



**DECISION NOTICE OF SHERIFF COLIN DUNIPACE,
JUDGE OF THE UPPER TRIBUNAL FOR SCOTLAND
(GENERAL REGULATORY CHAMBER)**

IN THE CASE OF

Glasgow City Council, City Chambers, George Square, Glasgow, G2 1DU

Appellants

Against

Ms Christina Gallagher, 64 Ochilmount, Bannockburn, Stirling, FK7 8PJ DD51LX

Respondent

FTS case reference BL00021-2504

26 June 2026

Decision

The Upper Tribunal sustains the appeal and remits the matter back to the First-tier Tribunal for determination on its merits.

Introduction

1. This is an appeal by Glasgow City Council (“the Appellants”), who have been granted leave to appeal a decision of the First-tier Tribunal (“the Tribunal”) dated 30 July 2025. By way of background, the original matter initially called for a Telephone Hearing on 13 June 2025. Ms Christina Gallagher (“the Respondent”) attended at that Hearing, although the Appellants did not.



The Respondent had appealed against a Bus Lane Enforcement Charge Notice (“Charge Notice”) issued by the Appellants on March 2025, relating to an alleged Bus Lane contravention on 27 February 2025 at 08:58 hours, the allegation being that the Respondent had driven her motor vehicle, registration number SJ19HRB, in a Bus Lane at Oswald Street/ Midland Street during its hours of operation. The Appeal Hearing was adjourned until 31 July 2026 to enable the Appellants to provide written submissions on two discrete, and two subsidiary questions, namely:

(a) Is the area of road into which the appellant is alleged to have driven in relation to Charge Notice (‘CN’) BL73634147 a Bus Lane as defined in s.44 of the Transport (Scotland) Act 2001 (‘2001 Act’)?

(i) the relevance (if any) of the 2010 Order definitions of ‘Bus Lane’ and ‘traffic lane’ to s.44 of the 2001 Act; and

(ii) if those definitions do apply here, whether what is claimed to be a Bus Lane is one by law where it takes up the entire width of a carriageway (as opposed to a part of the carriageway separated from other parts of the carriageway by road markings).

(b) Is the area of road into which the appellant is alleged to have driven in relation to CN BL73634147 a Bus Lane as defined in The Glasgow City Council (City Centre)(Traffic Management) Order 2010 (‘the 2010 Order’), as amended?

2. The Appellants responded to the foregoing request by reference to The Glasgow City Council (City Centre)(Traffic Management) Order 2010 (Variation Number 24) (Bus Priority) Order 2019, which they contended included the definition of a Bus Only Route, and which was added into the City Centre TRO by Amendment No. 16. Reference was also made to special authorisation from Transport Scotland.

3. The Tribunal thereafter decided that the salient issue was not whether the Respondent drove where the Appellants allege, (which did not in fact appear to be in dispute), but rather



concerned a question of legal classification in respect of whether the stretch of road allegedly driven in by the Respondent constituted a “Bus Lane” in law, such that a Bus Lane contravention could occur. The Legal Member considered the following legal instruments, namely:

1. Transport (Scotland) Act 2001, section 44 (“the 2001 Act”)
2. The Bus Lane Contraventions (Charges, Adjudication and Enforcement) (Scotland) Regulations 2011
3. Traffic Signs Regulations and General Directions 2016 (TSRGD 2016)
4. The Glasgow City Council (City Centre) (Traffic Management) Order 2010, as amended (including 2011 and 2019 variations)

4. In determining the matter the Legal Member observed that the 2001 Act did not specifically define a “Bus Lane” in its interpretation section, rather referring to it indirectly as an “*area of road*” in sections 44(3) and (4). The Legal Member decided that given Parliament had intended the term “Bus Lane” to carry its existing meaning from existing traffic legislation, that the relevant definition of this term could be found in TSRGD 2016, which contained the following definition:

“A *Bus Lane* is a traffic lane reserved for buses, where a *traffic lane* is a part of a carriageway, separated from other parts by road markings.”

5. Applying this definition, the Legal Member concluded that a Bus Lane could only constitute a part, and not the whole of a carriageway, and it therefore followed logically that it could not constitute an entire road, this definition aligning with the TSRGD 2016 definitions.

6. The Legal Member also concluded that the purpose of s.44(4) of the 2001 Act was to provide that a contravention could only occur where the instrument in question specified that the area of road (being a Bus Lane) could only be used by buses (and any other specified class of traffic), and that its terms concerned the contents of the instrument creating the contravention, and were not intended to define what constituted a Bus Lane. Support for this proposition was said to subsist in the fact that the term ‘Bus Lane’ had already been defined in other traffic legislation. Accordingly, it followed that if Parliament had intended that the same phrase should mean something different for the purposes of a Bus Lane contravention, it would have made its intentions in this regard



explicit. The Legal Member further concluded that authority existed for the proposition that the 2016 regulations and the 2001 Act were linked, with the former being about the signage for Bus Lanes, and the latter being about contravention of Bus Lane restrictions in traffic regulation orders.

7. The Legal Member thereafter determined that the ordinary and natural meaning of the term 'lane,' in the context of traffic, could only refer to part of a carriageway, and not to its entirety. The purported justification of their position by the Council by reference to The Glasgow City Council (City Centre) (Traffic Management) Order 2010 (Variation No. 24) (Bus Priority) Order 2019 ('2019 Order'), which listed the location in question (under a new schedule 46a) as a 'bus-only route' was noted, however the Legal Member concluded that as the definition of the term 'bus-only route' was added into the 2010 Order by the Glasgow City Council (City Centre) (Traffic Management) Order 2010 Amendment No.6 (Bus Lanes) 2011 (2011 Order), that this definition referred to an area of road restricted to buses and other specified classes of vehicle. However it was stated that a 'bus only route' and a 'Bus Lane' were defined differently by the Council in the relevant Traffic Regulation Order. The Charge Notice related to a Bus Lane, and accordingly the Council could not, having served this Notice alleging that the vehicle was driven in a Bus Lane, change the basis of that contravention to one involving driving in a 'bus-only route.' The 2011 regulations (from which the Council's powers derived) only related to driving in a Bus Lane, not a bus-only route, and since they were defined differently by the Council in the same Traffic Regulation Order, the Council could not argue that they are one and the same. The Scottish Ministers authorisation lodged by the Council was said not to assist either way here.

8. The Legal Member ultimately concluded therefore that when Parliament authorised the creation of Bus Lanes, that it intended to allow local authorities to delineate parts of a carriageway for the use of buses only, allowing other types of traffic to use the remainder of the carriageway alongside the Bus Lane, and facilitating buses to move around town centres more quickly than other types of traffic in these lanes delineated for them. However the Council was not entitled to use that legislation to create a bus only section of road and thereafter treat it for enforcement purposes as if it is a Bus Lane. The corollary of this position therefore was that the Council could not use Bus Lane contravention legislation to regulate drivers who are alleged to have driven in



the stretch of road on which the appellant drove. The Legal Member accordingly upheld the Respondent's appeal.

9. The Council sought leave to appeal against this decision and leave to appeal was granted by a Legal Member on the following eight grounds on 1 September 2025.

The Grounds of Appeal

10. The grounds of appeal in respect of which leave to appeal were granted were as follows:
- (i) *First, the FTT misdirected itself by failing to identify that the question which it required to answer was not whether the appellant had driven in a 'Bus Lane,' but rather whether a 'Bus Lane contravention' had occurred, as defined in s44(3) and (4) of the Transport (Scotland) Act 2001 ("the 2001 Act"), entitling the Council to impose a civil penalty in terms of Regulation 3 of The Bus Lane Contraventions (Charges, Adjudication and Enforcement) (Scotland) Regulations 2011 (SSI 2011/442) ("the 2011 Regulations"). The FTT approached the key issue as being the definition of 'Bus Lane', and when it did not find it as a defined term in the 2001 Act (which itself amounted to an error, see (ii)), it proceeded to adopt a definition from a (later) statutory instrument. Regulation 3 of the 2011 Regulations, read together with s44(3) and (4) required the FTT to consider whether a 'Bus Lane contravention' had occurred, and in particular, whether the order relied upon by the respondent provides that the area of road may only be used by buses (or by buses and some other class of vehicle). In failing to do so it misdirected itself as to the applicable legal framework and erred in law.*
- (ii) *Second, the FTT erred in its interpretation of s44(3) and (4) of the 2001 Act, by failing to give the natural and ordinary meaning to the words used in those provisions, and, in particular, by failing to recognise that section 44(4) defined the term "an area of road which is or forms part of a Bus Lane" in section 44(3) for the purposes of determining whether a Bus Lane contravention had occurred (§8). In rejecting the interpretation of s44(4) which provides a definition for the purposes of s44(3), the FTT ignored the opening words of s44(4): "For the purposes of subsection (3) above, an area of road is or forms part of a Bus Lane if." The words of section 44(3) and (4) are clear and unambiguous and do not produce any absurdity. The words ought to have put an end to the matter, and the FTT erred in concluding otherwise. The FTT erred in concluding that*



s44(4) did not define a term used in s44(3).

(iii) Third, to the extent that the FTT relies upon abstract 'Parliamentary intention' that only 'a part of the carriageway' should be designated for buses (the source of the intention being unexplained) (§13), the FTT erred in looking beyond the terms of the statutory provision in the absence of any ambiguity in the statutory wording which made it appropriate to do so.

(iv) Fourth, to the extent that the FTT attempts to rely on the principle of interpretation 'in pari materia,' i.e. that a provision in one Act is to be read as a whole with another Act on the same subject matter, that principle does not apply (§10). The 2001 Act and the Traffic Signs Regulations and General Directions 2016 ("the 2016 Regulations") are not part of the same subject matter such that they can be read together as forming one system and as interpreting and enforcing one another. The FTT recognises in terms that the purpose of the 2001 Act and the 2016 Regulations are different: "the former is about signage for Bus Lanes, the latter is about contravention of Bus Lane restrictions in traffic regulation orders" (§10). To the extent that the FTT relied upon the principle that there is 'equivalence' in the definitions of 'Bus Lane' in the 2001 Act and the 2016 Regulations, it erred in doing so.

(v) Fifth, the FTT erred in proceeding on the basis that different statutes could not define terms differently without explicitly referring to one another (§9). There is no such principle of statutory interpretation.

(vi) Sixth, the FTT erred in relying on a definition which is included in the 2016 Regulations (§8) as having any bearing on the correct interpretation of the 2001 Act, passed 15 years earlier.

(vii) Seventh, in determining that a CN that was issued in respect of a Bus Lane contravention could not incorporate a 'bus only route' contravention, the FTT erred in failing to appreciate that 'Bus Lane contravention' is a term of art in s44(3) of the 2001 Act and is broad enough to incorporate both Bus Lane and bus-only route contraventions provided for in the City Centre TRO.

(viii) Eighth, the FTT misdirected itself by relying on *Hazard v Glasgow City Council*, where the factual circumstances can be distinguished. *Hazard* involved a Bus Lane, and not a bus-only route. It involved consideration of whether the road markings were adequate, thus involving the requirements of the 2016 Regulations and the Traffic Signs Manual. That was not the basis upon which the FTT proceeded in this appeal.



The Hearing

11. A Hearing in respect of this Upper Tribunal Appeal matter took place on 4 March 2026 by WebEx, and I have taken cognisance of all the submissions received in this case. The Appellants were represented by Mr Dewart, Advocate, and the Respondent also participated. In advance of the Hearing the Appellants submitted reference to a previous Upper Tribunal decision in the case of Aberdeen City Council and Alison Wilson (Reference UTS/AP/25/0127). No authorities were referred to by the Respondent.

Discussion

12. This appeal concerns the proper interpretation of section 44 of the Transport (Scotland) Act 2001. Although leave to appeal was granted on a number of separate grounds, they ultimately raise a single central question: whether the expression "Bus Lane" in section 44 is confined to a lane forming part of a carriageway, or whether it extends to an area of road encompassing the entire width of a carriageway where use is restricted to buses and other specified classes of traffic, and accordingly, I intend to take a broad-brush approach in relation to this matter. In particular, the issue is whether the expression "Bus Lane" contained within that provision is confined to a longitudinally segregated part of a carriageway, or whether it is capable of extending to a restriction which can apply to the entire width of a road, thereby creating what is commonly described as a "bus gate" or "bus route" (the latter term being adopted herein).

13. The question for determination therefore is whether, for the purposes of the 2001 Act, the phrase "Bus Lane" necessarily comprises only part of a carriageway, or whether on a proper construction of the statutory language, it may encompass a restriction applying to the whole of a road. Further the issue is whether the phrase "area of road" used in the legislation is capable on a proper interpretation of including the entirety of a road, and whether such a section of road from which general traffic is excluded may properly fall within the statutory concept of a "Bus Lane."

14. A related question is whether in the event that local authorities do possess a statutory power under the aforementioned section 44 to impose restrictions which, in effect, create a section



of road usable only by buses and other specified vehicles, they are entitled to enforce such restrictions by means of the civil penalty regime provided for in that section.

15. The Tribunal had allowed the Respondent's appeal on the basis that the location in question did not constitute a "Bus Lane" in law for the purposes of section 44, and the present appeal therefore turns on a question of statutory interpretation, namely whether the expression "Bus Lane" is limited to a physically or longitudinally segregated lane within a carriageway, or whether the phrase "any area of road" is sufficiently broad to permit restrictions to apply across the entire width of the carriageway, thereby creating what is commonly referred to as a "bus gate" or "bus-only route".

16. The Appellants contend that the Tribunal erred in its interpretation of the legislation, by drawing an unwarranted and unnecessary distinction between "Bus Lanes" and "bus routes," and in failing properly to recognise that section 44 provides a statutory basis for the designation and enforcement of such routes.

17. In determining this matter it might be useful at this stage to distinguish between these concepts. A "Bus Lane" might ordinarily be understood as a designated portion of a carriageway reserved for buses and certain specified vehicles, running alongside lanes which remain available for general traffic. Whilst these lanes may operate continuously or during specified periods, a defining feature is that general traffic is still permitted to use the remainder of the road.

18. By contrast, a "bus gate" or "bus route" typically operates by restricting the use of the entire width of a road to buses and other authorised vehicles, thereby excluding general traffic altogether. The crucial distinction, therefore, lies in the extent of the restriction imposed. Whilst a Bus Lane regulates part of a road, a bus route effectively regulates the whole of it. Accordingly, a central issue in this appeal is whether sections 44(3) and (4), which provide for the imposition of civil penalties for Bus Lane contraventions, are confined to the former situation, or whether they extend to the latter, thereby authorising local authorities both to create bus-only routes and to enforce them by way of penalty charges.



19. As mentioned above authority for the imposition of Charge Notices is contained within Section 44(3) of the 2001 Act, which provides for the imposition of civil penalties where there is a contravention relating to:

“the use of an area of road which is or forms part of a Bus Lane.”

20. Some further clarification of the definition in this regard can be found in Section 44(4) of the Act which provides that:

“an area of road is or forms part of a Bus Lane if the order provides that it may be used only by buses or by buses and other specified classes of traffic.”

Factual Background

21. The factual matrix in the present appeal does not appear to be in dispute. It is accepted that a Charge Notice was issued to the Respondent on 8 March 2025 in respect of an alleged contravention which occurred on 27 February 2025 at 08.58 hours when the Respondent’s vehicle, registered number SJ19HRB, was said to have been in a Bus Lane during its hours of operation in Oswald Street/Midland Street, Glasgow. The Charge Notice issued at that time was in respect of contravention Code 34 which defines the contravention as “Being in a Bus Lane.” It is also accepted that the relevant restriction at that locus in Glasgow purported to apply across the full width of the carriageway and permitted its use only by buses and certain specified classes of traffic. As mentioned above such a restriction is commonly described as a “bus gate or bus route.”

22. The Respondent appealed against the imposition of the Charge Notice to the First-tier Tribunal, which allowed their appeal. Whilst their reasoning is set out in more detail above, broadly the Tribunal held that a “Bus Lane” as defined within the meaning of section 44 of the Act could not include a restriction which extended across the full width of the road but rather could only constitute part of that that carriageway. Applying that interpretation the Tribunal therefore concluded that no contravention could arise since there was, in law, no “Bus Lane” in existence at that locus.



The Legislation

23. The terms of section 44 of the Transport (Scotland) Act 2001 provide as follows:

44 Civil penalties for Bus Lane contraventions

(1) The Scottish Ministers may by regulations make provision for or in connection with—

(a) the imposition by approved local authorities of charges in respect of Bus Lane contraventions; and

(b) the payment of such charges.

(2) An authority is an approved local authority if—

(a) an order designating the whole or any part of their area has been made under paragraph 1(1)(d) or 2(1)(c) of Schedule 3 to the Road Traffic Act 1991 (c.40) (permitted and special parking areas outside London); and

(b) the Scottish Ministers have made an order specifying them as an approved local authority for the purposes of this section.

(3) 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.

(4) For the purposes of subsection (3) above, an area of road is or forms part of a Bus Lane if the order in question provides that it may be used—

(a) only by buses; or

(b) only by buses and some other class or classes of traffic specified in the order



Decision

24. For the reasons which I will now outline, I have concluded that the expression “Bus Lane” in section 44 is capable of including any area of road subject to a bus-only restriction, whether comprising a longitudinal part or the entirety of the carriageway, and this appeal is accordingly allowed.

25. Whilst I acknowledge that the Legal Member in his determination has made reference to separate regulations primarily related to signage, in my view such considerations perhaps unduly and unnecessarily cloud the central issue in dispute, that is in relation to the proper construction of Section 44, and in particular section 44(4) of the Transport (Scotland) Act 2001.

26. The starting point in dealing with such matters must be the language of the relevant section 44 itself. Section 44(3) provides that a “Bus Lane contravention” arises in respect of the use of “an area of road which is or forms part of a Bus Lane”. Section 44(4) then provides:

“For the purposes of subsection (3), an area of road is or forms part of a Bus Lane if the order in question provides that it may be used only by buses, or by buses and other specified classes of traffic.”

27. In dealing with questions of statutory interpretation it is appropriate to consider the most natural construction of the words used in ascertaining the intention of Parliament in passing the legislation. In the present case as has been observed the terms of section 44(4) set out and define what constitutes an “area of road which is or forms part of a Bus Lane.”

28. On the construction used by the Tribunal, the terms of section 44(4) are entirely redundant, and it is difficult to conceive of a situation whereby this section would be necessary if this interpretation favoured by the Tribunal were to prevail. The phrase “an area of road” would be entirely unnecessary if the only use to which the section could be put was in relation to a longitudinal lane. The phrase “area of road” is unqualified and it is difficult to conclude that it could not constitute a latitudinal restriction as well as a longitudinal restriction, apt therefore to include the entirety of the carriageway as well as any part thereof. The alternative construction favoured and adopted by the Tribunal to the effect that subsection (4) does not define “Bus Lane,” but merely specifies a subset of Bus Lanes, effectively deprives the provision of any practical effect.



It is difficult to conceive of any area of road within a Bus Lane which did not already fall within the definition of a Bus Lane. The reading of the section adopted by the Tribunal therefore appears to have rendered subsection (4) entirely redundant which clearly could not have been Parliament's intention.

30. It has been noted that in reaching its decision that the Tribunal placed considerable reliance on the fact that the term "Bus Lane" has already appeared in other road traffic legislation, concluding, not unreasonably, that had Parliament intended to have different definitions for this phrase to be applicable in different situations, then this would have been specified, whereas it would be more logical for existing definitions to be consistent across all legislation. Accordingly and applying this approach to the interpretation of the section, further specification in relation to meaning where any ambiguity arose could be found by reference to that legislation.

31. The Legal Member found assistance in the terms of the subsequently enacted *Traffic Signs Regulations and General Directions 2016*, in Schedule One defines a "Bus Lane" as a traffic lane reserved for

(a) buses; and

(b) where indicated on a sign, authorised vehicles, pedal cycles, solo motorcycles, or taxis

32. It was pointed out that there was a nexus between these Regulations which provide for signage and the terms of section 44(4) which provides for enforcement of breaches of these regulations. However the terms of Schedule Three which refer to the applicable signage where there are regulatory requirements for moving traffic, simply refer to "Routes" for use by buses (and other specified vehicles) at Diagrams 953 – 953B. On the face of it therefore there may be some ambiguity in these Regulations which might make any reliance on them to interpret an earlier piece of primary legislation somewhat problematic. Accordingly whilst acknowledging the decision in *Hazard v Glasgow City Council* [2024] RTR 8 in relation to reading legislation and regulations together, it is difficult to conclude that in the event of ambiguity that the subsequent Regulations should be given priority over subsequent legislation. In any event overt reliance on the Regulations might have been misplaced given they are restricted to the prescription and use of road signage, and they do not purport to govern the scope of civil enforcement under the 2001 Act.



Accordingly there may not be a basis for importing those definitions when interpreting section 44. Whilst the two regimes are related in a broad sense, they address different subject matters.

33. The Tribunal had also sought to define a “lane” by reference to its ordinary and natural meaning, suggesting that this could only be part of a carriageway and not all of it. Whilst this definition would of course exclude single lane roads, even if this definition were accepted, it could not be determinative. It also ignored the terms of section 44(4). If the foregoing definition was correct, then there would be no need for that section at all. While there may be some superficial attraction in the approach adopted by the Tribunal in relation to the utilisation of may be a common usage, it is cannot provide a determinative definition. The statutory language, in particular the breadth of the phrase “area of road”, indicates that Parliament did not intend to confine the provision to that narrower meaning adopted by the Tribunal.

33. The Tribunal had proceeded on the basis that Parliament’s purpose was limited to permitting the reservation of portions of carriageways for buses, and accordingly it is perhaps also instructive to have regard to the terms of the Road Traffic Regulation Act 1984, which empowers traffic authorities to make Traffic Regulation Orders. Section One of this Order states that:

(1)[[F1](#)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).

Section 2 of the foregoing Regulations also provides that:

(1) A traffic regulation order may make any provision prohibiting, restricting or regulating the use of a road, or of any part of the width of a road, by vehicular traffic, or by vehicular traffic of any class specified in the order,—

(a) either generally or subject to such exceptions as may be specified in the order or determined in a manner provided for by it, and

(b) subject to such exceptions as may be so specified or determined, either at all times or at times, on days or during periods so specified.

34. This wide-ranging power accordingly clearly anticipates that using Traffic Regulation Orders, local authorities would have the power to make any provision” prohibiting, restricting, or regulating the use of a road, or of any part of the width of a road, by vehicular traffic.” Section 2 in particular makes clear that local authorities have the power to allow the prohibition, restriction or regulation of the use of a road, or any part of the width of a road by vehicular traffic or by classes of vehicular traffic, with the ability to impose such restrictions generally or subject to restrictions. Accordingly this provision clearly anticipates that entire roadways, as well as any part of the width of a road can be regulated.

35. It is clear therefore that Glasgow City Council had wide powers available to them when introducing the Glasgow City Council (City Centre) (Traffic Management) Order 2010, and that these included the power to prohibit the use of an entire road or any part thereof t a particular class of vehicle. The terms of these provisions make clear that Parliament intended to give local authorities such as the Appellants the power to prohibit, restrict or regulate the use of the road or



any part of its width, and that such powers would not be restricted to having the foregoing powers in relation only to parts of a road or to any lanes therein.

36. This 2010 Order was then subsequently amended by the Glasgow City Council (City Centre) Traffic Management Order 2nd Amendment No. 6 (Bus Lanes) 2011 which provided for additional definitions to be added in to the 2010 Order. This provides two definitions, at paragraph 1(c) stating that a:

“Bus Only Route” means an area of road specified in Schedule 46 which is restricted to buses and other classes of traffic prescribed in the Articles pertaining to the Schedule 46 and in respect of which traffic signs are in place indicating the controls.”

36. Article (4) defines a Bus Lane as follows:

““Bus Lane “ means any lane in a length of road identified in Schedules 37, 38, or 39 reserved either on a permanent basis or during hours specified in this Order for buses and other classes of traffic prescribed in the Articles pertaining to Schedules 37, 38, and 39 and in respect of which traffic signs are in place indicating the controls.”

37. It is clear therefore that the Order specifically distinguished between Bus Lanes and bus routes, and that Parliament had expressly provided that the local authority had the power to introduce both types of restriction.

38. The Tribunal expressed some difficulty with the ability of the local authority to define a term which already carried a statutory definition, but for the foregoing reasons I do not accept that the Appellants did not have the power to introduce the relevant restrictions.

39. Much of this appeal appears to be unduly tied up in questions of nomenclature. The powers provided by the 1984 Regulations clearly allowed the Appellants to make any provision “prohibiting, restricting or regulating the use of a road, or of any part of the width of a road”. It does not specify that such a restriction etc must go by a certain name, and it is difficult to understand why the Appellants should be prevented from using a power expressly provided to them due to a question of nomenclature. It is also difficult to understand why the terms of Article 1(c) should be held not to be valid simply because of a naming issue. The definition of “Bus Only



Route” as set out above clearly falls within the range of powers provided to the Appellants in terms of the 1984 Regulations, irrespective of nomenclature.

40. Accordingly I disagree with the conclusion of the Tribunal to the effect that the creation of a Bus Only Route is contravenes the spirit of the legislation. On the contrary it is entirely within the spirit of the legislation and in particular the 1984 Regulations that Councils should have the powers to restrict entire sections of road to certain categories of vehicle.

41. Thereafter given that the wide powers conferred by the Road Traffic Regulation Act 1984, which expressly permit prohibitions affecting either part or the whole of a road, it would clearly be entirely anomalous if Parliament had intended that:

- partial bus-only restrictions could be enforced by civil penalty, but
- full-width bus-only restrictions could not.

42. Whilst I can understand that it would be preferable for there to be separate codes for contraventions of Bus Route and Bus Lane contraventions, at present there is only one such Code, namely Code 34 which states that the contravention involves “Being in a Bus Lane.” No rational policy justification for such a distinction has been identified, and as such I consider it unlikely that Parliament intended such a result.

43. Accordingly and for the following reasons I have concluded that the expression “Bus Lane” in section 44 of the Transport (Scotland) Act 2001 can include any area of road subject to a bus-only restriction, whether that restriction applies to part or the whole of a carriageway.

44. The starting point must be the language of section 44 itself, and in particular the terms of Section 44(3) which provides that a “Bus Lane contravention” arises in respect of the use of “an area of road which is or forms part of a Bus Lane”. Section 44(4) thereafter provides:

“For the purposes of subsection (3), an area of road is or forms part of a Bus Lane if the order in question provides that it may be used only by buses, or by buses and other specified classes of traffic.”

45. I have concluded that the terms of subsection (4) provide a statutory definition for the purposes of subsection (3), and the phrase “for the purposes of subsection (3)” make clear that



Parliament intended to define what is meant by an “area of road... forming part of a Bus Lane” in this specific context. The phrase “area of road” is expressed in clear and unqualified terms, and this definition is not limited to only part of a carriageway. There is no basis for restricting it to a longitudinally segregated lane, and on any view the natural meaning of the words is apt to include “any defined area,” and this definition must be capable of including the entirety of a carriageway.

46. The interpretation favoured by the Tribunal would significantly and unnecessarily narrow and restrict the scope of subsection (4), and would effectively, render its wording redundant. If a “Bus Lane” were confined to a longitudinal marked traffic lane forming part of a carriageway, there would have been no need for Parliament to introduce the broader concept of an “area of road” defined by reference to the terms of a Traffic Regulation Order. The approach of the Tribunal would have been to effectively render this section irrelevant.

47. I have also not accepted that it is appropriate to import a definition of “Bus Lane” from the Traffic Signs Regulations and General Directions 2016 into the interpretation of section 4, given that, whilst those Regulations clearly serve a distinct purpose, in relation to the prescription of traffic signs and road markings, they do not however purport to define the scope of civil enforcement under the 2001 Act.

48. Further I have not concluded that the ordinary meaning of the word “lane” must be treated as being determinative of referring to part of a roadway. While in everyday language the phrase a “lane” could refer to part of a carriageway, Parliament has nevertheless chosen in section 44 to expand the relevant concept by reference to the broader expression “area of road”, coupled with a functional test based on restriction of use. Had they intended the narrower interpretation to apply then there would have been no need for this further definition.

49. It is also relevant to note that Traffic Regulation Orders made under the Road Traffic Regulation Act 1984 expressly permit restrictions to be imposed on “a road, or any part of the width of a road”. That statutory framework clearly contemplates both:

- partial restrictions (such as conventional Bus Lanes), and
- full-width restrictions (such as bus-only routes).



50. Accordingly it would be anomalous if the civil enforcement regime under section 44 applied only to partial restrictions, but not to full-width restrictions of an otherwise identical character. I have found no indication in the statutory language that Parliament intended such a distinction, and of course when interpreting legislation any anomalies or absurdities should be avoided.

51. The Tribunal also placed undue weight on the distinction drawn within the relevant Traffic Regulation Order between “Bus Lanes” and “bus-only routes.” Whilst these two phrases are clearly different, in my view any such distinction of nomenclature would not be determinative. The question is whether the restriction imposed by the order falls within the statutory definition in section 44(4). If it does, the fact that it is described as a “bus-only route” does not exclude it from the scope of the Act.

52. Accordingly I have concluded that a restriction applying to the entire width of a carriageway, limiting its use to buses and other specified classes of vehicle, is capable of constituting an “area of road... forming part of a Bus Lane” within the meaning of section 44, and as such I have concluded that the Tribunal erred in law in concluding that the location in question could not constitute a Bus Lane for the purposes of section 44..

53. On the basis that the First-tier Tribunal had concluded that as there was no valid Bus Lane that it was not necessary to consider the merits of the registered keeper’s appeal against the Charge Notice, that appeal is now remitted back to the Tribunal to enable that appeal now to be determined.

Decision

54. The appeal is allowed.

57. The appeal is remitted to the First-tier Tribunal for determination of the Respondent’s appeal against the Charge Notice on its merits.

Sheriff Colin Dunipace



Member of the Upper Tribunal for Scotland

*A party to this case who is aggrieved by this decision may seek permission to appeal to the Court of Session on a point of law only. A party who wishes to appeal must seek permission to do so from the Upper Tribunal within **30 days** of the date on which this decision was sent to him or her. Any such request for permission must be in writing and must (a) identify the decision of the Upper Tribunal to which it relates, (b) identify the alleged error or errors of law in the decision and (c) state in terms of section 50(4) of the Tribunals (Scotland) Act 2014 what important point of principle or practice would be raised or what other compelling reason there is for allowing a further appeal to proceed.*