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CO/642/2023

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28/07/2023

Before

MR JUSTICE SWIFT

- -

Between

The King
on the application of

(1) London Borough of Hillingdon
(2) London Borough of Bexley
(3) London Borough of Bromley
(4) London Borough of Harrow **Claimants**
(5) Surrey County Council

-and -

The Mayor of London

Defendant

-and-

Transport for London

Interested Party

- -

Craig Howell Williams KC and Merrow Golden (instructed by **Legal Services, London Borough of Hillingdon**) for the **Claimants**
Ben Jaffey KC, David Heaton and Sophie Bird (instructed by **TfL Legal**) for the **Defendant** and the **Interested Party**

Hearing dates: 4 and 5 July 2023

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APPROVED JUDGMENT

MR JUSTICE SWIFT

A. Introduction

1. The London Boroughs of Hillingdon, Bexley, Bromley, and Harrow, and Surrey County Council ("the Councils") challenge the Mayor of London's decision to confirm the Greater London Low Emission Zone Charging (Variation and Transitional Provisions) Order 2022 ("the 2022 Order"). The Mayor confirmed the 2022 Order on 24 November 2022 pursuant to the powers in Schedule 23 to the Greater London Authority Act 1999 ("the 1999 Act"). The parts of the Order material for present purposes are due to come into force on 29 August 2023. The general effect of those parts of the 2022 Order will be to expand the London Ultra Low Emission Zone road charging area ("the ULEZ") from its present boundary within the North and South Circular Roads to an area with a boundary that largely, follows the boundary of the Greater London Authority area. In this judgment I will refer to this latter area as the ULEZ expansion area.

2. The ULEZ expansion area is significantly larger than the existing ULEZ area. As a result of the 2022 Order, the ULEZ emission standards and road charges for vehicles that do not meet the emission standards will apply to the large number of vehicles used in the ULEZ expansion area. This being so, it is unsurprising that the practical merits of the Mayor's decision are the subject of significant public comment and debate. This litigation is not concerned with that comment or those debates. The Councils' challenge rests on three discrete legal points. The first concerns the way in which the powers in Schedule 23 to the 1999 Act have been used to make the 2022 Order, expanding the application of the ULEZ road charging scheme. The 2022 Order amends the arrangements presently in force for the ULEZ charging zone. The Councils submit it was outside the Mayor's powers to extend the present ULEZ road charging scheme to the ULEZ expansion area by amending the arrangements presently in force. They submit that if the powers in Schedule 23 to the 1999 Act are properly construed, his only option is to use the powers available to him to establish a new road charging scheme. This ground of challenge also queries whether in other respects, certain requirements under Schedule 23 to the 1999 Act have been met. The outcome of this part of the challenge turns on the meaning and effect of provisions in that schedule to the 1999 Act. The second ground of challenge is directed to the public consultation exercise conducted by Transport for London for the purpose of informing the Mayor's decision on whether or not to confirm the 2022 Order. The Councils' case is that Transport for London conducted that exercise unlawfully by failing to provide sufficient or sufficiently clear information about its estimate of the proportion of vehicles likely to comply with the ULEZ emission requirements in the ULEZ expansion area. The third challenge is directed to the Mayor's decision, also taken on 24 November 2022, to make a grant of £110 million to Transport for London to meet the cost of a new London Vehicle Scrappage Scheme. The Councils say this decision was unlawful: (a) because eligibility for payment under the scheme is limited to people and organisations resident in the Greater London Authority area; (b) because the Mayor took the grant funding decision on the basis of insufficient information about the extent to which the scheme would be likely to compensate persons owning non-compliant vehicles; and (c) because the consultation exercise, so far as it concerned the scheme, was defective.

B. Decision

(1) Ground 1. Was it lawful for the Mayor to extend the ULEZ by amending the existing vehicle charging scheme; was the 2022 Order made consistently with all obligations arising under Schedule 23 to the 1999 Act?

3. There has been a vehicle emission charging scheme in London since 2008. The scheme that exists is the consequence of orders made and confirmed in exercise of the power under section 295 of, and Schedule 23 to the 1999 Act. The first such order was the Greater London Low Emission Zone Charging Order 2026 ("the 2006 Order"), made on 13 November 2006. The charging scheme contained in that Order came into operation on 4 February 2008. Since then, the parameters of the road charging scheme have changed significantly. All this has come about through a series of amendments made to the 2006 Order.

4. The 2006 Order established a charging scheme for the Greater London Low Emission Zone ("the LEZ"). The LEZ covered almost all the Greater London Authority area. The scheme required specified classes of vehicle (identified by reference to the classes set by the Vehicle Certification Agency) to pay a charge for each day they were used on roads within the LEZ. Put generally, buses, minibuses, coaches, and heavy vehicles were required to pay the charge (see article 4(2) of the Schedule to the 2006 Order and Annex 2 to the Schedule to the 2006 Order), unless they met compliance standards (see article 5 and Annex 2) or were in a category of exempt vehicles (see the list of "non-chargeable vehicles" at article 4(4)).

5. The 2006 Order was the subject of minor variation from time to time. Those changes are not material for present purposes. One variation that is relevant for the purposes of the Councils' submission in this case was made by the Greater London Low Emission Zone Charging (Variation and Transitional Provisions) Order 2014 ("the 2014 Order"), which came into force on 8 April 2019. The 2014 Order amended the charging scheme established by the 2006 Order. Most significantly, the consequence of the amendments made was the creation of two discrete charging regimes. The LEZ charging provisions continued to apply across the Greater London Authority area to the same classes of vehicle unless they met the compliance requirements (paragraph 6 of the Schedule to the 2006 Order as amended, and Part 1 of Annex 2 to the Schedule to that Order as amended to incorporate more stringent emissions standards), or were exempt (paragraph 5 in the Schedule, as amended). Every such vehicle remained liable to the LEZ charge on any day it was used on roads within the LEZ area. Alongside this, the amendments made by the 2014 Order created new Ultra Low Emission Zone (ULEZ) charging provisions that applied in the area of central London that was already the subject of the Congestion Charge. The ULEZ charge was a separate daily charge. The ULEZ charge applied: (a) to all vehicles subject to the LEZ charge on any day they were used in the ULEZ area (and, if on any day such a vehicle was used both in the LEZ and the ULEZ areas both charges applied); and (b) to motorcycles and cars. The ULEZ charging provisions were subject to exceptions for compliant vehicles (paragraph 6 of the Schedule to the 2006 Order as amended, and Part 2 of Annex 2 to the Schedule to the Order), and for non-chargeable vehicles (paragraph 5, as amended, which for the purposes of the ULEZ charge also included licenced hackney carriages).

6. With effect from 21 October 2021, the ULEZ area was extended to cover all roads within the boundary of the North Circular and South Circular Roads. This change was

made by the Greater London Low Emission Zone (Variation and Transitional Provisions) Order 2018. The 2022 Order further amends the 2006 Order; the most visible change being the extension of the ULEZ area to the same boundary as the LEZ area.

7. The power to make charging schemes is in Schedule 23 to the 1999 Act and is formulated as a power to be exercised by the Greater London Authority. However, by paragraph 2 of Schedule 23, any function conferred on the Authority by any provision in the Schedule is exercisable by the Mayor acting on the Authority's behalf.

8. Paragraph 8 of Schedule 23 identifies the necessary components of a charging scheme:

> "**8. The contents of a charging scheme**
>
> A charging scheme must—
>
> (a) designate the area to which it applies;
>
> (b) specify the classes of motor vehicles in respect of which a charge is imposed;
>
> (c) designate those roads in the charging area in respect of which charges are imposed; and
>
> (d) specify the charges imposed."

In addition, by paragraph 19(1):

> "**19.— Charging authority's 10-year plan for their share**
>
> (1) A charging scheme must include a statement of the charging authority's proposed general plan for applying the authority's share of the net proceeds of the scheme during the opening ten year period."

9. The power to make a charging scheme is described in paragraph 4 of Schedule 23. By paragraph 4(1)(a), a charging scheme must be in an order made by "the authority making the scheme". For present purposes, the relevant authority is Transport for London. By paragraph 4(1)(b) it is for the Mayor to decide whether to confirm a charging scheme. Paragraph 4(2) states that an "order containing a charging scheme shall be in such form as [the Mayor] may determine". Paragraph 4(3) confers a range of specific powers on the Mayor in connection with the decision whether or not to confirm a charging scheme:

> "(3) The Authority may—
>
> (a) consult, or require an authority making a charging scheme to consult, other persons;
>
> (aa) require such an authority to publish its proposals for the scheme and to consider objections to the proposals;
>
> (b) hold an inquiry, or cause an inquiry to be held, for the purposes of any order containing a charging scheme;
>
> (c) appoint the person or persons by whom any such inquiry is to be held;
>
> (d) make modifications to any such order, whether in consequence of any objections or otherwise, before the order takes effect;
>
> (da) require the authority by whom any such order is made to publish notice of the order and of its effect;
>
> (f) require the authority by whom any such order is made to place and maintain, or cause to be placed and maintained, such traffic signs in connection with that order as the Authority may determine."

10. The power at paragraph 4 to make a charging scheme is further described in paragraph 38.

> "**38. Variation and revocation of charging schemes**
>
> The power to make a charging scheme includes power to vary or revoke such a scheme, and paragraph 4 above (apart from sub-paragraphs (3)(f) and (6)) applies in relation to the variation or revocation of a charging scheme as to the making of a charging scheme."

The significance of the words in brackets was in issue in this case. Both provisions referred to concern traffic signs. Paragraph 4(3)(f), set out above, is the Mayor's power when deciding whether or not to approve a scheme, to require Transport for London to place and maintain traffic signs. Paragraph 4(6) confers a power on the charging authority (the maker of the charging scheme, in this instance Transport for London) to enter land and exercise any other power necessary "for placing and maintaining or causing to be placed and maintained, traffic signs in connection with the charging scheme".

11. Further provisions in Schedule 23 concern the purpose for which the powers to make a charging scheme must be used. By paragraph 5, a scheme "must be in conformity with

the Mayor's transport strategy" (prepared and published pursuant to section 142 of the 1999 Act); paragraph 3 provides that a charging scheme may only be made "… if it appears desirable or expedient for the purpose of … facilitating … any policies or proposals set out in the Mayor's transport strategy".

12. Two other provisions were relied on in submissions: paragraphs 9(4) and (7):

> "(4) A road shall not be subject to charges imposed by more than one charging authority at the same time, except with the consent of the Authority.
>
> …
>
> (7) A charging scheme must not impose charges in respect of a trunk road except with the consent of the Secretary of State."

13. The Councils' submission, taking account of the evolution of the charging scheme since the 2006 Order and the nature of the powers in Schedule 23 to the 1999 Act, is that the Mayor acted unlawfully by approaching the expansion of the ULEZ from its present boundary within the North and South Circular Roads to the edges of the Greater London Authority area by way of an amendment of the existing charging scheme. The Councils contend that such expansion required a new charging scheme to be made.

14. I do not consider this submission raises any matter going to the legality of the 2022 Order. There is no *vires* issue, *per se*. Paragraph 4 of Schedule 23 read with paragraph 38 states the powers to make, vary, and revoke a charging scheme compendiously. The limit of the power to vary a charging scheme is not set discretely from the power to make a scheme. Since the power to vary does not exist separately from the power to make a scheme no question can arise as to whether the Mayor took his decision to confirm the 2022 Order in exercise of the correct power. Regardless of whether the change made by the 2022 Order is characterised as a variation or the formulation of a fresh scheme, the source of the Mayor's power is the same.

15. This conclusion is not altered by what is said in paragraph 38, that neither paragraph 4(3)(f) or (6) applies when the paragraph 4 power is used to vary rather than make a charging scheme. Both provisions concern erection and maintenance of traffic signs in connection with a charging scheme. Neither provision can sensibly be construed as saying anything that marks the boundary of the power to vary a charging scheme as opposed to the extent of the power to make a scheme.

16. No point arises as to whether on this occasion the Mayor has exercised his power under Schedule 23 for a proper purpose. Putting the matter generally, the provisions in Schedule 23 that identify the purposes for which the paragraph 4 power may be used (paragraphs 3 and 5) each require that any exercise of the paragraph 4 power be consistent with the Mayor's transport strategy. In this case there is no suggestion that ULEZ expansion is inconsistent with the Mayor's strategy – ULEZ expansion is an integral part of that strategy.

17. The Councils' general submission to the contrary was to the effect that because the provisions expanding ULEZ contained in the 2022 Order could have been made as a new charging scheme – i.e., a scheme that applied the ULEZ charge to the expansion area for the first time, the Order should have established a new charging scheme and it was improper or impermissible to reach the same destination "merely" by amending the existing charging scheme. This submission over-extends the legal principle that public law powers must be exercised for proper purposes. The purposes for which any power exists will be apparent from the context within which the power arises, whether expressly from relevant statutory provision or otherwise by necessary implication. In the present case the relevant provisions are paragraphs 3 and 5 of Schedule 23. In the context of Schedule 23 there is no further provision relevant to purpose, and no legal standard by which "permissible" or "impermissible" amendments to charging schemes may be measured and distinguished from one another. This too is a consequence of the fact that when paragraphs 4 and 38 of Schedule 23 are read together, the power to vary a charging scheme is part and parcel of the power to make a scheme.

18. The remaining part of the Councils' submission on Ground 1 concerns paragraphs 9(4) and (7), and paragraph 19(1) of Schedule 23. Paragraph 9(4) is a prohibition against a road being the subject of charges made by more than one charging authority without the consent of the Mayor. I cannot see this provision has any relevance to the decision to confirm the 2022 Order or to the consequences of that Order in that form. The Councils' case rests on the premise that Transport for London is to be regarded as one charging authority for the purposes of the LEZ charge but a different charging authority for the purposes of the ULEZ charge (either as it applies within the existing charging area or as it will apply within the ULEZ expansion area). Regardless of whether the 2022 Order was properly made as a variation of the existing charging scheme, the submission based on paragraph 9(4) must fail. If the two charges are (as the Mayor contends) parts of a single charging scheme it would make no sense to consider Transport for London to be a different charging authority for each charge. Even if the two charges are (as the Councils contend) to be considered charges arising from two separate charging schemes, Transport for London remains the charging authority for each scheme, and it would still make no sense to conclude that the charges were being imposed "by more than one charging authority".

19. Paragraph 9(7) prohibits the imposition of charges on trunk roads without the consent of the Secretary of State for Transport. But since this provision applies regardless of whether a charge is imposed by a new charging scheme or by variation of an existing charging scheme it is not a provision that directly bears upon the Councils' Ground 1. Moreover, in the circumstances of the charging scheme as it now is and as it will be following variation by the 2022 Order, any point based on paragraph 9(7) is essentially academic. There are only three short sections of trunk road within the charging area: part of the M4 near Heathrow Airport; the M4 Heathrow spur; and the section of the M1 between the M25 and the A406 North Circular Road. The primary position of the Mayor and Transport for London is that these stretches of road are the subject of a consent given by the Secretary of State for Transport prior to the 2006 Order being made and that such consent will be sufficient when the ULEZ expands to cover them. It is not possible to reach a definite conclusion on this because neither the Mayor nor Transport for London nor the Secretary of State for Transport has been able to find the form of consent, albeit that all agree that some form of consent was given. In any event, it is unnecessary to reach a conclusion on this matter because the Mayor's evidence is

that LEZ charges are not presently levied for driving on these stretches of road because there are no enforcement cameras on them, and that in future no ULEZ charge will be levied for driving on these roads. The absence of cameras may, in part, be explained by the fact that it is not possible to drive on any of these three stretches of road without also driving on another (non-trunk) road within the LEZ (and from the end of August 2023 within the ULEZ) where there is a enforcement camera and for which a charge will be enforced. Be that as it may I am satisfied that consideration of paragraph 9(7) of Schedule 23 has no practicable bearing on the legality of the 2022 Order.

20. Paragraph 19(1) requires the charging scheme to include the charging authority's plan for the application of its share of the net proceeds of charges made pursuant to the scheme in the first 10 years of the scheme's operation. The paragraph 19 obligation is complemented by and overlaps with the obligation in paragraph 20, which requires a charging authority every 4 years to prepare "a general programme" for how its share of the net proceeds arising from a charging scheme will be applied. If the 2022 Order establishes a new charging scheme rather than a variation of the present scheme the paragraph 19(1) obligation will arise in respect of the new scheme notwithstanding that, in any event, proceeds arising from expansion of the ULEZ charge would need to be the subject of the paragraph 20 four-year programme that already exists for the charging scheme as it now stands. (The evidence of Christina Calderato, Transport for London's Director of Transport Strategy and Policy, was that the four-year programme for the charging scheme had been published in March 2023.)

21. The paragraph 19(1) requirement is, in the circumstances raised by this claim, the only provision that necessitates a decision on whether the 2022 Order can properly be considered a variation of the 2006 Order. If it can be seen as a variation the paragraph 19(1) requirement is already met by what is provided for at article 17 of and Annex 3 to the Schedule to the 2006 Order. If it cannot, there is no escaping a conclusion that the 2022 Order, as made, does not contain the required 10-year plan.

22. Whether or not the changes made by the 2022 Order can be considered a variation of the charging scheme does not, as contended for by Mr Howell Williams KC for the Councils, depend on consideration of the differences between the charging scheme in the 2006 Order as originally made and the charging scheme as it will be when varied in accordance with the 2022 Order. Rather, the relevant comparison requires consideration only of the changes the 2022 Order will make to the charging scheme as it presently stands. None of the variations made to the 2006 Order prior to the 2022 Order has been the subject of successful legal challenge. Therefore, my starting assumption must be that all earlier orders were regularly made and have effect in law.

23. Further, whether the changes contained in the 2022 Order can properly be considered variations to the present charging scheme is to be evaluated with the purpose of the paragraph 19(1) obligation in mind and having in mind also the effect of the paragraph 20 obligation. In this context, I do not consider the changes to be made by the 2022 Order go beyond what can, for this purpose, be properly considered as variation of the present charging scheme. The existing two levels of charge, the LEZ charge and the ULEZ charge, will remain. There is no change to the classes of vehicle subject to each charge. Some updated emissions standards are applied to some of the vehicle classes, but that is an entirely predictable feature of any charging scheme intended to improve air quality. The most visible change is the expansion of the ULEZ charging area. In absolute terms this is significant: geographically; and because of the number of vehicles

affected by the scheme for the first time; and in revenue terms, at least in the short term, until the compliance rate rises in consequence of ULEZ expansion. Nevertheless, I do not, for the purpose of the paragraph 19 obligation, consider that these matters require the conclusion that the 2022 Order will introduce a new charging scheme rather than a significant extension of the present scheme. The premise for the charge will remain the same and that being so, the objective laying behind paragraph 19 (which I take to be that a new charging scheme should be accompanied by a plan setting out how proceeds will be applied) is not engaged and the need for planning of this sort will be met satisfactorily by the continuing compliance of the charging scheme, as varied, with the requirements of paragraph 20 of Schedule 23.

24. Drawing these matters together, Ground 1 of the Councils' challenge fails. The Mayor's decision to confirm the 2022 Order as a variation of the existing charging scheme is consistent with his powers under Schedule 23 to the 1999 Act, and does not give rise to breach of any obligation imposed under that schedule.

(2) Ground 2. Was sufficient and/or sufficiently clear information provided for the purposes of the consultation exercise?

25. In March 2022 the Mayor announced he had requested Transport for London to consult on proposals to extend the ULEZ charging area. Transport for London devised a "consultation survey" which set out the matters on which views were invited by those responding to the consultation. There was a 10-week period for responses that ended on 29 July 2022. Various documents were published to provide information for those who wanted to comment on the proposals. The primary document was titled "Our proposals to help improve air quality, tackle the climate emergency, and reduce congestion by expanding the ULEZ London-wide and other measures" ("the consultation document"). One of the further documents published, prepared by consultants instructed by Transport for London, was described as an Integrated Impact Assessment Report ("IIA Report"). The central part of the consultation document was Chapter 6 "Impacts of proposals". That contained Transport for London's "… analysis of the likely significant impacts [of the proposals] and a summary of the IIA report". This part of the consultation document included the following:

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

> Different compliance rates have also been assessed, including lower and higher compliance rates and how long it takes for the compliance rate to be achieved. Taking this approach provides reassurance and ensures the robustness of the estimated scheme impacts.
> …
>
> The primary study area for impacts presented in the first half of this section is the Greater London area. The London-wide ULEZ IIA report, which is summarised in the latter half of this section, focuses on the impacts on the ULEZ expansion area … The air quality impacts presented in this section and in the London-wide ULEZ IIA report are based on the London Atmospheric Emissions Inventory which covers Greater London, as well as the area from the GLA boundary up to and including the M25.
>
> *Response of vehicle users*
>
> A key part of the assessment is estimating how people might respond to the proposed changes. …
>
> The primary objective of an expanded ULEZ is to improve air quality and reduce emissions in outer London. Therefore, the scheme aims to encourage frequent users of the zone who primarily travel using a non-complaint vehicle to switch to a sustainable mode or change to a compliant vehicle.
>
> …
>
> *Vehicle compliance impacts*
>
> The most significant impact on air quality and emissions will be as a result of people switching from non-compliant to ULEZ standards compliant vehicles, especially those who travel more frequently.
>
> We have estimated that out of around two million unique cars seen in London every day, around 92 per cent will already be compliant by the end of 2023. The introduction of a London-wide ULEZ could increase compliance to over 95 per cent in London. This equates to a reduction in the number of non-compliant cars from 160,000 to around 46,000, with around 70,000 switching to compliant vehicles and 44,000 few cars due to behaviour change."

26. Appendix B to the consultation document is important. The material parts are as follows:

> "**Methodology and assumptions**
>
> The assessment of how people might respond to the changes is based on estimates of the number of vehicles in the zone, the

compliance of those vehicles and how those who own non-compliant vehicles may switch to a compliant vehicle, sustainable mode or not travel to the zone at all. This assessment is then used to understand the impacts on compliance, vehicle kilometres, mode shift, air quality and carbon.

To understand the impacts of the scheme on vehicles travelling in London, we have provided estimates for London-wide daily unique vehicles and compliance rates.

London-wide unique vehicle estimates

Unique vehicle estimates were calculated based on a number of datasets including:

- The London Travel Demand Survey (2019/20). An annual survey on the travel patterns of 8,000 London households.
- EDMOND. Aggregated and anonymised mobile phone data collected by Telefonica in 2016 which provides information on travel, mode and journey purpose inferred through trip patterns.
- Average annual daily flow (AADF) data. Daily vehicle volumes based on DfT count data, by vehicle type.
- Aggregated ANPR camera data from our current network to identify totals of unique vehicles by type and spatial area.

The volumes data used in this analysis is based on the following assumptions:

- Capture rates and number of unique vehicles compared to the number of car driver trips are similar to those in the current ULEZ area.
- Most of the data used is from autumn 2021 onwards, so accounts for pandemic changes to travel demand.

Compliance rates

Forecast compliance rates for 2023 with the proposed changes are based on work undertaken as part of on-going preparation of the LAEI (London Atmospheric Emissions Inventory) which focuses on 2019, 2025 and 2030. Compliance rates are based on the fleet compositions which are prepared as part of the LAEI which include information on age and Euro standards, alongside fuel type and vehicle

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

27. The Councils' submissions relied heavily on one part of the IIA Report, Section 4. In the introduction to the IIA Report, Section 4 was described as providing "… a high-level summary of the predicted impacts of the proposal on travel patterns …". The introduction to Section 4 included the following:

> "To understand the potential impact that the Proposed Scheme would have on travel patterns, TfL has undertaken analysis using outputs from MoTiON. The impacts have been assessed by comparing two forecast scenarios:
>
> - The 2023 reference case representing the current ULEZ scheme.
>
> - The 2023 Proposed Scheme (expanded ULEZ) forecast scenario.

> This analysis has focused on the impacts of trips starting and ending within the ULEZ expansion area and trips entering the ULEZ expansion area from outside Greater London as this is the study area defined for this assessment. Further information on London-wide figures is available in the TfL consultation report … Table 4 presents the vehicle compliance assumptions used in the analysis as well as reference to the London-wide figures.
>
> …
>
> This section of the report summarises the key output from this analysis to provide a basis for the subsequent impact assessment."

Table 4 stated that the compliance assumption for outer London (i.e., the ULEZ expansion area) for 2023, referred to as the "reference case", was 91% for private cars.

28. The Councils' submission is that the premise for the reference case was not sufficiently explained with the consequence that there was no proper opportunity for the Councils and others to respond to Q13 in the Consultation Survey, which was as follows:

> "Q13. Please use this space to give us any comments about these proposals or impacts identified as part of the Integrated Impact Assessments. If you have identified any impacts, please let us know any suggestions to mitigate or enhance these."

29. It can fairly be said that some parts of the material published for the purposes of the consultation require careful reading. Some of the information is expressed in technical language or at least in jargon, words or expressions that could be unfamiliar to a reader not already immersed in the subject. However, that alone is not sufficient to suggest breach of any legal standard. The parties were agreed on the relevant legal standard: whether reasons sufficient to permit the opportunity properly to respond had been provided. That standard is not a standard of perfection or anything close to it; it is one resting on a practical notion of what is sufficient to permit an informed response.

30. I accept that in the context of this consultation exercise the so-called "reference case" information was important. It is clear from any reading of Chapter 6 of the consultation document that the reference case is the starting point from which the likely benefits of expanding the ULEZ area were assessed. However, I do not accept the Councils' submission that the premise for the reference case was not itself sufficiently explained. It was sufficiently explained in Appendix B to the consultation document. The four bullet points under the heading "London-wide unique vehicle estimates" identified the sources of data relied on, including ANPR camera data from TfL's existing camera network. Two assumptions were then applied (see the two following bullet points): (a) that information from the period from autumn 2021 could be relied on as indicative of post-pandemic travel patterns; and (b) that it was possible to extrapolate the volume of vehicles in the expanded ULEZ area from those observed in the present ULEZ area. The sections under the headings "Compliance rates" and "Vehicle switching and travel

behaviour change" then sufficiently explain the forecast made of the proportion of vehicles that would be compliant as at the point of ULEZ expansion, taking account of changes in "fleet composition" i.e. the range of vehicles in use in terms of age, fuel type, and emission standard used for the purpose of the London Atmospheric Emissions Inventory, a well-known data base used for the purposes of air quality policy work. Lastly, the likely time scale for an increase in compliance rates following expansion of the ULEZ area was estimated based on the experience of what had happened when the ULEZ area had previously expanded from the Congestion Charging Zone to the boundary of the North and South Circular Roads: see the heading "Compliance rates in 2023 with proposed changes".

31. The information in Section 4 of the IIA Report – a compliance rate of cars of 91% for the expansion area alone, and 92% London-wide – corresponds with the information in Appendix B to the consultation document and is sufficiently explained by that information.

32. One part of the Councils' submission was that elsewhere in the consultation documentation a different measure of compliance was referred to, drawn from DVLA records of vehicles registered to addresses in the ULEZ expansion area. That measure, which was to the effect that the level of compliant vehicles registered to addresses in the expansion area, borough by borough, ranged between 62% and 72% is, for example, referred to in Section 6 of the IIA Report which considers impacts on people, including socio-economically deprived groups, and Part 3 of the Baseline Report prepared by the same consultants who prepared the IIA Report. The Baseline Report was a document that lay behind the IIA Report and concerned information about the population living in the ULEZ expansion area. There is no inconsistency between the references to that measure in those contexts and the compliance rate referred to in Section 4 of the IIA Report and Chapter 6 of and Appendix B to the consultation document to describe the likely extent to which all vehicles being used either in the ULEZ expansion zone or London-wide would comply with the emission standards.

33. The Councils also contend that it would have been possible to present information differently or explain matters in greater depth. No doubt each could have been done. However, those possibilities do not detract from the conclusion that the information provided was sufficient to permit sensible and intelligent response to Q13 in the Consultation Survey, including the extent to which the estimated compliance rates, used as the premise for assessing the impacts of the proposals, were themselves robust.

34. One further aspect of the Councils' case on this ground is that insufficient information was given to explain the extent of Transport for London's present network of ANPR cameras in the ULEZ expansion area (the cameras presently used to enforce the LEZ charge). One point, made in Appendix B to the consultation document, was that ANPR camera data was one source of information used to estimate the compliance rate.

35. The text in Appendix B under the heading "Compliance rates" stated that "… changes to the camera network will increase the density of observations over time". This flagged the that the number of ANPR cameras in the ULEZ expansion area would increase and, by inference, that the present camera network was limited. Further information on the ANPR camera network was included in the draft Data Protection Impact Assessment document, a further part of the consultation information. That information was that there were 237 "cameras in the central ring" (i.e., the Congestion Charging Zone), 1156

cameras in the area beyond that bounded by the North and South Circular Roads, but only 106 cameras in the ULEZ expansion area.

36. Overall, there was sufficient information on this matter. What was said in the consultation document was sufficient bearing in mind that the ANPR camera data was only one of the sources relied on. The size of the ANPR camera network in the ULEZ expansion area was readily apparent from the information in the draft Data Protection Impact Assessment. So far as concerns this source of information the Councils have relied on two matters. The first is that knowing the bare number of ANPR cameras in the ULEZ expansion area said nothing as to how those cameras were spread across the various London boroughs. That is correct, but the lack of such further information did not prevent such sensible further representations being made by reference to the limited extent of ANPR camera information from the ULEZ expansion area. What was provided was sufficient for that purpose. The second matter is that the information on camera numbers was in the draft Data Protection Impact Assessment rather than in the consultation document itself. The point here is that the information required for the purposes of a consultation exercise should be sensibly presented; those wishing to respond ought not to have to engage in an exercise akin to a paper chase. In principle this point is correct. But I do not consider anything of that sort occurred on this occasion. In the context of this consultation, the draft Data Protection Impact Assessment document was a key document. Enforcement of the charging scheme relied on processing of personal data captured by the ANPR cameras, and that being so, the draft Data Protection Impact Assessment was not an obscure or unlikely source of information. Moreover, that document was referred to in Chapter 6 of the consultation document, the reference there making clear that a significant number of additional ANPR cameras would be needed for the ULEZ expansion area. It was reasonable to expect that people considering whether to respond to the consultation would have regard to this document.

37. For all these reasons, Ground 2 of the Councils' challenge fails.

(3) Ground 3. Was the Mayor's decision on the grant payment lawful?

38. At the same time as confirming the 2022 Order, the Mayor decided to make a grant payment of £110 million to Transport for London to meet the cost of a "London Vehicle Scrappage Scheme" ("the scrappage scheme"). The scheme was described in the "Request for Mayoral Decision" document, the headline paper provided to the Mayor for the purposes of his decision. The scrappage scheme was to be open to persons resident in Greater London and to "microbusinesses" and charities based in Greater London. So far as concerns eligible individuals, the scheme would have a particular focus on disabled persons and those on lower incomes. The scheme would provide for fixed amount scrappage grants. In each instance the value of the grant was modest (for individuals £1,000 for a motorcycle, £2,000 for a car, £5,000 for a wheelchair accessible vehicle; for eligible businesses or charities £5,000 for a van and £7,000 for a minibus). The Request for Decision document also referred to an evaluation of previous scrappage schemes (which was contained in a separate document), and to information provided in response during the consultation exercise.

39. The Councils raise three matters. The first submission is that no consideration was given to whether eligibility to apply under the scrappage scheme should extend to those living outside the Greater London Authority area. The Councils point out that the scrappage

schemes available in 2019 and 2020, when the ULEZ expanded to the boundary of the North and South Circular Roads, permitted applications by persons and businesses outside the ULEZ area. At that time there had been three such schemes. The car scrappage scheme was open to all Greater London residents. The schemes for vans and minibuses and heavy vehicles were open to businesses and charities either based in or operating in London. The Councils submit it was unlawful for the present scrappage scheme not also to be available to persons resident outside the ULEZ area as expanded as a result of the 2022 Order.

40. I do not accept this first submission. It is clear in the Request for Decision document that this time the scrappage scheme would only be open to London residents and microbusinesses and charities. The Request for Decision document also referred to consultation responses. The document itself included reference to responses to the effect that the scrappage scheme should be extended to cover people resident in council areas adjoining the Greater London Authority area. The Request for Decision document also referred to the report following the consultation exercise, another of the documents available to the Mayor when he took the decision to approve the grant funding. The report following consultation document also identified responses to the effect that the scrappage scheme should be available to people and businesses outside the Greater London Authority area and commented on them. Taking all this together, it is readily apparent that the information available to the Mayor covered the debate on whether eligibility for the scrappage scheme should extend to people and businesses outside London. The proper inference is that this matter was considered.

41. Further, the conclusion reached, to provide grant funding for a scheme open only to London residents, microbusinesses and charities, was plainly an option lawfully available to the Mayor. The Mayor was not subject to any free-standing obligation to approve any grant payment to support a scrappage scheme. Whether he did, and if so in what amount, were political choices within his discretion, subject only to the usual public law constraints. Nor was the Mayor subject to any legal obligation that prescribed the terms of any scrappage scheme he might choose to fund. On this matter too, so far as concerned any legal obligation, the Mayor had something of a free hand. Any decision he took could be the subject of legal scrutiny based on ordinary *Wednesbury* principles, but in this context any application of those principles would permit him significant latitude to decide as he considered appropriate. The fact that people and businesses outside the ULEZ charging area as it then stood had been eligible to apply under the scrappage schemes available in 2019 and 2020 established no legal requirement that the Mayor take the same approach this time round, particularly given that on this occasion those outside the expanded ULEZ area would be resident outside the Greater London Authority area. It was not unlawful for the Mayor to proceed on the basis that such funds as were to be available for this scrappage scheme should be available to people and organisations resident in the Greater London Authority area.

42. The Councils' second submission is that the decision on the grant payment was made without proper appreciation of the extent to which a scrappage scheme funded in that amount might go to mitigate the consequences of the ULEZ expansion.

43. I do not consider this submission identifies any legal error on the part of the Mayor. So far as concerns the information available to the Mayor when he took his decision, and for this purpose taking only one of the documents provided to the Mayor, the Request for Decision document set out the key provisions of the scrappage scheme, and also

identified the impact upon people and entities using non-compliant vehicles. I am satisfied the Mayor was informed of both the extent of the scrappage scheme and the nature of the problem it was intended to address. Further, for the purpose of this submission too, it is important to have well in mind that the Mayor was not subject to any legal obligation to make provision to meet adverse impacts of charging schemes at all, let alone in their entirety. No such requirement is to be found either in Schedule 23 or elsewhere in the 1999 Act. That being so whether to adopt measures to mitigate the impact of the changes made to the LEZ and ULEZ charging scheme by the 2022 Order was a matter of policy, a matter for the Mayor's judgement. The legal principles applicable to such decisions in a context such as this permit a wide margin. It is apparent from the evidence that the Mayor's decision on the amount of the grant to be made to fund the scrappage scheme in large part rested on what he could afford. That was an entirely permissible basis for this decision. Looking at the matter in the round, the fact that the scrappage scheme will not, and is not intended to, address all or even a preponderant part of the costs incurred because of the need to replace non-compliant vehicles does not disclose any error of law.

44. The Councils' third submission is that the consultation failed to provide sufficient information about the scrappage scheme. I reject this submission too. Q8 in the Consultation Survey posed the following:

> "Q8. How important is it that the proposed expansion of the ULEZ is supported by a scrappage scheme?"

and asked respondents to tick one of six boxes, to express an opinion ranging from "very important" to "don't know". The consultation document included this:

> "The expansion of the ULEZ to inner London was accompanied by three vehicle scrappage schemes to support this shift which cost a total of £61 million. For the London-wide ULEZ proposal the Mayor is considering a large-scale and targeted vehicle scrappage scheme to support Londoners including, for example, those on low incomes, disabled people, charities and businesses."

and the IIA Report included this:

> "The Mayor has made a commitment to help charities, small businesses, disabled people, and Londoners on lower incomes adapt to the potential London-wide ULEZ through the introduction of a new scrappage scheme to help Londoners scrap their older, more polluting vehicles. The size or the timing of the introduction of the fund has yet to be determined and so has not been assumed to be a part of the Proposed Scheme for the purposes of the impact assessment."

45. This information did not set out the detail or elements of the scrappage scheme. However, given the question posed in the Consultation Survey the ability to respond to

that question did not require such detail. Q8 was a form of 'straw poll' serving only to gauge, in a very general manner, opinion on the significance attached to scrappage payments. In this instance, the scope of the consultation was a matter within the discretion of Transport for London. There was no statutory obligation to consult that might set the parameters of the exercise or require consultation on the detail of the scrappage scheme. Transport for London undertook the consultation at the request of the Mayor. That request did not prescribe the form of the exercise or the specific matters to be covered. While the form of Q8 might be described as superficial, it was not unlawful for Transport for London to approach this matter in this way. There has not, and could not plausibly be, any suggestion that Transport for London was required to formulate the consultation question on the scrappage scheme in any different way. No detailed information about any scrappage arrangements was necessary to respond to the question as it was posed.

46. Ground 3 of the Councils' challenge also fails.

(4) Outstanding interlocutory applications

47. By the time the hearing commenced, four interlocutory applications remained outstanding: (1) an application dated 6 June 2023 by the Councils for permission to rely on a Second Reply; (2) an application by the Mayor and Transport for London made on 14 June 2023 to rely on three further witness statements; (3) an application made by the Councils on 20 June 2023 to exclude certain parts of the evidence relied on by the Mayor; and (4) an application of 22 June 2023 by the Councils to rely on one further witness statement in response to the witness statements that were the subject of the application of 14 June 2023.

48. I allow the applications dated 6 June 2023, 14 June 2023, and 22 June 2023. Allowing reliance on the witness statements and pleadings referred to in these applications does not give rise to any prejudice to any other party in these proceedings. I refuse the application dated 20 June 2023. The Councils' application to exclude evidence is made on the basis that the parts of the evidence identified in the application are irrelevant. In particular, the Councils are concerned that parts of the evidence filed by the Mayor and Transport for London amount to *ex post facto* justifications of the decisions challenged in these proceedings. I do not consider it necessary to exclude the parts of the evidence identified in the application to ensure a fair determination of the issues in this case.

C. Conclusion and disposal

49. The Councils' challenge fails on all three grounds and is dismissed.
