

## **Rhodes v City of York**

**The City of York's application to revoke the Decision of Adjudicator Knapp to allow Mr Rhodes's appeal is dismissed.**

**The reasons for allowing the appeal are varied.**

### **Summary of findings**

1. The Coppergate Traffic Regulation Order is valid, albeit that is drafted carelessly and obtusely;
2. Coppergate is a bus lane within the meaning of Section 144.
3. As such City of York are in principle entitled to enforce the Coppergate Traffic Regulation Order under the civil enforcement provisions.
4. However the signs at the entrances to Coppergate do not convey the terms of the restriction imposed by the Traffic Regulation Order because
  - a. The order of the words on the plate do not indicate the 7am – 7pm restriction
  - b. The exemption for private hire vehicles is not included
5. The errors in the signs means that contraventions of the Coppergate TRO are unenforceable (unless they have been changed);
6. There is no Secretary of State's Authorisation for the signs.
7. The original adjudicator's observations about the positioning of the signs apply (unless they have been changed)

### **Background**

1 Mr Rhodes's appeal was one of a significant number of appeals made to the Traffic Penalty Tribunal adjudicators against liability for payment of a penalty charge imposed by City of York Council ("CYC").

2. CYC had embarked on civil enforcement of the traffic restrictions at both locations in August 2013. A large number of £60 Penalty Charge Notices ("PCN") were issued to the owners of the vehicles alleged to have been "in a bus lane", giving rise to a significant proportion of representations from those vehicle owners being made to CYC. When the representations were rejected many vehicle owners exercised their right to appeal to the Traffic Penalty Tribunal ("TPT") so that one of the independent lawyer adjudicators could determine whether the vehicle owner was liable to pay the penalty charge. It is fair to say that the extent and force of the public reaction to the new enforcement measures appeared to take CYC by surprise.

3. I understand that CYC had initially intended to send warning letters to the owners of the vehicles contravening the 'bus lane' restrictions but the DVLA were doubtful whether it was proper for them to release details of a vehicle owner for the purpose only of a warning letter. Therefore CYC considered that they had no option but to issue PCNs from the outset.

4. I also understand that as a result of the experience of CYC following the impact of the Lendal Bridge and Coppergate enforcement the DVLA revised its view about providing vehicle keeper particulars so that warning letters can now be sent when a new scheme or regime is introduced by an enforcement authority. It was, however, no fault on CYC's part that they could not implement the 'soft' launch of the new measures that they had intended.

5. Given the number of appeals made to TPT, and that most complained that there was inadequate signing of the new restrictions, the adjudicator, Mr Stephen Knapp, who was allocated to determine the appeals consolidated the cases and arranged to undertake a site visit to both Lendal Bridge and Coppergate, where he inspected both locations including the approaches and routes leading to them. He then held a hearing in York to which Mr Rhodes came.

6. Mr Knapp subsequently issued his decision consolidating and allowing all the appeals against the imposition of penalty charges for alleged bus lane contraventions at both Lendal Bridge and Coppergate.

7. CYC applied for a review of the decision to allow all the appeals for both Lendal Bridge and Coppergate. The main thrust of the application for the review was that they had interpreted Mr Knapp's decision to be a challenge to the validity of the two Traffic Regulation Orders. CYC subsequently withdrew the application to review Mr Knapp's findings in respect of Lendal Bridge, and so I am dealing with the application for a review of his findings in respect of Coppergate alone.

8. In fact the restrictions at Coppergate were not new. It is clear from the various reports and briefing notes submitted by CYC that general vehicular access to Coppergate had been restricted for many years. This may account for the fundamental problem that has beset these cases, namely the excruciating drafting of the new Coppergate Traffic Regulation Order.

9. I have not seen a copy of the York Traffic Management Order 2011, which appear to have prescribed the previous restriction in Coppergate but one of the complaints made by the Coppergate appellants was that the hours of Coppergate restriction were extended so that they began at 7am rather than the previous 8am.

10. Mr Rhodes also maintained that he had previously been allowed to drive through Coppergate when he was giving lifts to the elderly and infirm as a voluntary driver under the York Wheels scheme, but apparently was no longer entitled to an exemption. Mr Rhodes was, as he put it, acting as a taxi doing a job for York City Council. He said,

*"I Nigel Rhodes work taxiing for your wheels on a voluntary basis because I have kidney failure. I am in possession of a valid disabled badge which I have been using in Coppergate for the last four years. With this I thought I was allowed to use Coppergate. I had no idea that it was for buses only and that it was a bus lane only. There has been no notice telling the public the changes which I have now been informed of. When taking passengers on behalf of York City Council (disabled... Dementia et cetera) cannot understand why this is new offence on my... I am in possession of our... YC... Saying exception is include ' all taxi services ' which I can which I can supply"*

11. This explanation is pertinent because it shows that Mr Rhodes considered himself to be a taxi, the purpose of his journey was acting as a taxi, that he himself has a blue badge he considered entitled him to use Coppergate. The York website helpfully explains:

*“York Wheels is a voluntary sector service for people who find it difficult to use public transport in the York area. Volunteer drivers, using their own cars, provide a transport service for a small charge. There are also two minibuses for hire by small groups. York Wheels also operates the Dial & Ride service in partnership with the council.”*

### **Mr Knapp’s Decision**

12. The main thrust of Mr Knapp’s decision is that Coppergate cannot properly be described as a bus lane. He also found that the traffic restriction was not adequately signed.

13. It is the finding that Coppergate is not in fact a bus lane that CYC principally challenge in their application for a review. They say that paragraph 45 of Mr Knapp’s decision amounts to an attack on the validity of the Traffic Regulation Order (“TRO”):

*45 - In my judgement notwithstanding the designation in the Traffic Order neither Coppergate nor Lendal Bridge can sensibly be described as a bus lane, street or gate but rather the roads are part of a general traffic scheme from which non-exempt vehicles are restricted at certain times and where buses are just one of the excepted categories or classes of vehicle.*

14. In essence Mr Knapp found that because there are fourteen exemptions in the TRO from the “driving restriction” in the Coppergate from 7am and 7pm Coppergate could not be said to be reserved for buses.

15. He rightly did not question the power of CYC to restrict vehicles driving into Coppergate. The power to make Traffic Regulation Orders (“TROs”) outside Greater London stems from Section 1 of the *Road Traffic Regulation Act 1986* (“The 1984 Act”) that allows a traffic authority outside London to make traffic regulation orders for a variety of purposes:

*(1) The traffic authority for a road outside Greater London may make an order under this section (referred to in this Act as a “traffic regulation order”) in respect of the road] where it appears to the authority making the order that it is expedient to make it—*

*(a) for avoiding danger to persons or other traffic using the road or any other road or for preventing the likelihood of any such danger arising, or*

*(b) for preventing damage to the road or to any building on or near the road, or*

*(c) for facilitating the passage on the road or any other road of any class of traffic (including pedestrians), or*

*(d) for preventing the use of the road by vehicular traffic of a kind which, or its use by vehicular traffic in a manner which, is unsuitable having regard to the existing character of the road or adjoining property, or*

*(e) (without prejudice to the generality of paragraph (d) above) for preserving the character of the road in a case where it is specially suitable for use by persons on horseback or on foot, or*

*(f) for preserving or improving the amenities of the area through which the road runs*  
*[F2or*

*(g) for any of the purposes specified in paragraphs (a) to (c) of subsection (1) of section 87 of the Environment Act 1995 (air quality).]*

16. Mr Knapp did not challenge the validity of the Coppergate TRO; he said at paragraph 46,

*“46 Clearly the Council has power to impose those restrictions but because Schedule 7 of the TMA has not been fully implemented civil enforcement does not apply and there is no power to issue a PCN.*

17. He went on to state that in his view there was no power to issue a PCN because Coppergate is not a bus lane within the meaning of Section 144 of the *Transport Act 2000* (“The Act of 2000”). The effect of that finding was that CYV could not enforce contravention of the (valid) Coppergate TRO could not be enforced under the Transport Act 2000 civil enforcement scheme for bus lanes. As well as his own view, Mr Knapp relied on the view expressed by Mr Munns of the road sign division of the Department for Transport.

18. Mr Knapp then commented in paragraph 46 that notwithstanding the reference to the Traffic Management Act 1004 (“the 2004 Act”) in the preamble to the TRO (see below), the bus lane enforcement powers in Schedule 7 have not be brought into force. (In fact Schedule 7 contains the same definition of bus lane, so the same point would arise).

19. Mr Knapp further found that the in any event the restriction was not adequately signed to bring to the attention of a road users the effect of the restrictions impose by the Coppergate TRO. I will deal with the signing at ....

45 “We have considered legal precedents (particularly Oxford) and design issues bearing in mind this is a sensitive location and conclude:

20. The Civil enforcement of bus lane contravention provisions are contained in section 144 of the Act of 2000. The relevant subsections are section 144 (4) (5) and (6):

*(4) A bus lane contravention is a contravention of any such provision of—*

*(a) a traffic regulation order,*

*(b) an experimental traffic order, or*

*(c) a temporary traffic restriction order, as relates to the use of an area of road which is or forms part of a bus lane.*

*(5) And an area of road is or forms part of a bus lane if the order provides that it may be used—*

*(a) only by buses (or a particular description of bus), or*

*(b) only by buses (or a particular description of bus) and some other class or classes of vehicular traffic.*

*(6) The roads in relation to which regulations under subsection (1) may authorise the imposition of penalty charges are—*

*(a) in the case of an approved local authority, roads in its area ...*

The Coppergate Traffic Regulation Order (“TRO”) must be read with reference to Section 144.

### **The Traffic Regulation Order**

21. The relevant Traffic Regulation Order (“TRO”) is the *York (Coppergate) (Local Bus Priority) Traffic Order 2013*.

22. So the starting point is that the title of TRO makes it clear that it relates to Coppergate for the purpose of “Local Bus Priority”.

23. The citation commences by explaining that the order is made by the city of York “*in exercise of their powers under Sections 1, 2, 4, 19, and Schedule 9 of the Road Traffic Regulation Act 1984*”. And because access is restricted to properties adjacent to Coppergate for more than eight hours in the day, the citation contains the statement that Section 3(1)(b) of the 1984 Act applies. The TRO came into force on the 1st August 2013

24. The citation continues that it is made “*in pursuance of powers granted by the Secretary of State under Sections 73, 74 and Part 2 of Schedules 7, Part 2 of Schedule 8 and under Parts 1 and 3 of Schedule 9 of the Traffic Management Act 2004...*”

25. It is indicative of the quality of the drafting of this TRO that the Act of 2004 has been included in the citation. The Act of 2004 does not contain any provisions enabling authority to make a traffic regulation orders. Furthermore, as Mr Knapp remarked (see above) the provisions that have been cited relate to the civil enforcement of bus lane contraventions under the Act of 2004 but these provisions have not been brought into force. The powers adopted by the City of York Council stem from Section 144 the Transport Act 2000 and *the Bus Lane Contraventions (Penalty Charges, Adjudication and Enforcement) (England) Regulations 2005* (“the 2005 Regulations”).

Notwithstanding the references to the Act of 2004, the 2005 regulations are defined in the Article 2 of the TRO, the Interpretation Article.

26. It follows that the references to the Act of 2004 are invalid and otiose, however they do not invalidate the TRO.

27. The next section of the TRO is headed:

*“PART II – DRIVING RESTRICTIONS”*

*Article 3, is titled*

*“LOCAL BUS LANE – ACCESS”*

3 (1) a person shall not cause or permit a vehicle to proceed between 7 AM and 7 PM on any day in a road designated a Local Bus Lane in Column 1 of the Second Schedule unless the vehicle:

(a) comes with in an Exemption designation of which is set out in Column 2 against that road;

or

(b) displays a Valid Permit

(2) nothing in this Article shall render it unlawful for a person to cause or permit a Specialist Vehicle or Non-motorised Vehicle to cross of carriageway by the most direct route stop

(3) nothing in this Article shall render it unlawful for a vehicle to proceed on the road when that road forms, or forms part of, an alternative route vehicles diverted from another road where that vehicle is prohibited from proceeding in that other road within the terms of a Notice or Order under Sections 14, 15, 16A or 16B or and Order under Section 21 Town Police Clauses Act 1847.

(4) "Local Bus" and "Local Bus Lane" are defined in Article 2(2).

The interpretation of the order is set out in article 2. There are 78 terms set out, including numerous definitions of terms that do not appear in the TRO, to which I shall refer later.

However,

"Bus" means:

(a) a Motor Vehicle constructed or adapted to carry more than eight seated passengers (exclusive of the driver)

(b) a Local Bus not so constructed or adapted.

28. There are numerous definitions in Article 2 of the TRO, but for the purposes of Article 3:

**"Local bus"** means a Public Service vehicle used for the provision of a local service not being an excursion or tour and for the purposes of this Order includes a Long Distance Carrier, a School person Carrier and, additionally a Work Person carrier when displaying a Valid permit in accordance with Article 6 the Fourth Schedule.

29. The three "carriers" included in the category of "local bus" are themselves defined:

**"Long Distance Carrier"** means a Bus which is proceeding in a Bus Lane within the City of York and which is being operated to provide a timetabled long distance service for the carriage of passengers at separate fares which is not a local service, excursion or tour."

There follows some exclusions to the definition that need not concern us here. So the definition of long distance carrier essentially describes a timetabled national coach services where passengers pay the going fare for the length of their journey eg. National Express services. Importantly tour coaches, although buses, are not included.

**“School-person carrier”** means a Bus which is not being used to provide an excursion or tour and is proceeding in a Bus lane within the City York to convey persons

- (i) to, or to a place within the vicinity of, their school on a day during the term time before they have attended the school on that day; or
- (ii) from, or from a place within the vicinity of, their school on a day during the term time after they have finished attending the school on that day

and providing it has a prescribed sign at both the front and rear of the bus.

**“Work-person carrier”** means a Bus which is not being used provide an excursion or for and is proceeding in a Bus Lane within the City of York”, i.e. buses to convey people to and from their place of work on a working day, “in either case, a Bus Lane Permit issued by the Council is displayed on the Bus.

So the definition of local bus includes local bus services, school buses and workers buses, as well as national bus services.

30. The other definitions that are relevant here are:

**“Dial a Ride Service”** means a service being operated by or on behalf of City of York Council to convey residence having mobility difficulties between their respective homes and York City Centre, major supermarkets and local shops by means of buses especially equipment in terms of seating/walking aids/wheelchairs with those being conveyed.

**“Exemption”** means a class of Vehicle or purpose for which a Vehicle may, subject to Article 3, proceed in a road, that Exemption being set out in Column 2 of the First Schedule and identifiable purposes in any provision of this Order by the letter or number set against that Exemption in Column 1.

**“Taxi”**, for the purposes of this Order, means a Hackney Carriage in respect of which a licence has been issued pursuant to the provisions of the Town Police Clauses Acts 1847 and 1889 and any Private Hire Vehicle in respect of which a licence has been issued pursuant to the provisions of the Local Government (Miscellaneous Provisions) Act 1976.

31. The definition of taxi therefore includes hackney carriages that have been licensed anywhere in England and Wales (except London), and private hire vehicles that have also been licensed by any local authority in England or Wales. (see below)

32. Given the definitions it is surprising to turn to the list of Exemptions contained in the First Schedule:

*FIRST SCHEDULE*

*(DRIVING RESTRICTIONS)*

*EXEMPTIONS TO DRIVING RESTRICTIONS*

1. *a vehicle proceeding omnidirectional with the permission of a police constable in uniform or a traffic proceeding with the permission of the Councils Head of Network*

*management or a person authorised to grant such permission on behalf of the Councils head Network Management*

2. *a Vehicle being used for Works or in accordance with the conditions of a Skip Licence*
3. *a Vehicle being used in the service of a local authority, water authority or statutory undertaker in the exercise of statutory powers or duties.*
4. *A Pedal Cycle*
5. *a motor vehicle proceeding between 10am and 4 pm*
  - a. *in connection with the delivery or collection of goods to or from premises; or*
  - b. *where necessary, the purposes of horticulture or silviculture.**on or adjacent to that road.*
6. *A marked motor vehicle being used by a universal service provider proceeding between 10am and 4pm for the collection of postal packets in the course of the provision of the universal postal service.*
7. *A Local Bus*
8. *A Vehicle being used for fire brigade, ambulance or police purposes in an emergency*
9. *A Taxi*
10. *A School-person Carrier*
11. *A Work-person Carrier when displaying a Valid Permit issued under article 6 and the Fourth Schedule*
12. *A Long Distance Carrier*
13. *A Network Rail Incident Response Vehicle suitably marked and readily identifiable as such responding to an accident or incident within the railway network which is caused the secession of rail traffic movement in any length of Railtrack at or in proximity to the location of the said accident or incident*
14. *A bus being operated on behalf of City of York Council within the terms and conditions of the Dial a Ride Service and within the terms and conditions of a Permit issued under Section 19, transport act 1984 in respect of the conveyance of disabled persons and on which is displayed a Disabled Persons Badge.*

33. A local bus, which, after all, features in the TRO title as the purpose of the TRO, only appears as an exemption at Number 7. However, the draftsman must have forgotten the variety of buses he or she included in the definition of “local bus” in Article 2, because a school-person carrier, a work-person carrier and a long distance carrier are separately listed at exemptions 10, 11, and 13.

34. Therefore, there are four classes of buses included in the definition of ‘local bus’ in Article 2 and then the exemptions separately exempts the three that are not providing local bus services.

35. Dial a ride services are also exempted providing the vehicle falls within the definition of a “bus”.

36. The upshot of this is that of the 14 exemptions to the driving restriction, 5 are buses (or a particular description of buses) within the meaning Section 144(5) of the Transport Act 2000.

37. Of the other nine exemptions four are the standard ones for vehicles direct by a police officer, emergency vehicles, statutory undertakers, and postal services; and two are common ones for pedal cycles and taxis (which includes PHVs – see the definitions and below).

38. Therefore 11 of the list of 14 exemptions are either buses or standard and common exemptions.

39. Of the remaining three, there is one for loading and unloading, but at different times to the restriction, (which has caused the greatest challenge for signing – see below). This also, exempts vehicles being driven in Coppergate for horticulture or silviculture. I have no evidence as to whether there are flower beds or containers and trees in Coppergate so have no view as to whether those exemptions are required, or whether the draftsman imported them along with the other redundant and irrelevant clauses taken from other TROs is not clear.

40. The exemption for skip licensees surprisingly is not restricted to the loading or unloading times, although, presumably, this exemption is brought to the licencees' attention in the terms and conditions of the licence.

41 Finally, in York, an exemption for railway vehicles attending rail emergencies would appear necessary, and again, presumably the railway officials are aware of the exemption in the same way that the emergency services are.

42 When Mr Knapp was considering the provisions for the bus priority route in Coppergate, he was of course considering the similar provisions for Lendal Bridge. He commented that there were 21 exemptions to the restriction on driving across Lendal Bridge. Looking at both TROs together I can see why and how Mr Knapp reached the conclusion that Coppergate could not reasonably be described as a bus lane (and he was in agreement on that point with Mr Munns of the DfT).

43. However, taking a purposive approach, and deconstructing the tangle and obfuscation of the drafting of the exemptions and definitions, I conclude that the provisions of the TRO just about come within the definition of a bus lane in Section 144(5) of the Transport Act 2000.

44. I therefore find that the effect of Article 3 and Schedule 1 of the TRO is that from 7am to 7pm Coppergate falls within the definition of a bus lane in Section 144(5)(b) of the Transport Act 2000, because the TRO provides that Coppergate may be used "only by buses (or a particular description of bus) and some other class or classes of vehicular traffic".

45. It follows that I dismiss Mr Knapp's ruling that Coppergate is not a bus lane and his finding that enforcement of the contraventions of the TRO cannot be effected through the civil enforcement provisions of the Bus Lane Contraventions (Penalty Charges, Adjudication and Enforcement) (England) Regulations 2005. However, there remains the issue of the signs.

46. I would at this point observe that given the importance to CYC of the two bus priority routes and traffic schemes it is a wonder that they did not take care to produce TROs that reflected the drafting of the statutory powers they were so keen to adopt. I hesitate to suggest that it seems unlikely that the CYC legal department, who have so clearly and precisely argued the application for a review of Mr Knapp's decision, were consulted in the drafting of the Coppergate TRO. The CYC Briefing Note dated 30 November 2011 for introducing CCTV based Traffic Enforcement on Coppergate includes the suggestion paragraph 12 the Transport Systems and Traffic Teams "...draft the necessary changes to the Traffic Order", so it seems that it was not the responsibility of the legal department.

47. There are numerous definitions contained in Article 2 of the TRO, defining many terms that do not appear in the TRO, for example, "Disabled Person", "Disabled Person's Vehicle" and "disabled Persons Badge" are all defined although none of these expressions appear in the TRO. This may be of relevance because Mr Rhodes says that prior to the introduction of the new scheme he was entitled

to driving Coppergate by virtue of being the holder of a disabled person's badge. It is therefore not clear whether these definitions remain from an earlier order relating to the use of Coppergate, whether they have simply been copied from a TRO that relates to restricting and prohibiting parking.

Most glaring is this definition:

**“Servicing period”** *“has the same meaning as in Article 3(2) wherever it appears”.*

The term “servicing period” does not appear in Article 3(2) of the Coppergate TRO, or anywhere else.

48. It is clear that whoever drafted this TRO, either, like a child at a ‘pick ‘n mix’ counter simply selected a range of terms for the CYC TRO clause book, or did not amend the previous TRO that applied to Coppergate with any consideration for the new scheme to be enforced by CCTV camera.

49. The CCTV enforcement is particularly relevant because Part III of the TRO has detailed provision about permits. These are only required by “work-person carriers” that must display them when being driven through Coppergate during the restricted hours. This requirement is odd in a scheme to be enforced by CCTV, where the new practice is to record the vehicle registration numbers of exempted vehicles into what is known as a ‘white list’ so that the CCTV processing system identified the vehicle as exempt. It is implausible that the images of all vehicles driving in Coppergate are scrutinised to see if a work-person carrier permit is displayed. So the permit provision drafted for permits to be displayed are clearly inappropriate.

## The Signs

50. I now turn to the signs. The use of sign 619, prohibition of motor vehicles (the low flying motor cycle) is recommended in the Traffic signs Manual where the bus route does not operate 24/7. Therefore there is no requirement to obtain a special authorisation to use sign 619 to sign a restriction that is intended to be enforced using the bus lane civil enforcement scheme. This was confirmed in *The Queen on the application of Oxfordshire County Council v. The Bus Lane Adjudicator [2010] EWHC 894 (Admin)*.

51. The permitted variant of the plate allows for the words “except for local buses” and “loading” and “taxis”. A time period may be added.

52. Below is the sign at the entrance to Coppergate:



- The words used are permitted variants and would not in themselves require a special authorisation.
- Looking at the sign it can be seen that “10am -4pm” relates to the exemption above “and for loading”.
- It follows that the next line up, “7am -7pm” must refer to the words above, “Except local buses and taxis”.

This reading of the sign is not incongruous, incoherent or even ambiguous – there are numerous “motor vehicles prohibited” signs that apply 24/7, and a road user unfamiliar with York would interpret it as I have described.

53. Therefore the information conveyed by the sign is that Coppergate is prohibited to motor vehicles at any time, with an exception for local buses and taxis between 7am and 7pm, and another for loading between 10am and 4pm.

54. There is, of course, the problem if the plate is correctly laid out because the time of the restriction needs to be differentiated from the time of the loading exemption. The plate would require a break ,such as:

7am – 7pm  
 Except local buses and taxis  
 -----  
 Loading and unloading  
 10am- 4pm

55. That the information is in the wrong order, so as to convey entirely the wrong hours of the restriction, is already be known the CYC engineers because they corrected the same mistake when they redesigned the signs for Lendal Bridge.

56. Mr Knapp described the new signs at Lendal Bridge

*33. At Lendal Bridge the original exception plate stated:*

*“Except local buses and taxis 10.30 am – 5.00 pm”.*

*34. In January 2014 the plate was changed so that it read:*

*“10.30 am – 5.00 pm except local buses and taxis”.*

*The later sign was considered to be closer to the form of diagram 620.*

57. Local authorities are under a statutory duty to sign the effect of their TROs. This duty is imposed by Regulation 18 of *the Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996*:

## Traffic signs

18.—(1) Where an order relating to any road has been made, the order making authority shall take such steps as are necessary to secure—

(a) before the order comes into force, the placing on or near the road of such traffic signs in such positions as the order making authority may consider requisite for securing that adequate information as to the effect of the order is made available to persons using the road;

(b) the maintenance of such signs for so long as the order remains in force; and

(c) in a case where the order revokes, amends or alters the application of a previous order, the removal or replacement of existing traffic signs as the authority considers requisite to avoid confusion to road users by signs being left in the wrong positions.

(2) The order making authority shall consult the appropriate Crown authority before carrying out the requirements of sub-paragraphs (a) and (c) of paragraph (1) in relation to a Crown road.

(3) This regulation is without prejudice to section 85 of the 1984 Act (traffic signs for indicating speed limits).

58. I find as a fact that the information on the plate to the sign at the entrances to Coppergate does not convey the effect of the TRO, and in particular does not convey the times of the restriction. As the Court of Appeal determined on *The Queen v the parking Adjudicator ex part Herron*

*“the ultimate question for the Adjudicator was to be derived from Regulation 18 of the Procedure Regulations: were there traffic signs conveying adequate information as to the effect of the parking restriction at the time and place at which the PCN had been issued? “*

59. I therefore confirm that Mr Rhodes’s appeal should be allowed because the contravention was unenforceable.

60. I observed that the CYC engineers changed the order of the words at Lendal Bridge so I surmise that they may have already done do with Coppergate.

61. There has been much general interest in whether there is in fact a Department for Transport authorisation for the signs at Coppergate. Neither CYC nor the DfT have produced any authorisations and I find there is not authorisation.

62. There was a sporadic email exchange between Mr Darren Capes of CYC and both John Munns and Renata Williams at the DfT. In which informal permission was tentatively granted by the DfT to use a smaller font in this email:

*“We have considered legal precedents (particularly Oxford) and design issues bearing in mind this is a sensitive location and conclude:*

*This is not a bus lane scheme but a prohibition of motor vehicles so you need to remove the top panel “Coppergate Bus Lane” from the four advance signs ...The plate beneath the entry*

*sign to diagram 619 is hard to design and if normal rules are followed it ends up huge. We have therefore taken on board the sensitivity of the site and would exceptionally authorise the plate attached .....*

63. I appreciate that CYC may have taken this email to authorise the order of words on the sign as well as the font, but I do not accept that the DfT were considering whether the words conveyed the terms of the TRO. CYC will have submitted their sig and the DfT were concerned about the size of the plate and that there was a proposal to give advance warning on bus lanes, that the DfT did not consider to be a bus lane in signing terms.

64. Whatever the status of the email, the informal permission was never subject to a formal authorisation from the Secretary of State, it is for this reason that there is none recorded in the official list of authorisations.

65. CYC were obviously still anxious that their proposals would not be fully compliant with the civil enforcement provisions because Mr Capes replied to Mr Munns's email asking whether Mr Munns considered that bus lane is enforceable under the provisions of the bus lane regulations. Mr Munns replied "*enforcement matters are beyond my strict remit and we can only authorise sign legends and designs*". He then went on to suggest that they took their own legal advice he also said, quotation "in strict terms this is a two-way bus gate, not a bus lane. I have been advised that the bus lane part in the Transport Act 2000 can only be used by approved local authorities (i.e. local authorities with bus lane powers) to enforce moving violations in bus lanes or on areas of the road which forms part of the bus lane. Only "approved devices" (i.e. cameras authorised by the Secretary of State) must be used for bus lane enforcement .

66. It is at this point that I would have expected Mr Capes to have heeded Mr Munns's advice and involved the CYC lawyers. Maybe he did, but it seems unlikely because the lawyers would have examined the TRO and recognised the flaws I have described.

67. The upshot is that there is no authorisation from the Secretary of State for the uses of the signs at Coppergate.

68. There is one further problem with the signs at Coppergate. The definition of 'taxi' in the TRO includes private hire vehicles ("PHVs"). Furthermore I am satisfied that this is not one of the mistakes in the drafting but was intended because Mr Capes makes that clear in his email to the DfT. However the definition for the purposes of road signs does not include PHVs:

In the Traffic Signs Regulations and General Directions 2002 (TSRGD)

*"taxi" means –*

*(a) in England and Wales, a vehicle licensed under –*

*(i) section 37 of the Town Police Clauses Act 1847; or*

*(ii) section 6 of the Metropolitan Public Carriage Act 1869;*

*or under any similar enactment; and*

*(b) in Scotland ...*

69. The effect of this is that whenever the word "taxi" is used on a traffic sign or plate it has the meaning given to it in the TSRGD and does not include PHVs. Therefore where the TRO provides that PHVs may use a bus lane or bus route then the Secretary of State's authorisation is required to include the "PHVs" in addition to "taxis" on the plate. Oxfordshire County Council had such an authorisation for the prohibited traffic sign at the short bus route in the High Street at the time when the PCN subject to that appeal was issued (there has been a new layout and there may be different exemptions now in Oxford High Street now).

70. The importance of this has emerged in numerous cases concerning other cities outside London in England that have embarked upon civil enforcement bus lane contraventions that the issue of whether a private hire vehicle is allowed to use a bus lane or not is a sensitive and inconsistent problem. For example private hire vehicles are not allowed to use the bus lanes in either Manchester or Leeds but they may in Liverpool. In Medway PHVs licensed by Medway Council may use the bus lanes (their exemption therefore does not need to be signed because those to whom it applies know about it as a term and condition of their licence). It is therefore of great importance that the driver of the PHV should know whether or not they are prohibited from entering Coppergate during the restricted hours. This is particularly so in a city of historic importance and tourist destination like York where PHVs from the surrounding areas of York may be taking passengers from out

71, Therefore that PHV's are entitled to use Coppergate should be included on the plate. This, of course, creates further difficulties for CYC insofar as the information on the plate as it stands now is in essence far too much, so much so that the DFT reluctantly and informally agreed to a smaller font than is prescribed in TSRGD.

72. I therefore find as a further fact that the omission of "PHV" from the Coppergate signs constitutes a further failure on the part of CYC to comply with Regulation 18 of LATOR.

73. I would remark that in my directions I asked the CYC to clarify the position between taxis and private hire vehicles and they did not respond to my request. I conclude that they already recognise this problem.

74 Mr Rhodes considered that he was performing services of a taxi and would therefore be subject to the exemption. As it happened he was neither a licensed private hire vehicle nor a taxi but a volunteer working for the important and useful local charity York Wheels. Therefore, he is not entitled to the exemption.

75. He also implied that in the past people with disabled badges were permitted to drive through Coppergate. Judging by the TRO that may have been the case - I do not know. It is the case that CCTV enforcement would not identify a Blue Badge. Whatever the situation was in the past, there is no exemption for Blue Badge holders. Nonetheless Mr Rhodes's appeal is allowed for other reasons.

76. Finally, Mr Knapp having undertaken a site visit, identified problems with the siting of some of the signs. He took those observations into account when finding that CYC failed in their duty under Regulation 18 of LATOR. I would not interfere with those findings made after a site visit. I agree about the failure to comply with Regulation 18, albeit for different reasons.

Caroline Sheppard

Chief Adjudicator

24 April 2014