJ in *Nadarajah v Secretary of State for the Home Department* [2005] EWCA Civ 1363 at para 68: “The principle that good administration requires public authorities to be held to their promises would be undermined if the law did not insist that any failure or refusal to comply is objectively justified as a proportionate measure in the circumstances.” It is for the authority to prove that its failure or refusal to honour its promises was justified in the public interest. There is no burden on the applicant to prove that the failure or refusal was *not* justified.

...

42. It follows that, unless an authority provides evidence to explain why it has acted in breach of a representation or promise made to an applicant, it is unlikely to be able to establish any overriding public interest to defeat the applicant's legitimate expectation. Without evidence, the court is unlikely to be willing to draw an inference in favour of the authority. This is no mere technical point. The breach of a representation or promise on which an applicant has relied often, though not necessarily, to his detriment is a serious matter. Fairness, as well as the principle of good administration, demands that it needs to be justified. Often, it is only the authority that knows why it has gone back on its promise. At the very least, the authority will always be better placed than the applicant to give the reasons for its change of position. If it wishes to justify its act by reference to some overriding public interest, it must provide the material on which it relies. In particular, it must give details of the public interest so that the court can decide how to strike the balance of fairness between the interest of the applicant and the overriding interest relied on by the authority. As Schiemann LJ put it in *R (Bibi) v Newham London Borough Council* [2001] EWCA Civ 607, [2002] 1 WLR 237, at para 59, where an authority decides not to give effect to a legitimate expectation, it must "articulate its reasons so that their propriety may be tested by the court".

...

45. There is a further point. In *Bibi*, Schiemann LJ said that an authority is under a duty to consider a legitimate expectation in its decision making process. He said:

"49. Whereas in *R v North and East Devon Health Authority, Ex p Coughlan* [2001] QB 213 it was common ground that the authority had given consideration to the promises it had made, in the present cases, that is not so. The authority in its decision making process has simply not acknowledged that the promises were a relevant consideration in coming to a conclusion as to whether they should be honoured and if not what, if anything, should be done to assuage the disappointed expectations.

...

51. The law requires that any legitimate expectation be properly taken into account in the decision making process. It has not been in the present case and therefore the authority has acted unlawfully."

46. The Board agrees. Where an authority is considering whether to act inconsistently with a representation or promise which it has made and which has given rise to a legitimate expectation, good administration as well as elementary fairness demands that it takes into account the fact that the proposed act will amount to a breach of the promise. Put in public law terms, the promise and the fact that the proposed act will amount to a breach of it are relevant factors which must be taken into account.

225. In *Re Finucane's Application for Judicial Review* [2019] UKSC 7, [2019] HRLR 7, Lord Kerr reviewed the authorities cited by TFL on the circumstances, such as representations concerning macro-political issues of policy, in which a legitimate expectation may not be enforced, at [57] – [60]:

“57. Shortly after the decision in *Coughlan*, the Court of Appeal had occasion to again consider the reach of substantive legitimate expectation in *R v Secretary of State for Education and Employment, Ex p Begbie* [2000] 1 WLR 1115. At p 1130 Laws LJ said:

“As it seems to me the first and third categories explained in the *Coughlan* case [2000] 2 WLR 622 are not hermetically sealed. The facts of the case, viewed always in their statutory context, will steer the court to a more or less intrusive quality of review.”

58. The key factor in *Coughlan* was, Laws LJ said, the limited number of individuals affected by the promise in question. Significantly, so far as concerns the present appeal, he also said at p 1131:

“The more the decision challenged lies in what may inelegantly be called the macro-political field, the less intrusive will be the court’s supervision. More than this: in that field, true abuse of power is less likely to be found, since within it changes of policy, fuelled by broad conceptions of the public interest, may more readily be accepted as taking precedence over the interests of groups which enjoyed expectations generated by an earlier policy.”

59. Laws LJ considered the evolving case law in this field in *Nadarajah v Secretary of State for the Home Department* [2005] EWCA Civ 1363, albeit on an expressly obiter basis - see para 67. In explaining the basis for substantive legitimate expectations, he made these observations at para 68:

“It is said to be grounded in fairness, and no doubt in general terms that is so. I would prefer to express it rather more broadly as a requirement of good administration, by which public bodies ought to deal

straightforwardly and consistently with the public. In my judgment this is a legal standard which, although not found in terms in the European Convention on Human Rights, takes its place alongside such rights as fair trial, and no punishment without law. That being so there is every reason to articulate the limits of this requirement - to describe what may count as good reason to depart from it - as we have come to articulate the limits of other constitutional principles overtly found in the European Convention. Accordingly a public body's promise or practice as to future conduct may only be denied, and thus the standard I have expressed may only be departed from, in circumstances where to do so is the public body's legal duty, or is otherwise, to use a now familiar vocabulary, a proportionate response (of which the court is the judge, or the last judge) having regard to a legitimate aim pursued by the public body in the public interest. The principle that good administration requires public authorities to be held to their promises would be undermined if the law did not insist that any failure or refusal to comply is objectively justified as a proportionate measure in the circumstances."

Laws LJ also returned in para 69 to the theme of decisions not to fulfil an undertaking for policy reasons falling within the "macro-political" field. I will consider his remarks on this subject in the next section of this judgment.

60. The subject of substantive legitimate expectation arose again in *R (Bhatt Murphy) v Independent Assessor* [2008] EWCA Civ 755. At para 35, Laws LJ said:

"... the notion of a promise or practice of present and future substantive policy risks proving too much. The doctrine of substantive legitimate expectation plainly cannot apply to every case where a public authority operates a policy over an appreciable period. That would expand the doctrine far beyond its proper limits. The establishment of any policy, new or substitute, by a public body is in principle subject to *Wednesbury* review. But a claim that a substitute policy has been established in breach of a substantive legitimate expectation *engages a much more rigorous standard*. It will be adjudged, as I have foreshadowed, *by the court's own view of what fairness requires*. This is a principal outcome of this court's decision in *Ex p Coughlan* (see in particular paras 74, 78, 81 and 82). It demonstrates the importance of finding the reach of

substantive legitimate expectation.” (Emphasis added)”

226. Lord Kerr concluded:

“74. Stephens J found that the considerations outlined in the Secretary of State’s statement to Parliament on 11 November 2010 (set out in para 42(iii) above) “were overriding interests which, as far as the decision maker was concerned, justified the frustration of the expectation.” - para 166. He held that the decision to resile from the undertaking “was clearly concerned with macro-political issues of policy.” - para 167.

75. The reference to “macro-political issues” derived from the judgment of Laws LJ in *Nadarajah*. At para 69 of the judgment in that case, Laws LJ said:

“... where the representation relied on amounts to an unambiguous promise; where there is detrimental reliance; where the promise is made to an individual or specific group; these are instances where denial of the expectation is likely to be harder to justify as a proportionate measure. ... On the other hand where the government decision-maker is concerned to raise wide-ranging or ‘macro-political’ issues of policy, the expectation’s enforcement in the courts will encounter a steeper climb. All these considerations, whatever their direction, are pointers not rules. The balance between an individual’s fair treatment in particular circumstances, and the vindication of other ends having a proper claim on the public interest (which is the essential dilemma posed by the law of legitimate expectation) is not precisely calculable, its measurement not exact.”

76. Where political issues overtake a promise or undertaking given by government, and where contemporary considerations impel a different course, provided a bona fide decision is taken on genuine policy grounds not to adhere to the original undertaking, it will be difficult for a person who holds a legitimate expectation to enforce compliance with it.”

The representations relied upon

227. In the Claimants’ Statement of Facts and Grounds, the representations relied upon were set out at paragraph 45 as follows;

- i) “(a) The Streetspace Plan’s failure to distinguish hackney carriages from “general traffic” and effectively to reverse the longstanding policy of presuming

that hackney carriages will be permitted to use carriageways otherwise reserved for buses is a breach of the hackney carriage trade's legitimate expectation."

- ii) "(b) There has long existed a clear and unequivocal policy presumption that hackney carriages will be able to use London's arterial routes, including bus lanes, to transport members of the public. That this presumption exists has been stated expressly both in policy and by the Mayor in response to questions. It also exists by virtue of very long established practice."

228. In the Claimants' skeleton argument, the representations were revised to read as follows:

"89. In the present case the Claimants have a legitimate expectation of:

(a) Being permitted to pass and repass on London's roads in accordance *inter alia* with the routes contained in the Knowledge of London. This is an expectation which arises as a result of the established practice of permitting hackney carriages to do so, and from requiring drivers to invest considerable time and money in learn routes involving passage along those routes, and to pay a fee for their licence.

(b) Having access to all bus lanes, for the purposes of driving in them as through-routes, as well as entering them to pick up and set down, except where specific safety or bus operational issues make this impractical. This arises as a result of the express policy contained in the Mayor's extant 2007 Taxis and Bus Lane policy.

(c) Being regarded as public transport forming "a vital part of London's integrated transport network, fulfilling demands that cannot be met by the bus, train or tube". This arises both as a result of the express policy contained in the Mayor's 2007 Taxis and Bus Lane policy, and as a result of the longstanding and distinct legal status of hackney carriages"

229. I agree with Mr Jaffey QC's submission that the skeleton goes beyond the pleading. However, bearing in mind the importance of the issues to the parties, and the fact that Mr Jaffey QC has had a fair opportunity to consider the reformulated grounds, it is in accordance with the overriding objective to consider all the arguments in this claim.

230. Taxis are a form of public transport, and so are to be distinguished from private hire and other vehicles on the road. Only taxis and buses are authorised to ply for hire in London which means that they can be hailed from the street. This requires access to bus lanes which usually run alongside the pavement. Because of the status of taxis as public transport, and their right to ply for hire, they have enjoyed the right to drive along bus lanes, and pick up and drop off passengers from bus lanes for many years. A Bus Lane Policy has been in place since before TfL was established in 2000.

231. The wording of the current Bus Lane Policy⁸ is to “allow for 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”.
232. The policy should be read with the Policy Guidance⁹ which states:
- “1. Taxi access to bus lanes reflects the recognition in the Mayor’s transport strategy that taxis are “a vital part of London’s integrated transport network, fulfilling demands that cannot be met by the bus, train or tube”.
 2. The Mayor has stated that TfL’s general policy should be to allow taxis in all bus lanes except where specific safety or bus operational issues made this impractical.
 3. This policy applies for the purposes of taxis driving in bus lanes as through-routes and entering bus lanes to pick up and set down. ‘Pick up’ and ‘set down’ mean that there is an intended passenger waiting at the kerbside or that an existing passenger wishes to be set down.”
233. The Policy Guidance expresses the exception slightly differently to the Bus Lane Policy. However the Bus Lane Policy is the primary document and the Policy Guidance cannot give the exception in the policy a different meaning.
234. The Policy Guidance’s reference to picking up passengers recognises that access to bus lanes gives effect to a licensed taxi driver’s right to ply for hire.
235. The Bus Lane Policy and Policy Guidance only applies to TLRN roads, as Boroughs control bus lanes on other roads. Taxis have access to most Borough bus lanes as well – taxis have access to 93% of all London’s bus lanes, including on Borough roads – but access on non-TLRN roads is determined according to Borough policies and decisions.
236. In my judgment, the Bus Lane Policy, supported by the Policy Guidance, amounts to a representation, to taxi drivers as a class, that taxis will be allowed to drive in all TLRN bus lanes, and enter bus lanes to pick up or drop off passengers, except where to do so would cause significant delay to buses or materially worsen the safety of road users. The representation is sufficiently clear and unambiguous to found a legitimate expectation. I do not consider that the exception, which enables TfL to exclude taxis from specific bus lanes in limited circumstances, renders the representation unclear or ambiguous and therefore incapable of founding a legitimate representation. There is a clear policy presumption in favour of granting access. In practice, taxis can access 95% of all bus lanes on TLRN roads, and the exception has been interpreted strictly, and exercised sparingly.
237. The Bus Lane Policy and Guidance were upheld as lawful by the Court in *Eventech*, in a challenge by private hire vehicles to the exclusive use of bus lanes by taxis and buses.

⁸ Public Carriage Office Taxi and Bus Lanes Policy (2007).

⁹ Public Carriage Office Taxis and Bus Lanes: Policy Guidance (2007)

238. The Mayor, who is also Chair of TfL, has made other formal representations to taxi drivers, as a class, that they will enjoy continued use of bus lanes:
- i) In 2016, in the “Taxi and Private Hire Action Plan”;
 - ii) In 2016, in the Mayoral Manifesto;
 - iii) On 5 June 2017, at Mayor’s Question Time; and
 - iv) On 25 March 2020, at Mayor’s Question Time.
239. These representations confirm and underline the Mayor’s and TfL’s ongoing commitment to the representation, and provide a further basis for the taxi drivers’ legitimate expectation.
240. Taxi drivers can also rely upon the long-established practice of driving in bus lanes, in support of their legitimate expectation.
241. The creation of a bus lane has to be authorised by a statutory order. Currently 95% of TLRN bus lanes allow taxis access. The order for each of those bus lanes exempts taxis from the ban on vehicles other than buses driving in bus lanes, to ensure that they are not liable to a penalty. The existence of multiple bus lane orders which permit taxis to drive in bus lanes is further evidence in support of the taxi drivers’ legitimate expectation.
242. Turning to consider the other representations relied upon by the Claimants, I have not been able to find in the evidence a clear and unequivocal representation that taxi drivers will be “permitted to pass and repass on London’s roads in accordance *inter alia* with the routes contained in the Knowledge of London”.
243. The statement in the Bus Lane Guidance that taxis form “a vital part of London’s integrated transport network, fulfilling demands that cannot be met by the bus, train or tube” is to be considered as part of the explanation for the Bus Lane Policy. It is not a free-standing representation which is capable of founding a separate legitimate expectation.
244. It is implicit in the Bus Lane Policy and Policy Guidance that taxis will be able to travel along all arterial roads which have bus lanes. Beyond that, the evidence has not shown any clear and unambiguous representation that taxis will be able to travel in all arterial roads, as submitted by the Claimants.

Detriment

245. Ms Proctor summarised the detriment suffered by taxi drivers in her first witness statement as follows:

“26. Whilst we recognise that proportionate changes need to be made to the road network to support social distancing, it is not accepted that Licensed Taxis need to be or should be excluded from key roads. The exclusion of Licensed Taxis who

provide door-to-door serviceswill result in a greatly diminished service for the elderly and the disabled...”

“28.Licensed Taxi drivers have decided to become taxi drivers and to remain as taxi drivers, undertaking and submitting to the extensive regulatory requirements ... - the very considerable investment of personal time and effort needed to pass the Knowledge of London and the very considerable expense of vehicles capable of being licensed as hackney carriages in reliance upon the clear and unequivocal longstanding policy presumption and understanding that Licensed Taxis will be able to travel freely and ply for hire throughout London’s road network, including along carriageways and around turns otherwise reserved for buses.

29. However, our understanding and expectation that we will be able to travel and ply for hire throughout London’s road network including along carriageways and around turns otherwise reserved for buses, is being frustrated by the Streetspace Plan in a way that will inevitably work to the very considerable detriment of the Licensed Taxi trade. Our road journeys will become longer and more tortuous as we are forced to seek out ways around the road closures, which will in turn make our journeys slower and significantly more expensive for all our passengers, and that will inevitably deter many people from using black cabs in future.

30. If TfL and the Mayor wish to maintain a Licensed Taxi service in London, they must take into account the economic viability of the service, and must recognise that the service will become non-viable if taxi drivers are unable to access infrastructure, and are prevented from taking the most efficient route between two points, and from avoiding congestion by being able to travel along carriageways and take turns otherwise reserved for buses and from which other motorised vehicles are excluded.”

Breach of legitimate expectation

246. In my judgment, the policies in the Plan and the Guidance, which treat taxis in the same way as general traffic which is to be “suppressed”, and excluded from certain routes which will only remain open to buses, cycles and pedestrians, has led to a clear breach of the taxi drivers’ legitimate expectation in regard to the use of bus lanes. As I have already found under Ground 1, the Plan and the Guidance were made without regard to the Bus Lane Policy and Policy Guidance, which remain in force.
247. Giving effect to the Plan and the Guidance, the A10 Order also treats taxis in the same way as general traffic which is to be “suppressed”, and excluded from routes which will only remain open to buses, cycles and pedestrians. During most of the day, between 7 am and 7 pm, through traffic is prohibited on Bishopsgate, enforced by banned turns,

and no vehicles (including taxis) may travel through the bus gates. There is no evidence that TfL ever considered the significance of the Bus Lane Policy and Policy Guidance when deliberating over the terms of the scheme, including access to taxis. Instead, it considered it had an untrammelled discretion to exclude taxis, which was erroneous both in fact and law.

248. Attempts by TfL to rely upon the exceptions in the Bus Lane Policy and Policy Guidance were impermissible *ex post facto* justifications. If TfL had decided not to apply the Bus Lane Policy and Policy Guidance, that would have been recorded in the evidence, along with the reasons for departing from such a long-established policy, upheld by the Court in *Eventech* and repeatedly reaffirmed by the Mayor. In any event, the exclusion of taxis from the bus gates in the A10 Order went far beyond the limited policy exception, which has only been applied for specific space/safety reasons in a small number of locations, on a case by case basis (see Mr Monck's first witness statement, paragraph 29 and 30). As the Mayor stated on 26 March 2020, the policy of the Mayor and TfL has been to increase access to bus lanes.

Should the legitimate expectation be upheld?

249. In *Paponette*, Lord Dyson said, at [37], that the onus is on the decision maker “to justify the frustration of the legitimate expectation. It is for the authority to identify any overriding interest on which it relies to justify the frustration of the expectation. It will then be a matter for the court to weigh the requirements of fairness against that interest”.
250. The Defendants submitted that this case came within the “macro-political field” and the ongoing and unprecedented health crisis justified a different course, relying upon Lord Kerr's approach in *Re Finucane's application for judicial review*, at [77].
251. In my view, the Defendant's submission was severely undermined by the fact that, unlike many of the authorities relied upon, this is not a case where the decision-maker has amended or revoked the policy upon which the legitimate expectation is founded. The Bus Lane Policy and Policy Guidance are still operative, and the Mayor and TfL have not suggested that they intend to revoke them. Where a public body has a clear policy, then those who are affected by it are entitled to expect that policy to be operated, unless and until a reasonable decision is taken that the policy be modified or withdrawn: *SAVE v Secretary of State HCLG* [2018] EWCA Civ 2137 per Coulson LJ at [39].
252. In this case, I have found that the Bus Lane Policy and Policy Guidance were not considered or applied when the challenged decisions were made. In *Paponette*, Lord Dyson said, at [45] – [47], that a legitimate expectation must be taken into account by an authority when considering whether to act contrary to it.
253. The rationale behind the Bus Lane Policy and the Policy Guidance is that taxis are “a vital part of London's integrated transport network, fulfilling demands that cannot be met by the bus, train or tube” (Policy Guidance, paragraph 1). TfL's own report from 2002 (relied upon by TfL in the *IWU* case) stated:

“TfL considers that licensed taxis make an important contribution to London's public transport system, enabling a

wide variety of users (including the disabled) to make short trips efficiently and providing a vital alternative to private car use. ...

Taxis are a vital part of London's integrated transport network. They form a unique link between other forms of transport, fulfilling needs that cannot be met by the bus, train or tube. They have a significant role in the proposed scheme by providing an important means of moving around central London. ... Taxis also have an important role in providing door to door transport for disabled people, especially through the Taxicard scheme. London taxis are the only form of social transport that is 100% wheelchair accessible."

254. In my view, the Plan, the Guidance and A10 Order promoted schemes which disregarded these well-established justifications for according taxis the right to use bus lanes. The consequences of preventing taxis from entering the bus gates in Bishopsgate for passengers who cannot walk, cycle or use public transport are severe. As the EqIA acknowledged, some will now be prevented from making their journey at all. Similar problems are likely to arise in other parts of London where taxi access has been restricted: see Ms Proctor's first witness statement, paragraph 26, and the Proctor schedule.
255. The Guidance advised that there was a need to "urgently 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". In my judgment, the measures proposed in the Plan and the Guidance, and implemented in the A10 order, were extreme, and went beyond what was reasonably required to meet the temporary challenges created by the pandemic. It was possible to widen pavements to allow for social distancing, and to allocate more road space to cater for an increase in the number of cyclists, without seeking to "transform" parts of central London into predominantly car-free zones. The stated justification for the restrictions on vehicle access, namely, that after lockdown there would be a major increase in pedestrians and cyclists, and excessive traffic with risks to safety and public health, was not evidence-based. In fact, it was already clear by the time the A10 Order was made, that many people were responding to the pandemic by staying at home, especially office workers. Traffic levels in central London, especially the City where the A10 Order operates, fell dramatically during the first lockdown, and have remained well below pre-COVID levels. The assumption made by TfL that, if taxis were allowed in the Bishopsgate bus gates, there would be no appreciable reduction in traffic volume because taxis would divert into Bishopsgate from other routes, overlooked the fact that taxi use in central London has dropped considerably through lack of customers, and many taxis have been taken off the roads.
256. Whilst the Transport Strategy 2018 proposed a shift away from car use, it did not recommend the exclusion of taxis from bus lanes, and it recognised the importance of taxis as a form of public transport. Mayoral statements have confirmed that the use of bus lanes by taxi drivers would continue. I consider it was unfair and contrary to good administration to use the pandemic as a justification for restricting taxi access to bus lanes, especially by use of temporary orders, which may be made rapidly without any requirement for consultation. Such major changes are more appropriately made after consultation and careful consideration of existing policies, and the reasons for them.

257. Finally, the detriment suffered by taxi drivers as a result of the schemes introduced under the Plan and the Guidance is a relevant consideration to take into account.

Conclusion

258. Taking into account all the evidence adduced and submissions made, I conclude that the Mayor and TfL have not shown that there was an overriding public interest which justified the frustration of the taxi drivers' legitimate expectation.
259. For these reasons, Ground 4 succeeds.

Ground 5

260. The Claimants submitted that the treatment of taxis in the Plan and the Guidance and the A10 Order was irrational. The Mayor and TfL responded that the Plan, the Guidance and the A10 Order fell well within the discretionary area of judgement open to TfL as to how to respond to an emergency situation. These were temporary measures, which responded to the unprecedented difficulties of the ongoing global health crisis.
261. Mr Matthias QC submitted that the test to be applied was essentially one of proportionality. The distinction between the rationality test (as it has evolved), and the proportionality test, was considered in *Pham v Secretary of State for the Home Department* [2015] UKSC 19, per Lord Sumption at [104] – [109] and Lord Reed, at [113] – [119]. Subsequently, in *Keyu v Secretary of State for Defence* [2016] UKSC 69, [2016] AC 1355, the Supreme Court declined to rule that the rationality test had been superseded by the proportionality test, declaring that such a major change to the law would have to be considered by a panel of nine Supreme Court Justices.
262. In accordance with the conventional view, I have applied the proportionality test to the human rights claim under A1P1 (Ground 3) and to the legitimate expectation claim (Ground 4). On Ground 5, I propose to apply the rationality test with anxious scrutiny as I have found that human rights are engaged.
263. I have already found that, in making the Plan and the Guidance, the Mayor and TfL failed to distinguish taxis from “general traffic” and in doing so, failed to have regard to relevant considerations, namely, (a) the distinct status of taxis as a form of public transport, reflected both in law and policy; and (b) the role played by taxis in facilitating accessible public transport for those with mobility impairments (Ground 1).
264. I have also found that, in making the Plan, the Guidance and the A10 Order,
- i) The Mayor and TfL failed to discharge the public sector equality duty (Ground 2).
 - ii) A1P1 was engaged, as the licences held by taxi owners and drivers, and the economic benefits derived from them, were possessions, but an interference with the peaceful enjoyment of property by control of use has not been established (Ground 3).

- iii) The Mayor and TfL breached the legitimate expectation held by taxi drivers, as a class, based upon the Bus Lane Policy, and long-established practice, that taxis would be allowed to drive in all TLRN bus lanes, and enter bus lanes to pick up or drop off passengers, except where to do so would cause significant delay to buses or materially worsen the safety of road users. The Mayor and TfL have not shown that there was an overriding public interest which justified the frustration of the taxi drivers' legitimate expectation (Ground 4).
265. It follows from the findings above that the decision-making process was seriously flawed. Nonetheless, was the outcome a rational response to the transport issues which arose as a result of the COVID-19 pandemic?
266. In my judgment, the flaws identified were symptomatic of an ill-considered response which sought to take advantage of the pandemic to push through, on an emergency basis without consultation, “radical changes”, “plans to transform parts of central London into one of the largest car-free zones in any capital city in the world”, and to “rapidly repurpose London’s streets to serve an unprecedented demand for walking and cycling in a major new strategic shift” (Mayor’s statements on 6 and 15 May 2020). This approach was consistent with the additional guidance from the Secretary of State for Transport dated 9 May 2020 where he advocated a shift to walking and cycling and said:
- “We recognise this moment for what it is: a once in a generation opportunity to deliver a lasting transformation in how we make short journeys in our towns and cities...”
267. The scale and ambition of the proposals, and the manner in which they were described, strongly suggest that the Mayor and TfL intended that these schemes would become permanent, once the temporary orders expired. However, there is no evidence to suggest that there will be a permanent pandemic requiring continuation of the extreme measures introduced by the Government in 2020.
268. The Guidance advised that, pursuant to the Plan:
- “We need to urgently 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. Suppressing motorised traffic while allowing essential journeys to take place is key to ensuring we manage our road and public transport network to maximise our ability to keep people moving safely.”
269. The stated justification for the restrictions on vehicle access, namely, that after lockdown, because of the limited public transport capacity, there would be a major increase in pedestrians and cyclists, and excessive traffic with consequent risks to safety and public health, was not evidence-based. It was mere conjecture, which was not a rational basis upon which to transform London’s roads. It must have been apparent to the Mayor and TfL that people were responding to the pandemic by staying at home, especially office workers, and so it was possible that they would continue to do after lockdown, to avoid infection. Central London was deserted during lockdown. Even once the lockdown was relaxed, and the government exhorted people to return to work

to boost the city centre economies, people chose to remain at home where possible. There was no evidence to indicate that the predicted five-fold increase in the number of pedestrians and ten-fold increase in the number of cyclists in central London occurred.

270. Traffic levels in central London, especially in the City where the A10 Order operates, fell dramatically during the first lockdown, and have remained well below pre-COVID levels. This was apparent from TfL's data, prior to making the A10 Order. On 15 May 2020, the Mayor also announced a significant increase to congestion charges and to the hours and days of operation of the charging scheme, which was intended to deter vehicles from entering central London.
271. The exclusion of taxis from the bus gates on Bishopsgate was based on pre-COVID 19 data from April 1999 which found that 43% of vehicles (other than buses) travelling along Bishopsgate between 8.00 am and 9.00 am were taxis. The Claimants challenged the reliability of the 43% figure, contrasting it with the much lower figures in TfL's statistics based on ANPR data (e.g. taxis comprising 17.8% of all vehicles in the congestion charging zone from 2 – 6 March 2020, and only 5% of all vehicles across Greater London over the same period). Mr Low, the Claimants' expert, criticised TfL for its failure to capture data from other less busy times of the day, and not considering limiting the restriction for taxis to the AM Peak, instead of imposing it for 12 hours per day. Remarkably, TfL continued to justify the A10 Order by reference to the 43% figure without taking into account the drop in the volume of traffic caused by COVID 19.
272. The exclusion of taxis from the bus gates on Bishopsgate was also justified in the pre-COVID 19 modelling on the basis that, if taxis were allowed in the Bishopsgate bus gates, there would be no appreciable reduction in traffic volume because more taxis would divert into Bishopsgate from other routes. There was no evidence produced in support of this proposition, and whether or not it was correct would obviously depend on the number of taxis wishing to travel in that direction at any one time. Remarkably, TfL continued to justify the A10 Order on the basis of this assumption after COVID-19, even though taxi use in central London had dropped considerably through lack of customers, and many taxis have been taken off the roads.
273. If the Mayor and TfL had proceeded more cautiously, monitoring the situation and acting upon evidence rather than conjecture, their proposals would have been proportionate to the difficulties which needed to be addressed. As it was, the measures proposed in the Plan and the Guidance, and implemented in the A10 order, far exceeded what was reasonably required to meet the temporary challenges created by the pandemic. It was possible to widen pavements to allow for social distancing, and to allocate more road space to cater for an increase in the number of cyclists, without seeking to "transform" parts of central London into predominantly car-free zones.
274. In my judgment, it was both unfair and irrational to introduce such extreme measures, if it was not necessary to do so, when they impacted so adversely on certain sections of the public. The impact on the elderly and disabled who rely heavily on the door-to-door service provided by taxis is described at paragraphs 130 – 136 above. See also the adverse impacts identified in the EqIA (paragraphs 189-192 above). Taxis are a form of public transport. Travellers may wish to travel by taxi for legitimate reasons. Taxis have been valued by the NHS and vulnerable groups during the pandemic because they are safer than trains, buses and private hire vehicles. The detriment suffered by taxi drivers and the potential impact on their A1P1 rights, is set out in Ms Proctor's first

witness statement, paragraphs 26 - 30, and Mr Da Costa's first witness statement at paragraphs 10 - 11. These impacts were either not considered, or automatically discounted because they were considered to be in conflict with the objectives of the Plan.

275. I conclude that the decision-making processes for the Plan, Guidance and A10 Order were seriously flawed, and the decisions were not a rational response to the issues which arose as a result of the COVID-19 pandemic.
276. Therefore permission to apply for judicial review is granted on Ground 5, and Ground 5 succeeds.

Conclusions

277. The claims for judicial review are allowed on Grounds 1 (in part), 2, 4 and 5, but refused on Ground 3.
278. **Ground 1:** in making and promulgating the Plan and Guidance, the Mayor and TfL failed to distinguish taxis from "general traffic". In doing so, they failed to have regard to relevant considerations, namely:
- a) the distinct status of taxis as a form of public transport, reflected both in law and policy;
 - b) the role played by taxis in facilitating accessible public transport for those with mobility impairments.

However, Ground 1 did not succeed in respect of the A10 Order.

279. **Ground 2:** In making the Plan and Guidance and the A10 Order, TfL and the Mayor failed to have proper regard to the public sector equality duty, pursuant to section 149 of the Equalities Act 2010.
280. **Ground 3:** The economic benefits which taxi drivers derive from their statutory licences, which entitle them to ply for hire throughout London, are a "possession" within the meaning of A1P1 ECHR, and so A1P1 is engaged. However, because of the way in which this challenge was formulated, and insufficient evidence, the Claimants failed to establish an interference with their possessions by control of use.
281. **Ground 4:** The Plan and Guidance and the A10 Order breached the Claimants' legitimate expectation to pass and repass on London's roads, and to use lanes reserved for buses.
282. **Ground 5:** The treatment of taxis in the Plan and Guidance and the A10 Order was irrational.
283. In my judgment, quashing orders rather than declarations are appropriate because of the nature and extent of the unlawfulness which I have identified, which affects not only taxi drivers, but also their passengers. The Plan, the Guidance and the A10 Order all need to be re-considered by the Defendants and substantially amended in the light of my judgment. To reduce disruption, the Defendants can turn their minds to this task now, on a provisional basis, as there will be a stay and a delay whilst they pursue their

appeal. If the appeal is unsuccessful, they can apply for further time (if required) to finalise the proposed revised Plan, Guidance and Order before the quashing orders take effect.

Appendix 1

The Proctor schedule

London Streetspace Plan (LSP)

The following indicates the Bus Lane, Bus Gate restrictions including banned turns and those implemented under TFL guidance for local boroughs who have implemented Low Traffic Neighbourhoods (LTN):

Scheme	Impact	TfL commentary	Claimants' Final Comments
Islington	<ul style="list-style-type: none"> • 4 bus gates within 7 separate LTN schemes that prohibit through access to taxis. • Numerous streets across LTN schemes no longer permit through access. NB: the 812-bus route has been suspended since 31/3/2020 for 2 bus gates in 2 separate schemes which prohibit taxis. 	<ul style="list-style-type: none"> • There are a number of Streetspace camera enforced closures in Islington, mainly using “no motor vehicles” signs or by bollard closures. • There are two Islington LTNs which contain a bus gate that prohibit taxis: one in the St Peter’s LTN and another in the Amwell Street LTN. • TfL funded two LTN’s via the LSP; others are Islington’s own initiatives. 	<ul style="list-style-type: none"> • This does not include the bus gate in Clerkenwell Green scheme at Corporation Row. • This does not include the bus gate in Canonbury East scheme for which ETO states as follows: <ul style="list-style-type: none"> (b) prohibit the passage of all vehicles, except pedal cycles and buses, at the following locations: <ul style="list-style-type: none"> (i) Dove Road, at a point 6 metres south-east of the south-eastern kerb-line of Henshall Street (measured on the south-west side of Dove Road); (ii) Downham Road, at a point 26.5 metres west of the western kerb-line of Southgate Road (measured on the south side of Downham Road); (c) prohibit all vehicles, except pedal cycles and buses: <ul style="list-style-type: none"> (i) proceeding in a generally north-easterly direction in Henshall Street, from turning right into Dove Road; (ii) proceeding in a generally south-westerly direction in Henshall Street, from turning left into Dove Road;

			<p>In addition, the 812 bus which is the reason for the 2 bus gates in the Amwell Street and Clerkenwell Green LTN schemes was suspended in March 2020 as unable to socially distance passengers.</p>
<p>Hackney</p>	<ul style="list-style-type: none"> • 6 bus gates within 8 separate LTN schemes that prohibit through access to taxis. • Significant number of restricted turns. • 4 further schemes with bus gates planned and await further information 	<ul style="list-style-type: none"> • There are a number of closures associated with LTNs. Extending LTNs was a Hackney policy prior to LSP. • Access is restricted for all vehicular traffic except buses and cyclists. Most of the closures do not require bus access and hence all motor vehicles are excluded. • Restricted turns apply to all vehicles. • Some previously restricted turns from the TLRN to borough roads have been lifted as part of borough requests. 	<ul style="list-style-type: none"> • ETO wording – Bus Gate on Pritchard’s Road over the Cat & Mutton bridge from the junction of Andrews Road to the junction with Wharf Place for a total length of 43m. Access through the bus gate will be allowed for local buses, emergency services and Hackney’s and Tower Hamlets’ refuse vehicles at all times. • ETO wording – Taxi exclusion from Lee Street/Steane Street states “Access will be permitted for emergency and authorised vehicles; ambulance, fire engine and police vehicles (used for emergency services purpose) and Hackney Council refuse vehicles and local buses (where appropriate). 3. The London Borough of Hackney will in due course be considering whether the provisions of the ETO should be continued in force indefinitely. Accordingly, these changes are being introduced for a trial period before consideration is given to whether the provisions of the ETO should be made permanent.” • West Hoxton, London Fields and Hackney Downs all have bus gates in LTN’s where TMO prohibits taxis. • A series of banned turns into Richmond Road, Queensbridge Road and the A10 have been removed after the Council wrote to Transport for London to request the changes. NB: bus gate in Richmond Road remains and a bus uses it.

			<ul style="list-style-type: none"> Signed off 4 October – Stoke Newington Church Street, Broadway Market and in Hackney Central we are also undertaking further work aimed at delivering additional point closures and the implementation of bus gates. NB: Amhurst Road in Hackney Central not yet operational
Lambeth	<ul style="list-style-type: none"> 5 bus gates within 8 separate LTN schemes that prohibit through access. The Cut – no through access on key eastbound route from Waterloo Station. 	<ul style="list-style-type: none"> There are 5 LTNs within the LSP programme for Lambeth. 3 of the schemes have bus gates prohibiting access to all traffic except buses, cyclists and special permit holders (on Atlantic Road only). 5 bus gates in total will be camera enforced. Lambeth is currently in discussion with the taxi trade; there are currently no taxi exemptions. There is no bus gate on The Cut. The scheme on the Cut involves a point closure preventing through access. This builds on experience of some months of prior closure for emergency utility works 	<ul style="list-style-type: none"> Our information from the borough indicates 7 LTN as 1 due to go live. The issue with The Cut is this is a key route to and from Waterloo Station when travelling to and from the East, primarily the City when the Waterloo and City line fails.
Southwark	<ul style="list-style-type: none"> 4 bus gates within 2 separate LTN schemes. Bermondsey Street – closed to through traffic. Numerous streets across LTN schemes no longer permit through access and restricted turns. 	<ul style="list-style-type: none"> There are bus gates in Dulwich Village and on Tierney Road. All bus gates have exemptions for Hackney Carriages (Black Cabs). A point closure has been installed in Bermondsey Street between White's Ground and Leathermarket Street, except for cyclists. This is not a bus gate as all motor traffic is blocked. 	<ul style="list-style-type: none"> Dulwich Village – bus gates on Burbage Road, Turney Road and Townley Road (3) Walworth – bus gate on Penrose St (1) Yes, taxi access permitted as we highlighted. Issue with Bermondsey Street is extensive diversion required to get to Guys, London Bridge etc

		<ul style="list-style-type: none"> • There are a number of LTN closures across the borough. These apply for all vehicular traffic, including taxis. 	
Westminster	<ul style="list-style-type: none"> • Temporary timed closures in Covent Garden and Soho to permit outside hospitality but marshal arrangements to permit taxi access for disabled passengers and/or residents. • Social distancing measures – Oxford Street/Regent Street and some temp closure of rank space 	<ul style="list-style-type: none"> • Covent Garden and Soho restrictions are not funded by LSP, but are Westminster’s own initiatives. • Oxford Street and Regent Street measures are not funded by LSP. Neither set of measures precludes taxi access. 	<ul style="list-style-type: none"> • Part of Westminster Hospitality reopening but gave due consideration to taxi access.
Camden	<ul style="list-style-type: none"> • Temporary timed closures in Covent Garden and Soho to permit outside hospitality but marshal arrangements to permit taxi access for disabled passengers and/or residents upon request. • Extensive implementation of LTN’s and new cycle lanes which do not consider curb side access for loading and unloading wheelchairs. • No current bus gates. • Await plans on Camden High Street which may prohibit taxis but permit buses and cycles. 	<ul style="list-style-type: none"> • No part of Soho is in Camden. • Camden carried out EQIAs explicitly factoring taxi drop off into consideration, including impacts on older taxi users and those with disabilities. • It is correct that there are no current bus gates in Camden. • Camden High Street is a TLRN road. TfL has no plans to remove taxi access from the TLRN bus lane on Camden High St. 	<ul style="list-style-type: none"> • Soho is an error and Covent Garden is split between Camden and Westminster. • The claimants do not share the same view on the EQIA’s it has seen and how difficult it has been in practice to gain access to the Camden part of Covent Garden; Seven Dials to drop off passengers and residents. • Agreed on bus gates. • Original press release issued by Camden indicated bus/cycle only and the reference to no plans to remove taxi access is welcomed.
Hammersmith & Fulham	<ul style="list-style-type: none"> • LTN scheme implemented using ANPR and permits taxi access through bus gates. 	<ul style="list-style-type: none"> • Harwood Terrace LTN permits taxi access. 	<ul style="list-style-type: none"> • Agreed.
Hounslow	<ul style="list-style-type: none"> • 3 LTN’s with 2 bus gates 	<ul style="list-style-type: none"> • Taxis are permitted if making an access movement (i.e. to a property in the area). 	<ul style="list-style-type: none"> • Taxis are permitted access through the bus gates on Acton Lane and Turnham Green Terrace. Other roads in proximity to the Hospital and EV chargers access to premises now permitted.
Wandsworth	<ul style="list-style-type: none"> • 7 LTN’s with 2 bus gates alongside CS7 Upgrade on A24 (latter is LSP TFL scheme) 	<ul style="list-style-type: none"> • Six LTNs were implemented. All have since been withdrawn by the Borough. 	<ul style="list-style-type: none"> • Our information from the Borough indicated 7.

<p>City of London</p>	<ul style="list-style-type: none"> • City Streets plan – extensive changes within the Square Mile which operate in conjunction with the A10 Bishopsgate scheme as the roads running off the A10 are under COL jurisdiction and further limit east/west routing options. • Many roads now prohibit taxis but permit buses and cycles although some permitted access is given to drop off and pick up passengers in limited areas. • Moorgate southbound permits buses and now prohibits taxis. • Leadenhall Street permits some taxi access once you can navigate around the A10 bus gates, but taxis can now not use this road as a through route. • Newgate Street proposed to revert to bus and cycle only once gas works complete and will prohibit taxis from a key route into/out of the Square Mile. 	<ul style="list-style-type: none"> • The City’s plans for their streets were developed before TfL started their A10 Bishopsgate scheme. TfL considered the City’s closures when developing its own A10 scheme. • The City does permit access for certain purposes in certain areas (e.g. servicing properties in the street). • Moorgate - south of London Wall - in a southbound direction is buses and cycles only (no taxis). This part of Moorgate is open to taxis northbound. • There is a City of London bus gate on Leadenhall Street. The A10 scheme was cognisant of this and was designed to allow access to properties (for taxis, PHVs and everything else) to the west of the bus gate via Threadneedle and Cornhill. • Newgate St - This proposal is referenced in the TfL paper on strategic movement in central London for taxis. TfL understand this is no longer a live proposal. 	<ul style="list-style-type: none"> • Phase 1 was, and Phase 2 went to Transport Committee late June and referenced TFL A10 plans. • Access is permitted in certain streets for picking up and dropping off disabled passengers, blue badge holders and residents. • Prior to City Streets measures taxis were permitted to use Moorgate – south of London Wall. • The access is to enable entry to St Mary’s Axe which is 1 way from Leadenhall Street in line with need to access road for picking up and dropping off disabled passengers. Previously taxis had through access to Aldgate. • Reference to no plans to remove taxi access is welcomed. This was raised at phase 1 of COL implementation as a key route to Barts Hospital.
<p>Croydon</p>	<ul style="list-style-type: none"> • 2 bus gates in 1 LTN within Crystal Palace 	<ul style="list-style-type: none"> • TfL’s understanding is that there is one bus gate. • Croydon are currently considering the future of the scheme, including public engagement and if there should be an exemption for black cabs. 	<ul style="list-style-type: none"> • Our information from the Borough shows 2 roads.
<p>Tower Hamlets</p>	<ul style="list-style-type: none"> • Wapping High Street bus gate • Roman Road bus gate (decision made but not implemented yet) 	<ul style="list-style-type: none"> • Wapping High Street and Roman Road bus gates predate LSP and were not funded as part of this programme. 	<ul style="list-style-type: none"> • Wapping Bus gate was tweaked as part of Covid measures to exempt blue badge holders. 6-month review period in ETO delayed due to Covid.

		<ul style="list-style-type: none"> • Wapping High Street bus gate was implemented on the 13th November 2019 on an 18-month experimental basis. • The Roman Road bus gate was first announced to the public in March 2019 via a public engagement exercise. In July 2020, Tower Hamlets carried out a public consultation with more than 2,100 respondents and 67% support of the bus gate at the junction of Roman Road / St. Stephen’s Road. A decision to go ahead has been taken (subject to call-in process), but the bus gate has not been implemented yet. 	<ul style="list-style-type: none"> • Tower Hamlets have referenced Streetspace replacing and fast-tracking previous Healthy Streets scheme. • Transport Committee reports indicate taxi access was not considered but blue badge permit holders will be exempt. • The consultation response had categories within the response to bus gate access, taxis were part of the category that could be given exemptions. • Await implementation date.
<p>LSP – TFL roads</p>	<ul style="list-style-type: none"> • Euston Road – part of eastbound bus lane now prohibited to taxis and extensive banned turns. • Hampstead Road – part of southbound bus lane now prohibited. • Tottenham Court Road – part of northbound bus lane and left turn now prohibited to taxis. • Grosvenor Road/Millbank/Claverton Street – restricted left turn onto Chelsea Bridge and Vauxhall Bridge when bridge works completed (bus permitted) and Claverton Street (bus permitted and taxi to be prohibited) • CS7 Upgrade on A24 – significant banned turns. • A21 Lewisham/Catford – bus gates permit taxis. 	<ul style="list-style-type: none"> • Euston Road – Exclusion is from a very short stretch of bus lane only (Melton Street past Euston Bus Station entrance) to avoid taxis crossing with cyclists on a very heavily used area of bus lane addressing serious safety concerns. Some banned turns have also been introduced applying to all vehicles • <i>Hampstead Road - taxis were not previously permitted in this bus lane so no change has been made. [Note: Counsel for TfL subsequently notified the Court that this comment was incorrect, and Ms Proctor’s evidence was now accepted as accurate.]</i> • Tottenham Court Road is not a TLRN road, but a borough road. The project here predates LSP by some years and is 	<ul style="list-style-type: none"> • The small part of eastbound bus lane access referred to is the eastbound route from Euston station taxi rank. There is no other exit from Euston Station onto Euston Road; the same as Liverpool Street station there is one entry/exit point from the taxi rank. Taxis previously had access to the bus lane, • 16/7/2020 – TFL TMO advertised in the Camden Journal (relevant points): <ul style="list-style-type: none"> (3) change the operational times from Monday to Friday 4pm to 7pm to at any time and remove Taxis and Solo Motor Cycles from the types of vehicles permitted to use the northbound bus lane on the A400 Hampstead Road between its junctions with Varndell Street and the northern arm of Mornington Crescent; (4) change the operational times from Monday to Friday 7am to 10am to at any time and

	<ul style="list-style-type: none"> • Greenwich/Woolwich – no bus gates but taxis now prohibited from previous bus/taxi only turns. • London Bridge corridor – bus/taxi/motorcycle and cyclists permitted through timed bus gates. • Old Street Roundabout – bus gate proposed which prohibits taxis. 	<p>being completed by Camden using third party funds. It was subject to a full consultation in June 2014.</p> <ul style="list-style-type: none"> • Grosvenor Road/Millbank - the left turn ban except cyclists onto Chelsea Bridge was introduced as part of the LSP-funded CS8 Upgrade before being amended by the Vauxhall Bridge works to allow the left-turn for motorists (diversion route) under temporary signal control. The only banned movement (which is permitted for buses and cyclists only) is the left turn into Claverton Street from Grosvenor Road. 	<p>remove Taxis and Solo Motor Cycles from the types of vehicles permitted to use the southbound bus lane on the A400 Hampstead Road between its junctions with the southern arm of Harrington Square and Cardington Street.</p> <ul style="list-style-type: none"> • Agreed on Tottenham Court Road, however TMO for Covid emergency advertised in June included additional restrictions to taxis as described. • TfL ranks team email circulated 20/11/2020 has indicated post completion of Vauxhall Bridge works “the temporary traffic signals at Chelsea Bridge/Grosvenor Road will be removed and the banned left turn will be reinstated on Tuesday 1 December 2020.” • Taxis and buses previously permitted to turn left into Claverton Street which is traffic light controlled. Left turns permitted into St Georges Square by all motor vehicles not traffic light controlled. This also crosses the same cycle lane. • Agreed the London Bridge corridor which leads to A10 permits buses/taxis/motorcycle and cyclists. • Old Street roundabout original plans were long standing – however this scheme has been tweaked post Streetspace implementation to include a bus gate which prohibits taxis as indicated in TfL TMO sent via email to Mr Massett, the Chair of the Ranks Committee on 23/9/2020.
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