

Application for a Review by Newcastle City Council of the Adjudicator's Decision

This Review Decision includes 4 x Annexes, which are referred to throughout the body of the decision.

Review Adjudicator:

Caroline Sheppard OBE, Chief Adjudicator

Newcastle City Council's application to revoke the Adjudicator's Decision is dismissed.
The appeals remain allowed.

1. Introduction

Cases being reviewed:

LK00090-1702 Lesley Hedley
LK00116-1703 Diana Little
LK00098-1702 Jonathan Townshend
LK00199-1704 Joseph Thomson
LK00182-1704 James Watson

1.1. These five cases all relate to Penalty Charge Notices ("PCNs") issued for "being in a bus lane" at the northbound section of a two-way bus gate in John Dobson Street, Newcastle.

1.2. The street is named after John Dobson (1787 – 1865), the noted architect best known for designing Newcastle railway station and developing the city centre in a neoclassical style. John Dobson Street runs from Market Street in the south to St. Mary's Place in the north. It is a B class road that has, for many years, been a popular and familiar route to the centre of Newcastle.

1.3. In 2016, Newcastle City Council ("NCC") essentially created a 'no through road' by restricting 70 metres in length at the most northerly part of the street to buses, taxis, cycles and other 'authorised' vehicles. The 'bus lane' referred to in the PCNs is what traffic engineers call a 'bus only street' or 'two-way bus gate'. A significant number of PCNs have been issued since to the owners of unauthorised vehicles that have travelled through the bus gate.

1.4. Following a site visit and hearing of 10 consolidated appeals concerning PCNs issued for alleged contraventions of the bus gate restriction, the bus lane adjudicator, Mr Paul Pearson ("the Adjudicator") allowed seven of the appeals relating to the northbound carriageway of the bus lane, and dismissed two relating to the southbound carriageway

(having allowed one for other reasons). NCC have applied for a review of the Adjudicator's decision ("The Decision") in respect of five of the seven allowed northbound appeals.

1.5. The Adjudicator summarised his decision with respect to the five appeals subject to this review:

1. *The effect of the Traffic Regulation Order is to make John Dobson Street a "no through route" to most traffic except buses, taxis, motorcycles and cycles.*
2. *The Council introduced its permanent signing regime around 18 October 2016.*
3. *The signs used by the Council substantially comply with the regulations.*
4. *The Council has attempted to comply with recommendations of the Department for Transport in the Traffic Signs Manual.*
5. *However, overall the signing is not adequate to convey the effect of the Traffic Regulation Order for the following reasons:*
 - a. *A motorist is entitled to know what lays ahead of him before entering the road;*
 - b. *There is no warning to motorists prior to entering John Dobson Street that it is no longer a through route;*
 - c. *The main warning sign prior to the bus gate is not sufficiently visible if the motorist is following a bus; and,*
 - d. *The wording used on other advanced signing is vague.*
6. *A total of five appeals were heard in respect of Penalty Charges Notices issued since the new signing regime was introduced. All five appeals have been allowed."*

1.6. These contrast with his reasons for allowing the two southbound appeals:

1. *The signs used by the Council substantially comply with the regulations.*
2. *There is no obvious compromise to the visibility of the signs in St. Mary's Place.*
3. *Overall the signing regime in St. Mary's Place is adequate.*
4. *Two appeals were heard. One appeal was allowed on its own facts. The other was dismissed."*

2. The application for a Review

2.1. NCC's application is made under Regulation 23(1) of the *Bus Lane Contraventions (Penalty Charges, Adjudication and Enforcement)(England) Regulations 2005* ("the Regulations"), which provide that an adjudicator may, on the application of a party, review and revoke or vary any decision to reject a notice of appeal or to dismiss or allow an appeal upon a number of grounds. Ground (f) provides that a review may be conducted if it is in the interests of justice. It is upon this Ground upon that NCC relies.

2.2 The main reasons why NCC believe Adjudicator Pearson's decision should be reviewed can be summarised:

- They consider the decision is inconsistent with the Adjudicator's earlier decisions relating to the John Dobson Street bus gate. In particular, he did not explain in his written judgment that he had determined earlier appeals relating to the John Dobson Street restriction and had dismissed them. NCC say this omission amounts to procedural unfairness.
- The Adjudicator did not properly consider the judgement of Beatson J in *Oxfordshire County Council v The Bus Lane Adjudicator [2010] EWHC 894 (Admin)* ("Oxfordshire")

- The decision has inconsistencies within in itself; and
- Because of the perceived inconsistency and the publicity concerning the enforcement of this restriction, motorists are likely to be confused and NCC itself does not know whether to introduce new signs.

2.3. In support of its application, NCC also produced two videos filmed from the dashboard of a car driving along John Dobson Street and through the restriction. I am grateful for this helpful evidence of the route from the perspective of a driver. I have reproduced some still images from the videos at **Annexes 1 and 2** for reference.

2.4. NCC acknowledges that the factual background to the Decision is set out comprehensively in the Decision itself. They do not appear to disagree with the Adjudicator's findings about the signs, which he set out at 5 in his summary (above).

2.5. In his Decision, the Adjudicator described the background and history of the new John Dobson Street restriction:

"Between 23 February 2016 and 31 March 2017 a total of 95,149 Penalty Charge Notices were issued. Of the 95,149 some 30,033 PCNs were within the first ten weeks. 26,911 PCNs were issued for the northbound lane and 3,122 were issued Southbound. Since 1 May 2016 there has been a steady reduction in the overall number of PCNs issued in both directions. The total number of PCNs issued in March 2017 was 3,547. This represents a reduction of around 75% in comparison with March 2016. Nevertheless, 3,547 PCNs (or 115 per day) is still a significant number of PCNs for a single 'bus gate'.

"The proximity of the Central Motorway (A167M) makes John Dobson Street attractive to motorists coming from outside of Newcastle and its immediate surrounding area. Motorists will use the large NCP car park that is situated on John Dobson Street, and historically would have used the road as a through route to other significant parts of the city centre (such as the Civic Centre, the Haymarket and Eldon Square). This is clearly demonstrated by the figures provided by the Council which show that in 2013 there was an estimated 60,000 movements of vehicles per month through what is now the bus gate. In 2015 that figure was estimated as being 39,000."

2.6. The restriction had been introduced in the spring of 2016. Initially, there were continuing roadworks and temporary signs although the council did begin to enforce contraventions by means of issuing PCNs. The Traffic Penalty Tribunal adjudicators had allowed a significant number of appeals because of problems with temporary signing and roadworks.

The Adjudicator's earlier decisions

2.7. As NCC points out in its application, Adjudicator Pearson had dealt with the first appeals against PCNs issued for contraventions after the new signing had been put in place ("the first wave cases").

2.8. One would have expected the new, permanent signing to have had immediate effect and deterred most drivers from proceeding through the bus gate. But it quickly became apparent from the number of appeals that continued to be made to adjudicators – and the number of PCNs issued – that the signs at the restriction were still having little impact. This indicated the need to reconsider whether the signs were bringing the effect of the bus gate restriction to road users.

2.9. While the Adjudicator did not expressly state in his reasons that he has previously considered appeals relating to the bus gate in John Dobson Street, the council officers were well aware that there were continuing high numbers of appeals, most of which

raised issues about lack of warning or directional signs from motorists who had not encountered the restriction before. The NCC officers were well prepared for the hearing and had produced a considerable amount of information and data about contraventions of the bus gate after decisions on the first wave cases. It was clear to them that the reason for the persistent ongoing failures to observe the bus gate restriction after the new signing had been put in place required to be examined further.

2.10. The Adjudicator commented in Paragraph 20 of the Decision that NCC were continuing to issue PCNs at the rate of 115 per day. Further, he explained that:

“The Council confirmed at the hearing that in July 2016 only 13% of the 5,677 PCNs issued for northbound contraventions, were issued to people who had contravened the restriction previously. The figure was 9% for southbound contraventions. This would tend to indicate the majority of contraventions were by motorists unfamiliar with the area and/or the changed priorities.

“The proximity of the Central Motorway (A167M) makes John Dobson Street attractive to motorists coming from outside of Newcastle and its immediate surrounding area. Motorists will use the large NCP car park that is situated on John Dobson Street, and historically would have used the road as a through route to other significant parts of the city centre (such as the Civic Centre, the Haymarket and Eldon Square). This is clearly demonstrated by the figures provided by the Council which show that in 2013 there was an estimated 60,000 movements of vehicles per month through what is now the bus gate. In 2015 that figure was estimated as being 39,000.”

2.11. This trend would not have been established when he considered the decisions on the first wave cases.

2.12. NCC have referred me to *Fox Strategic Land & Property Ltd v Secretary of State for Communities and Local Government [2012] EWCA Civ 1198*, a planning case that deals with the need for consistency in deciding like-for-like cases. The five cases involved in this review, however, are materially different from the decisions on the first wave cases. These cases involve different facts; namely the inadequacy, or lack of, the advance and directional signs.

2.13. In essence, there is no inconsistency between the Adjudicator’s previous decisions and his decisions in these five cases. In his summary of findings relating to these five cases, the Adjudicator reiterated that: *‘The signs used by the Council substantially comply with the regulations’*. This reflects his initial findings immediately after the new signs were put in place. NCC have cited the Adjudicator’s decision in LK00055-1702 that concerned an incident on 21 October 2016:

“There is one advanced sign in John Dobson Street which is adjacent to the NCP car park prior to the junction of Northumberland Road. This is now a permanent sign erected on posts. It is again of the usual type with a white background. It alerts motorists to the bus lane restriction after Ridley Place and advises “other traffic” to turn left into Northumberland Road. It is far enough in advance of the junction to give the motorist advanced warning of the need to turn into Northumberland Road. I consider that in most circumstances this sign is also sufficiently visible, although I note there is a 20mph speed limit sign a short distance in front of the sign and this could cause problems with visibility if traffic flow is heavy”

2.14. I note that even then the Adjudicator had decided that the signs at the restriction itself were adequate when traffic was light – the clear inference being that the signage might not be adequate if traffic conditions were heavy.

2.15. The observation in the first wave cases was echoed and developed at Paragraph 30 of the Decision, where the Adjudicator explained he had misgivings about the visibility of the signs.

“There is however a very real potential for obstruction of the warning sign. John Dobson Street is a major route for local bus services and it seems that at least 11 different bus services use this area. A motorist travelling behind a bus is unlikely to see the sign. He will have just left a busy junction controlled by lights, there is likely to be vehicles moving to the left to enter the NCP car park and in all probability the bus will be slowing to stop in the bus stop just beyond the sign. In such circumstances the driver will be looking to the outside of the road to see if it is safe to overtake a slowing bus. This causes me significant concern given that this is the only advanced warning of the bus gate.”

2.16. The videos produced by NCC for the review application confirm the adjudicator’s findings and observations about vehicles following a bus (see screen captures from the videos in **Annexes 1 and 2**).

2.17. It is not unusual for adjudicators to consider subsequent cases for a particular restriction, where in earlier cases the same or different adjudicator may have concluded that the signs were adequate. As in the numerous appeals that relate to John Dobson Street, fresh cases bring a new perspective and introduce a different set of facts beyond the motorist simply being on a particular stretch of road faced with signs indicating a restriction.

2.18. Adjudicators must consider what the appellant has described and address the points they make. These may be ones that have not been made in relation to the restriction concerned in earlier cases.

2.19. These five cases were not materially the same as the first wave cases and so the *Fox Strategic Land* case is not relevant.

3. The appellants’ cases

3.1. I do not know where the appellants in the first wave cases lived, but it is material to these cases that the appellants were not residents of Newcastle. Residents quickly get to know about new restrictions, not least because of adverse press coverage about the number of PCNs being issued. These five appellants, however, were all coming into Newcastle for the first time since the new bus gate restriction was introduced and, understandably, were unaware of it. They all raised points that had not been addressed in the decisions on the first wave cases.

3.2. The appellant from North Tyneside in case **LK00182-1704** had appealed because it was night-time and he said the illumination blinded the visibility of the sign.

3.3. In **LK00116-1703**, the appellant – from North Tyneside – was unused to driving in Newcastle on her own. It was a dark winter evening, and she was concentrating on the traffic. Having received the Notice of Rejection from NCC she explained that Ridley Place was congested and too narrow to perform a three-point turn; the only way out would have been to reverse (see **Annex 3: Google Street View Image 3**). This was a new point for consideration.

3.4. In **LK00098-1702**, the appellant – from Hartlepool – refers to alterations in the traffic scheme before approaching John Dobson Street and the lack of information about the new restriction.

3.5. In **LK00090-1702** the appellant – from Blyth – also complained of heavy traffic and that she only realised there was a restriction once she had crossed the carriageway marking. This is a further case where the Adjudicator’s previous finding that the signs

were adequate in light traffic would need to be examined. She not been to Newcastle for two years. She mentioned a long queue for the NCP car park that caused congestion and distractions – another new point for consideration.

3.6. I will deal with **LK00199-1704** last ("the Durham appellant"), because their explanation essentially rounds up the complaints of each of the appellants. He said as his first point that there should have been advance warning when turning right into John Dobson Street because it had become a 'no through road':

"Turning right from the B1309 (which I have done countless times in the past) onto John Dobson street I did not notice any new signs indicating that cars can't turn right and get through to St Mary's place (as they could in the past!) There are no visible advanced warning signs on the B1309 junction to warn drivers that turning right is a "no through road" so I was not aware of the new bus lane ahead or the fact that I can't get through to St Mary's Place or indeed can't get through anywhere other than where I came from."

3.7. In the first wave cases, the Adjudicator had not addressed the adequacy or otherwise of the directional signs. Because these appellants raised this point, he needed to consider their arguments.

3.8. The Durham appellant summed up the quandaries faced by motorists in his initial representations to NCC:

"The signage and road markings are totally inadequate. I have used this route for years and didn't notice any new signs, by the time I did notice a sign I wasn't 100% sure whether I was in a bus lane or not and regardless of whether I did or didn't see any signs, the safest thing to do at this point was to continue through the course I was taking as there are no clear alternative routes to take."

3.9. At this point I will refer to the Google Street View **Images 1 and 1a in Annex 3**). These photos show the sign leading to the roundabout off the junction of the Central Motorway, A167(M), and the B1309, to which the Durham appellant refers. The sign indicates the first road off the roundabout leads to "City Centre B1309". This road feeds round to Durant Road and the junction with John Dobson Street, where turning right, will take the vehicle to the bus gate (turning left will take the driver away from the city centre). This photo was not part of the evidence, but it illustrates what the appellants have described. The NCC officers will be well aware of all the signs on their road network. The Google Street View images date from June 2018 and would have been in place at the time of all five of these alleged contraventions.

3.10. This sign – which I assume has been rectified by now – directs drivers to the city centre along the B1309, even though the city centre ceased to be accessible from the B1309 after the John Dobson Street bus gate restriction was put in place. The sign also shows the Shopmobility icon when, again, the Shopmobility services at Eldon Garden Shopping Centre cannot be reached by that route. (Another appellant, whose case was consolidated with these, explained that she followed the Shopmobility sign when taking her disabled mother to the City Centre - NCC did not request her case to be reviewed).

3.11. I am bound to express dismay that a sign directing vehicles to the city centre through John Dobson Street should have been left in place at a principal junction and not have been replaced. That neglect alone is grounds for showing that NCC had not brought the bus gate restricting access to the city centre to the attention of road users.

3.12. Therefore, in the five cases subject to this review, the Adjudicator has not disagreed with his earlier finding; he was considering the explanations given by the appellants as to why they drove through the restricted area. He concluded that – notwithstanding the signs were substantially compliant (as he has found in his earlier decisions), because of the inadequate information and directional signing on the

approach to the restriction –NCC had nevertheless failed in their duty to bring to the attention of road users the effect of the John Dobson Street northbound bus gate restriction.

3.13. The Adjudicator describes the signing, and absence of signs, in Paragraphs 25 to 35:

“36. The signs used by the Council appear to substantially comply with the current regulatory requirements. It also appears the Council have attempted to adopt the recommendations made in the Traffic Signs Manual. However, overall I do not consider the signing to be adequate to alert the motorist of the effect of the Traffic Regulation Order.”

3.14. The crux of his decision lies in Paragraphs 36 and 23:

37. John Dobson Street (northbound) was a through route to all traffic for a significant period of time. A considerable amount of traffic utilised the road as such. Prior to the introduction of the bus gate, there was (to all intents and purposes) a lane of traffic in each direction that the general motorist could not use – but it was still possible to exit north. The primary effect of the Traffic Regulation Order is to make John Dobson Street (northbound) a no through route to most traffic, yet there is no advanced signing prior to the vehicles entering via Durant Road other than a vague wording of “other traffic”. Similarly there is no warning prior to the junction with Durant Road for vehicles coming from the Market Street area that John Dobson Street is a no through route north, other than what I consider to be the vague wording I have referred to.

38. A motorist is entitled to know what lays ahead of him prior to entering a road and before the most obvious opportunity to change his general direction has passed. Added to the lack of advanced warning signs is the fact that there is a real likelihood that a motorist is likely to miss the one advanced sign capable of warning him to turn around before the bus gate is reached.”

3.15. The Adjudicator, therefore, made it clear that the duty to bring a traffic restriction to the attention of road users extends to prior information about the road restriction ahead and informative signing, prior to entering the restricted road, of the route to be taken to avoid it.

4. Traffic Signs

4.1. In their application for a review, NCC rightly say that the central issue in all of the appeals was the adequacy of signage to bring to drivers’ attention the fact that a bus gate (or, more precisely, a no through road for most vehicles) had been created along a length of John Dobson Street.

4.2. NCC appears to base its application for a review on the belief that substantial compliance with the Traffic Signs Regulations and General Directions 2016 (“TRSRGD”) and the Traffic Signs Manual (“TSM”) at the point of the restriction is the only consideration applicable as to whether a traffic authority has reasonably complied with Regulation 18 of *The Local Authorities’ Traffic Orders (Procedure) (England and Wales) Regulations 1996* [S.I 1996 2489] (“LATOR”), and they consider that the Adjudicator did not attach sufficient weight to the judgment of Beatson J (as he then was) in *R (Oxfordshire County Council) v The Bus lane Adjudicator* [2010] EWHC 894 (Admin) (“Oxfordshire”).

4.3. Traffic signs are prescribed in the TSRGD – a vast and virtually incomprehensible tome, like a bygone shopping catalogue of road signs.

4.4. Guidance on the use of signs; for example, when and where to place them, is issued by the Department for Transport (DfT) in the TSM, which are issued in Chapters (see below). Both the TSRGD and the TSM makes it clear that signing involves varying aspects of engineering and design to achieve the aims of designing traffic schemes and restrictions and inducing compliance.

4.5. Regulation 18 of LATOR deals with an authority's duty to sign:

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) ...

(3) ...

4.6. There has been a history of High Court and Court of Appeal decisions concerning signs conveying parking restrictions and a traffic authority's duty under Regulation 18 of LATOR. These establish that a failure to comply with the Regulation 18 duty as to signage is a proper ground on which an adjudicator may allow an appeal against the issue of a PCN, on the ground that the alleged contravention of the relevant Traffic Regulation Order did not occur. The key Court of Appeal case is *Herron v. The Parking Adjudicator and Ors* [2011] EWCA Civ 905, and *R (London Borough of Camden) v. The Parking Adjudicator* [2011] EWHC 295 (Admin), per Burnett J. at [50] – [51] is also instructive.

4.7. These were cases about parking and apply where the vehicle is stationary and the driver can look around for signs before, and on leaving, the vehicle. It is common sense, as noted by Mrs Justice Lang's Judgment in *R (Nottingham City Council) v the Bus lane Adjudicator* [2017] EWHC 430 (Admin) ("Nottingham") that other factors will apply to moving traffic penalties.

4.8. Beatson J, in "*Oxfordshire*", made it clear that advance warning signs could be taken into account when looking at whether the restriction has been adequately signed. He also emphasised that an adjudicator must have regard to the TSM as well as the TSRGD.

4.9. The Adjudicator did just that at Paragraph 14 when he quoted from Chapter 1 of the TSM:

"The Traffic Signs Manual is intended to give advice to traffic authorities and their agents on the correct use of signs and road markings. Mandatory requirements are set out in the current version of the Traffic Signs Regulations and General Directions. Nothing in this manual can override these. ... It is for traffic authorities to determine what signing is necessary to meet those duties although failure to follow the Manual's guidance without good reason might well

lead to enforcement difficulties. In particular, adjudicators might consider such failure to be evidence that the signing was unclear. Traffic authorities should always remember that the purpose of regulatory signs is to ensure that drivers clearly understand what restrictions or prohibitions are in force.”

4.10. The different Chapters of the TSM have recently been revised and reissued, but the underlying principles are preserved.

4.11. Chapter 1 provides an overall and general discussion about signs and the principles of signing. At Paragraph 3.1.3, it reminds traffic authorities that:

“Section 122 of the Road Traffic Regulation Act 1984 places a duty on authorities to exercise their functions under the Act (which include the provision of traffic signs) “to secure the expeditious, convenient and safe movement of traffic”.”

4.12. At Paragraph 4.1.1, TSM Chapter 1 also explains that: *“Signs are used to control and guide traffic and to promote road safety.”*

4.13. The Adjudicator quoted from the previous version of the TSM (in many ways clearer), which was current when the John Dobson Street bus gate restriction was introduced.

4.14. Chapter 3 of the TSM deals with regulatory signs (which include bus lane and bus gate signs), i.e. signs that convey a statutory requirement by virtue of a traffic order made by the authority. It provides plans and diagrams showing where the signs should be placed at the point of the restriction.

4.15. The Adjudicator did consider the significant paragraph from the Beatson J’s “Oxfordshire” judgment at Paragraph 16 of the Decision:

“Where the signs have not been placed in positions where they cannot be seen or easily seen, are not obstructed by vegetation or other street furniture and are clearly visible and comply with departmental guidance there must be strong reasons given for concluding that they do not provide adequate information...”

4.16. Adjudicators usually describe the ‘Beatson test’ from this famous extract without the double negatives:

Signs must be placed so that they:

- can be seen or easily seen
- are not obstructed by:
 - vegetation
 - other street furniture
- are clearly visible and:
- comply with departmental guidance; there must be strong reasons given for concluding that they do not provide adequate information.

4.17. Over the years since then, adjudicators have added to the list of potential obstructions, *“anticipated other traffic, especially buses”*. This is because they have dealt with so many cases where the signs or surface marking are regularly obscured by buses, stationary or moving.

4.18. The Adjudicator also cited Mrs Justice Lang’s “Nottingham”.

4.19. At Paragraph 18 of the Decision he sets out:

“18. The two questions in these cases concerning signing therefore are:

a. Do the signs used by the Council comply with the Traffic Signs Regulations 2002 or 2016?; and, if they do,

b. Are they adequate for securing information as to the effect of the traffic regulation order creating the bus gate restriction is made available to persons using the road?”

4.20. The Adjudicator then describes the signing, and absence of signing in Paragraphs 25 to 35. He concludes at paragraph 36:

“36. The signs used by the Council appear to substantially comply with the current regulatory requirements. It also appears the Council have attempted to adopt the recommendations made in the Traffic Signs Manual. However, overall I do not consider the signing to be adequate to alert the motorist of the effect of the Traffic Regulation Order.”

4.21. At Paragraphs 37 and 38 he explains his findings:

“37. John Dobson Street (northbound) was a through route to all traffic for a significant period of time. A considerable amount of traffic utilised the road as such. Prior to the introduction of the bus gate, there was (to all intents and purposes) a lane of traffic in each direction that the general motorist could not use – but it was still possible to exit north. The primary effect of the Traffic Regulation Order is to make John Dobson Street (northbound) a no through route to most traffic, yet there is no advanced signing prior to the vehicles entering via Durant Road other than a vague wording of “other traffic”. Similarly there is no warning prior to the junction with Durant Road for vehicles coming from the Market Street area that John Dobson Street is a no through route north, other than what I consider to be the vague wording I have referred to.

38. A motorist is entitled to know what lays ahead of him prior to entering a road and before the most obvious opportunity to change his general direction has passed. Added to the lack of advanced warning signs is the fact that there is a real likelihood that a motorist is likely to miss the one advanced sign capable of warning him to turn around before the bus gate is reached.”

4.22. Paragraph 38 is highlighting the different considerations to be taken into account for a moving traffic contravention. This important point was touched upon by Beatson J in “Oxfordshire”, when he made it clear that advance warning signs could be taken into account when looking at whether the restriction has been adequately signed.

4.23. The need to consider signage in a moving traffic case was also noted by Mrs Justice Lang in “Nottingham”:

“The Adjudicator was entitled to emphasise the importance of consistency in signage, to avoid confusion among road users who may be travelling at speed, in unfamiliar places, perhaps when visibility is poor.”

4.24. Although “Oxfordshire” and “Nottingham” have been the only High Court decision concerning bus lanes, *Coombes v DPP [2006] EWHC 3263 (Admin)* examined the placing of signs to convey a speeding restriction. That case addressed the situation of traffic signs leading to and at the point where a speed limit begins.

4.25. In the case, Mr Justice Walker, at Paragraph 22 said the:

“test involves a requirement that, at the geographical point where the motorist exceeded the limit, the signs could reasonably be expected to have conveyed the limit to an approaching

motorist in sufficient time for the motorist to reduce from a previous lawful speed to a speed within the new limit"

4.26. The High Court made it clear that the cumulative effect of signs should be taken into account in considering whether a moving traffic offence had been committed:

"as [the driver] approached the signs at the start of the relevant stretch, then if he had not had local knowledge he would not have had time to reduce his speed below 30 m.p.h. when he entered the relevant stretch. This seems to me to be an assessment by the court of the cumulative effect of the roadside signs and roundels."

4.27. *Coombes v DPP* also established that it is irrelevant when considering the impact of signing on whether or not an offence had been committed that a local would know of the restriction (i.e. it is not a subjective test).

4.28. Therefore, for moving traffic, the signs used at the site of the bus gate restriction may comply with the TSRGD and TSM Chapter 3, but if, say, the driver has no forewarning, and is faced with having to do a U-turn to avoid the restriction, can the authority be said to have complied with Regulation 18?

4.29. Advance directional signs are not regulatory signs and so are not dealt with in Chapter 3 of the TSM, although Chapter 1 makes it clear that traffic authorities should utilise the full suite of signs contained in TSRGD. It is implicit that the Regulation 18 duty to bring to the attention of road users the effect of the various traffic restrictions and instructions requires the traffic authority to utilise such TRSDGD signs as are necessary.

4.30. Schedule 12 of TSRGD deals with directional signs and comprises 29 Parts set out in 100 pages. They include approved wording for, for example, "alternative route" and "avoiding". The signs on the approaches to the roundabout off the A167(M), where the B1309 sign to John Dobson Street is placed, should have been replaced with signs utilising these approved word providing the necessary advice as to the alternative route to be taken.

4.31. Taking in the scope of TSRGD and the TSM, it is clear that although the signs immediately at the John Dobson Street bus gate complied with TSRGD, NCC's duty to bring the restriction to the attention of the road user is not limited to the signs placed at the restriction, and that the bus lane authority has not necessarily fulfilled its duty under Regulation 18.

4.32. This conclusion significantly widens the range of the Adjudicator's decisions 'first wave' cases. For these reasons I reject NCC's submission that the Adjudicator's Decision had inconsistencies within itself.

5. A new traffic scheme

5.1. Introducing a new traffic scheme requires as much attention to compliance and potential enforcement as to the engineering of the scheme. NCC state that they had issued warning notices for fourteen days after the new restrictions came into force. This demonstrates that NCC recognise that people unfamiliar with the new restriction may not readily or intuitively recognise the restriction and work out what they should do to avoid it.

5.2. It is significant that all the appellants in these five cases did not reside in Newcastle (although some live nearby) and some said they had not been in the city since the restriction was put in place. This was the common fact to these appeals.

The significance of the B road

5.3. The sign indicating the B1309 on the roundabout on exiting the A167(M) is fundamental to the misleading of drivers arriving at John Dobson Street. I have commented on the sign to the B1309 remaining in place at the A167(M) roundabout when I set out the appellants' cases above. The appellants either expressly said they had come from the A167(M); or it can be inferred from where they were coming from. Not only would they have come off the roundabout and taken the road signed as the B1309 leading to the city centre, they would also have arrived at the Durant Road junction with John Dobson Street.

5.4. The system of roads classification is intended to direct motorists towards the most suitable routes for reaching their destination. It does this by identifying roads that are best suited for traffic.

5.5. The statutory *Guidance on Road Classification and the Primary Route Network*, published by the Department for Transport (DfT) on 13 March 2012, describes road classification at Paragraph 1.13 as:

- A roads – major roads intended to provide large-scale transport links within or between areas.
- B roads – roads intended to connect different areas, and to feed traffic between A roads and smaller roads on the network.

5.6. A bus gate restricting through traffic, therefore, is a contradiction of what is a 'B road'.

5.7. The B1309 has not, so far as I am aware, been declassified. The signing, and retention of the classification, means that NCC are giving conflicting messages to road users that interferes with their Regulation 18 duty. By keeping the road as a B road (despite it being simple to change its status) they are saying in effect, *"we hereby inform you that this road is suitable for general traffic to access particular areas and to connect with other roads"*.

5.8. As the appellants have pointed out – in less technical terms – their confusion was compounded by the sign indicating the B1309 on the approaches to the roundabout off the A167(M), and the absence of a sign at the junction of the B1309 (Durant Road) and John Dobson Street; which, together, provide inaccurate information.

5.9. Drivers are effectively misled into to approach what is – in effect – a dead end, except for buses and authorised vehicles. The neglect to remove the misleading sign at the roundabout, and the failure to provide any sign indicating at the junction of Durant Road and John Dobson Street that turning right is not a through road, amount to fundamental negligence.

The advance direction sign before the bus gate.

5.10. There are two difficulties with the advance direction sign ahead of the restriction in John Dobson Street itself – the first relates to the information it conveys, and the second to its visibility to drivers of moving vehicles.

5.11. The Adjudicator described the advance direction sign as "vague". In my view it is, in fact misleading and wrong. Both the turnings to the left are shown by a line with a chevron point at the end, indicating a through road.

5.12. The consequences of taking either turning are described in the Notice of Rejection ("NoR") – the bolding is my emphasis:

*"If motorists follow the directions for 'Other traffic' they will be able to use the one way system in place to avoid the bus lane. Vehicles should turn on to Northumberland Road and then follow the one way system, which goes around the NCP car park, to North Street and back to the junction with John Dobson Street. At this point drivers should turn right, taking them away from the bus lane to find **an alternative route to their intended destination**.*

*Alternatively, motorists still have a chance to avoid the bus lane by following the directions for 'Ridley Pl only'. The bus lane commences just after the junction with Ridley Place and whilst **Ridley Place is a not a through road**, there is sufficient space to turn around and return to John Dobson Street. Unauthorised vehicles should not turn left out of Ridley Place; there are signs in place and a directional arrow on the road advising drivers to turn right, as this will take them away from the bus lane."*

5.13. Although the NoR included the map (see **Annex 4**), it did not indicate a route to the city centre, where the driver would have been heading. Therefore the 'Other traffic' turning takes the driver round a circuitous route to head back the way they came (see **Annex 3: Google Street View Image 2**), so cannot properly be described as a through route. There is no reason why the diagram on the sign on John Dobson Street does not convey the route.

5.14. The Ridley Place turn ('Ridley Pl') should have the red 'no through road' ending to the line. This is a fundamental error.

5.15. The NoR also points to problems with the scheme as a whole. There must be serious doubts about the enforceability of a restriction where so many drivers reach the point of no return and either have to turn into a cul-de-sac and struggle with a U-Turn, or have to make a U-turn at the restriction itself. Given that there are frequent buses travelling in both directions that latter manoeuvre could be described as ill-advised. The situation is similar to the driver reaching the speed limit sign at the beginning of the limit, which gave rise to Walker J, in *Coombe v DPP*, finding that the speed limit was unenforceable.

5.16. The Adjudicator also found that the advance warning sign prior to the bus gate "is not sufficiently visible if the motorist is following a bus". Subsequently NCC have produced two videos that clearly illustrate that common situation (see still photos taken from videos at **Annexes 1 and 2**).

5.17. It should always be borne in mind that a road with a section set aside for buses is likely to have a frequent occurrence of buses, both single and double decker. Buses can reasonably be anticipated on a bus route, in both directions, and in bus lanes. There will inevitably be frequent times when a driver is following a bus, which is also likely to stop at a bus stop. Therefore, the presence of buses must be factored in to sign design and engineering.

5.18. The Adjudicator was justified in taking into account the sign, and the absence of a sign, in reaching his conclusion that, overall, the signing is not adequate to convey the effect of the Traffic Regulation Order.

5.19. I have rejected NCCs contention that the Adjudicator's Decision in these five appeals was inconsistent with his decision on the first wave of appeals. I agree with NCC that motorists are likely to be confused, not because of potential inconsistency, but because of signing, conflicting directional advice and lack of information. In their submission, NCC says itself that it does not know whether to introduce new signs. The Adjudicator's decision could not have provided a clearer description of the signing problem. It is not for adjudicators to tell a council how to design and sign a traffic scheme. The authority is obliged not just to sign the restriction itself, but when a new

scheme is introduced to sign directions for the alternative route. Where this is successfully achieved, it is unlikely to give rise to appeals such as these.

5.20. These five cases turn on their own particular facts. There will have been drivers who received a PCN who may have taken a different route to John Dobson Street. While in most cases NCC will not know from which direction the driver came, it nevertheless emphasises the importance of properly and sensibly considering representations.

5.21. The introduction of a new traffic scheme requires as much attention to compliance and potential enforcement as the engineering of the scheme itself. It is now recognised that embedding a new scheme involves the three 'Es': engineering, education and enforcement. The introduction of the John Dobson Street bus gate – and severing of a main route to Newcastle City Centre was bound to be an engineering challenge. Compliance would always need to be achieved by education, both of locals and infrequent visitors.

5.22. NCC has explained that they had issued warning notices for 14 days. This demonstrates that they recognise that people unfamiliar with the new restriction may not readily or intuitively recognise the restriction and work out what they should do to avoid it. Adjudicators have regularly commented that confining the issuing of warning letters to the first 14 days of the start of the restriction is misguided. A driver from outside the vicinity may not have been aware of any public information and they may not be a regular visitor to the city.

5.23. It is significant that all the appellants in these appeals did not reside in Newcastle, and some said they had not been in the city since before the restriction was put in place. Of the 53 appeals relating to the John Dobson Street restriction currently awaiting an adjudicator's consideration, only 13 are Newcastle residents (I have not asked NCC to comment on this since they already have this information).

5.24. It is easily possible to send warning letters for as long as it takes for the first incidence of contravening the restriction, with a helpful explanation of the alternative route that will take a driver to the far side of the restriction (as opposed to explaining how to retrace their route). This policy can also be sensibly applied to representations where it is clear that it is a first-time contravention. Enforcement is a last resort for those who have been warned.

5.25. That said, if the signing is improved, fewer PCNs will need to be issued.

5.26. Since these cases are principally about signing, I will quote from Sir Alan Duncan's foreword to the report issued by the Road Signs Task Force – a review of road signs and decluttering that he was chairing. The report was published around the time of these incidents in Newcastle. In the introduction to the report, issued in March 2017, he explained the purpose of road signs:

First, they provide information. This includes giving directions, such as providing information on road conditions, the route, and places of interest and facilities. Good information, particularly on direction signs, helps keep traffic moving and enables road users to be confident that they will be able to navigate their way to their destination.

Second, they give warnings of hazards ahead such as low bridges or schoolchildren crossing. Warning signs can play an important part in improving road safety, where appropriately used to warn of specific safety issues or hazards.

Third, they regulate the use of the road. This includes signs prohibiting movements, setting parking restrictions, and indicating speed limits. Regulating traffic in this way is a necessary part of

managing the roads to ensure they are used as efficiently and safely as possible.

5.27. This clearly sets out in simple language the wider responsibilities of traffic authorities. In these five cases, the Adjudicator was entitled to reach the decision that Newcastle City Council had not fulfilled its duty to sign the effect of the John Dobson Street bus gate.

Caroline Sheppard OBE,
Chief Adjudicator, Traffic Penalty Tribunal

Wednesday 15 July 2020.

ANNEX 1: Video Clip 10.38 am Screen Captures

Image 1: Driving north on John Dobson Street past B1309 (Durant Street) turning on right.



Image 2: Driving north on John Dobson Street approaching North Street turn-off left. The bus ahead is obscuring the oncoming directional sign for the Bus Lane / available turn-offs at this point.



Image 3: Driving north on John Dobson Street, past directional sign indicating two available left turns before the Bus Lane ('Other traffic' and 'Ridley Pl only') and 20 mph markings on road.



Image 4: Driving north on John Dobson Street, arriving at a Bus Stop between the recently passed directional sign for the Bus Lane and the first available left-turn before it (which was indicated as 'Other traffic' on the directional sign). The Bus Stop is positioned just before the available left turn.



Image 5: Driving north on John Dobson Street; the first available left-turn before the Bus Lane, shortly after the Bus Stop, comes into view (what was indicated as 'Other traffic' on the preceding directional sign).



Image 6: Driving north on John Dobson Street approaching Ridley Place (the second available left turn before the Bus Lane, indicated as 'Ridley Pl only' on the preceding directional sign).



Image 7: Driving north on John Dobson Street, meeting the turn-off for Ridley Place (the second available left turn before the Bus Lane, indicated as 'Ridley Pl only' on the preceding directional sign).



Image 8: Driving north on John Dobson Street, across the turn-off for Ridley Place (the second available left turn before the Bus Lane, indicated as 'Ridley Pl only' on the preceding directional sign).



Image 9: View looking north on John Dobson Street after entering the Bus Lane; indicating that buses may stop / queue.



ANNEX 2: Video Clip 11.10 am Screen Captures

Image 1: Driving north on John Dobson Street under Berwick Court, with directional sign on left ('Local traffic only' / 'Parking John Dobson Street' and 'Other traffic' to turn right).



Image 2: Driving north on John Dobson Street; directional sign indicating two available left turns before Bus Lane ('Other traffic' and 'Ridley Pl only'), from the perspective of being in the middle of the road (following overtaking bus).



Image 3: Driving north on John Dobson Street; first available left-turn before the Bus Lane comes into view (what was indicated as 'Other traffic' on the preceding directional sign). Taken from the perspective of a driver that has overtaken a parked bus at the Bus Stop, which is located just before the available turn.



ANNEX 3: Google Street View Images

Image 1: Driving north on the slip road off the A167(M) approaching the roundabout with sign indicating 'City Centre B1309', accompanied by Shopmobility graphic.
Google Street View, June 2018



Image 1a: Close-up of sign indicating 'City Centre B1309', accompanied by Shopmobility graphic, on approach to roundabout off the A167(M).
Google Street View, June 2018



Image 2: View of first available left-turn off John Dobson Street on to Northumberland Road (indicated on preceding directional signage as 'Other traffic').
Google Street View, June 2018



Image 3: View of second available left-turn off John Dobson Street when driving north, before the Bus Lane, on to Ridley Place. This follows the preceding directional sign (indicated as 'Ridley Pl only'). Note that a driver faces dead-ends straight-on and right.
Google Street View, August 2018



ANNEX 4: NCC Map of John Dobson Street Bus Gate

