

JOHN DOBSON STREET BUS GATE

ADJUDICATOR'S REVIEW DECISION

OPINION

“DL” References are to paragraphs the Chief Adjudicator’s Decision Letter

THE ISSUE

1. On 15th July 2020, the Chief Adjudicator of the Traffic Penalty Tribunal (“TPT”) issued a review decision (“the Decision”) in which she found that the signage for northbound traffic informing motorists of a bus gate on John Dobson Street (“JDS”) was inadequate. She therefore upheld 5 appeals from 2017 against Penalty Charge Notices (“PCNs”) and set aside the PCNs. It is extremely disappointing that it took 3 years for the Chief Adjudicator to issue the Decision and, so far as I am aware, no proper explanation has ever been given for this delay.
2. Given the many PCNs that have been issued to motorists travelling along JDS, this decision has much wider ramifications than just the 5 appeals. Considerable publicity has been generated by the JDS bus gate.
3. In my view, there are a number of legal flaws and I have highlighted the main ones below. A technical note will be provided by Officers outlining the difficulties in complying with the Decision. My understanding is that signage is likely to become very misleading, which is the exact opposite of what the Decision intended.

THE LEGAL TEST FOR TRAFFIC SIGNS

4. The adequacy of signage is governed by the Local Authorities (Traffic Orders) Regulations 1996 (“LATOR”). Regulation 18 requires that “*adequate information as to the effect of the [traffic] order is made available to persons using the road*”.
5. It is well established that ‘substantial compliance’ with this obligation is sufficient to meet the legal test¹.

LEGAL ERRORS

6. There are a number of legal errors in the Decision.
7. **First**, the Decision misapplied Regulation 18 LATOR. Paul Pearson (“PP”), the original Adjudicator concluded that the signs used “substantially comply with the regulations”. That is the legal test. Caroline Sheppard (“CS”) upheld this finding². However, PP went on to find that ‘overall’ the signing is not adequate³. CS upheld this approach⁴.
8. The error is this: having concluded that the signs were substantially compliant (and therefore met the legal test) they both went on to apply some additional overarching test which does not appear in the Regulations or from the case law.
9. **Second**, CS appeared to distinguish the substantial compliance approach by arguing that it only applies to parking contraventions and that somehow a different approach should be taken when considering moving traffic penalties⁵. This is a misreading of the law as decided by the Courts.
10. **Third**, at §3.11, CS criticised signage at the A167(M) roundabout for being misleading and that was sufficient to quash the PCNs. The only way to read this finding is that all of the other signs before the bus gate could have been perfectly adequate but the single alleged failing at the roundabout renders that completely irrelevant. This is an error of law and

¹ *Herron v. The Parking Adjudicator and Ors* [2011] EWCA Civ 905 at §37.

² see *e.g.* DL2.13

³ DL1.5

⁴ see DL3.12 and DL4.2.

⁵ see DL4.6 and 4.7, where she relies on *R(Nottingham City Council) v the Bus lane Adjudicator* [2017] EWHC 430 (Admin) (“*Nottingham*”).

suggests that CS has not taken an overall approach in assessing whether there has been compliance with Reg. 18 LATOR.

11. **Fourth**, the Decision misunderstood and misapplied the principle of consistency in decision making. The Council's central point in asking for a review was that PP should have recognised that he had made previous decisions which held that the northbound signage was adequate. He failed to mention or pay regard to these previous decisions. The principle at play is that like cases should be decided alike. PP did not do this.
12. The Chief Adjudicator committed the following errors:
 - a. She held that there was no inconsistency between PP's decision and his earlier ones⁶. There plainly was: he concluded that the signs were adequate and the PCN properly issued in at least one case;
 - b. The factual position between the 'first wave cases' and the current decision was not materially different. The signs were the same, the level of traffic broadly comparable and the use of JDS by buses remained the same.
13. **Fifth**, PP and CS imposed a unreasonably high burden on NCC:
 - a. The Decision suggests that despite the advanced sign and the bus gate signs being compliant with the LATOR, there should have been another sign or signs. The obligation is to provide sufficient information to draw a restriction to the attention of the motorist. That duty was met;
 - b. In all cases, signage will have to be designed so as to cover every eventuality including whether it *could* be obscured by high sided vehicles such as buses. This is an unrealistic counsel of perfection;
 - c. Their approach also runs contrary to the established position that where signs comply with Government guidance "*there must be strong reasons given for concluding that they do not provide adequate information*"⁷. It is difficult to see what 'strong reasons' exist in the present case.

⁶ DL2.13

⁷ *Oxfordshire County Council v The Bus Lane Adjudicator* [2010] EWHC 894 (Admin) at §69

14. **Sixth**, CS appears to have inserted an extra requirement to sign directions for an alternative route avoiding the bus gates. The requirement to sign an alternative route **in addition to** signing the restriction, is step too far and not within the scope of a reasonable reading of Regulation 18. In any event, I am advised by NCC's technical officers that the regulations relating to traffic signs would not allow signage of an alternative route in any event.
15. **Seventh**, CS took into account the fact that the Appellants did not live in Newcastle⁹. It is well established that compliance with Regulation 18 is an objective, not a subjective test. It should therefore be irrelevant that the Appellants did not reside in Newcastle.
16. **Finally**, I consider that CS took account of irrelevant considerations when criticising the advance direction sign close to Ridley Place¹⁰. Whether Ridley Place is a no through road is neither here nor there, in my view. The requirement is to adequately convey the effect of a restriction, not to provide the most convenient alternative route avoiding the restriction. In an ideal world, that would be the case but I cannot see how it is a breach of Regulation 18 if a person needed to undertake a 3 point turn at the end of Ridley Place.

CONCLUSIONS AND OVERVIEW

17. The Chief Adjudicator's decision contains a number of legal flaws, the most significant of which I have set out above. Although the Review Decision will be cited in the future by motorists and other Adjudicators if PCNs are issued, it is not binding and the Council is perfectly entitled to draw the legal errors to the TPT's attention. It may be that other Adjudicators find the JDS signs to be perfectly adequate.

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⁸ See DL 5.19

⁹ DL5.2

¹⁰ see DL5.11 – 5.15