

**PATROL ADJUDICATION JOINT COMMITTEE
Executive Sub Committee**

REPORT FOR INFORMATION

DATE 26th January 2010

SUBJECT ON-LINE LIBRARY OF TRAFFIC REGULATION ORDERS
HELD BY THE TRIBUNAL

REPORT OF: The Chief Adjudicator

PURPOSE OF REPORT

To inform Members of a forthcoming initiative to place the tribunal's existing library of Councils' Traffic Regulation Orders (TROs) on the tribunal's website, so as to make the TROs publicly accessible and provide an on-line resource for councils.

RECOMMENDATIONS

It is recommended that the Committee:

[i] Note the information provided in the report.

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1. Background

- 1.1 In the overwhelming majority of appeals, both relating to parking and bus lanes, the PCN(s) which are subject of the appeal have been served for the alleged contravention of the provisions of a TRO. The Council has the burden of proving in each appeal that the alleged contravention(s) occurred. The Council must, therefore, in each case produce in evidence the TRO which creates the restriction the Appellant is alleged to have contravened in order to prove that it does create the restriction which the Appellant is alleged to have contravened.
- 1.2 Unlike the remainder of the evidence in each individual case, which will be unique to that case, each TRO will generally recur as evidence in many appeals. TROs are usually lengthy documents, commonly running into tens of pages and sometimes into hundreds of pages. As a rule of thumb, the evidence submitted by the Council for each PCN subject to an appeal, excluding the TRO, comprises a bundle of 20-40 pages. The inclusion of the TRO commonly increases the size of the Council's evidence bundle by 50-100% (and on occasions the TRO can comprise the majority of the bundle).
- 1.3 The inclusion of the TRO in each evidence bundle that a Council prepares, in the situation where that same document has been supplied many times before, imposes a burden on all those involved in the appeals process:
- a) For the Council it entails both staff time and resources (copying/scanning, paper, post etc) in producing the same TRO repeatedly as appeals concerning restrictions created by that TRO arise. This work is duplicated as the evidence bundle must be sent to the Appellant as well as the tribunal.
 - b) For the tribunal staff there is staff time involved in processing the same document on to many individual case files and the cost involved (for personal hearings) in sending that document many times over in individual case files to the Adjudicator
 - c) For the Adjudicator, the inclusion of the TRO significantly increases the size of the Council's evidence bundle making it more unwieldy and time-consuming to navigate (particularly in cases where they have considered the TRO concerned previously, are familiar with its terms, and the terms of the TRO is not in issue, so that reference does not need to be made to it at the hearing).
 - d) For the Appellant, the tribunal consistently receives feedback that the Appellants find the size of the Councils' evidence bundles (which the Councils are obliged to copy to the Appellant) excessive and even intimidating. Many also question the proportionality of the Council's response to the amount in issue and the appropriateness of the cost involved in such a response. Furthermore, many Appellants' appeals are

only concerned with the facts surrounding the alleged contravention and not the law contained in the TRO and have no interest in the TRO.

A solution has been developed, which has been in place for a number of years, which involves the tribunal maintaining a central electronic library of TROs

2. The Current TRO Library

- 2.1 The tribunal has afforded Councils the option of submitting any TROs they choose to the tribunal's Information Officer. These are then transferred into an electronic database (the TRO Library) with an entry for each Council which has supplied TROs in this way containing an electronic representation of the TROs so supplied by that Council.
- 2.2 The TRO Library can be accessed remotely by all Adjudicators. As a result, once the Information Officer has confirmed to a Council that the TROs it has supplied to him have been added to the electronic database, the Council need no longer include copies of those TROs as part of the evidence bundle in individual cases. The Council must still cite the title and relevant articles and schedules of the TRO on which it relies in each individual case. However, because the TRO is contained in the TRO library, the Adjudicator can then access the TRO there to read the provisions of the TRO identified in the Council's submission. To assist the identification of the correct TRO each TRO in the TRO library is assigned a unique index number, and the Council is required to identify that index number in its submissions in each appeal.
- 2.3 In short, any TRO need only be submitted to the tribunal once rather than multiple times as part of individual appeal bundles. This addresses the problems identified at a) above
- 2.4 At the present time 184 Council have submitted TROs to this central library and it contains about 7,000 TROs in total.

3. Limitations of the present arrangement

- 3.1 The database is a closed internal system, accessible to the Adjudicators only. It is not accessible to either Councils or Appellants.
- 3.2 Whilst many Appellants do not wish to see the TRO, there are Appellants who do. In any event all Appellants are entitled to have access to the evidence presented to the Adjudicator by the Council and the Adjudicator should not make a decision based on evidence that one party has not had the opportunity to consider and respond to (should they wish to do so).

- 3.3 Whilst the TRO library addresses the problems identified at a) above, the inability of the parties to access the TRO library (given that it contains evidence to which the Adjudicator may refer in deciding an appeal) creates a different problem – an inequality of arms as far as the Appellant is concerned.
- 3.4 A partial solution is that Council's are advised that where a request is made by the Appellant to see the TRO they must still supply a copy to the Appellant.

This poses problems:

- a) Where the Appellant requests the TRO having received the Council's evidence bundle, this can introduce delay in the resolution of the process;
- b) Some Councils, because the Appellant would not otherwise have access to the TRO, include it in the evidence bundle to both Appellant and tribunal, notwithstanding that it is contained in the TRO library. The TRO library is not, therefore, fully effective in relieving the burdens identified at a) above.

4. The Next Step

- 4.1 In order to provide equality of arms, whilst maintaining the advantages offered to all parties by the existing TRO library, the tribunal intends to make the TRO library publicly accessible. This will be achieved by allowing access to the TRO library through the tribunal's existing website.
- 4.2 The submissions contained with a Council's evidence bundle will indicate whether that bundle includes the TRO relied upon by the Council, or whether it is contained in the TRO library. The tribunal's correspondence to the Appellant will instruct Appellants how to find and locate TROs through the tribunal's website.
- 4.3 The tribunal's website will provide a search screen which will provide access to the TRO library, searchable by:
- a) Council (will display all TROs supplied to the tribunal by that Council)
 - b) By TRO index number (the tribunal assigns a unique index number to each TRO in its library – the Council cites this index number in the submissions and evidence bundle it supplies to the Adjudicator and Appellant)
 - c) By TRO name (the Council identifies the name of the TRO in its submissions to Adjudicator and Appellant)
 - d) By year of TRO (this information is also contained in the Council's submissions.

4.4 This facility is presently developed as a prototype but is now very close to being finalised and the tribunal anticipates making this facility available before the end of the financial year.

4.5 The Appellant is, therefore, put in the position that, immediately upon receipt of the Council's submissions and evidence bundle, they can access via the internet the TRO relied upon by the Council. Conversely, where the Appellant has no desire to look at the TRO they are not burdened with a lengthy bundle containing it. Both parties and the Adjudicator have access to identical set of evidence.

5. Cost Savings

5.1 By way of example, a typical TRO can add over £1 to the cost of the postage therefore:

Stage 1 the Council spends £2 per appeal forwarding the TRO to the Tribunal and the Appellant

Stage 2 the Tribunal spends £1 per appeal forwarding the document to the Adjudicator for the purposes of personal hearings.

With an anticipated total number of appeals of 13,500 this year that could potentially mean £18,900 (allowing for appeals that are not contested and therefore TROs are not submitted) spent by councils on sending their TROs to the Tribunal and Appellant and £3,807 is spent by the Tribunal on posting out TROs to the Adjudicator.

Additional savings to be gained for the councils and the tribunal:

- Administrative time in compiling/receiving the evidence bundle
- Paper and Stationery Costs

6. Other benefits and limitations

6.1 The publicly accessible TRO library will have benefits to others beside Appellants:

- a) Councils may use it as a resource to identify how other Councils have drafted their TROs in general, or to deal with particular restrictions. It offers to opportunity to promote best practice and achieve greater consistency in TRO drafting
- b) It offers greater accessibility to the public as a whole (not just Appellants) to TROs – for example, those who have received a PCN but are not yet at the appeal stage may be able to find the TRO relevant to them.

- c) It may encourage Councils to make all their TROs accessible on their own websites (research by the tribunal identified that only a small minority of Councils presently do so)
- d) The operating system for the Traffic Regulation Orders on Line will be applied to the on-line register later in 2010

6.2 The publicly accessible TRO library has limitations:

- a) It does not assist those with no access to the internet, who will still need to receive a paper copy, but the extent to which this arises will be considerably reduced compared to the current position
- b) the TRO library is a limited resource and must be understood by the public to be so. It does not contain all TROs – some Councils have supplied no TROs at all, many have only supplied a proportion of their TROs. Whilst Appellants will be advised by the Council whether the TRO relevant to their appeal is in the TRO library, a member of the public has no guarantee of being able to find a TRO in which they are interested. Furthermore, there is no guarantee that the TRO library will contain the current TRO affecting a particular location, or that it will not contain superseded TROs in respect of a particular location (but in respect of which appeals are still being received). There is a risk that a general enquirer may identify a TRO concerning the location with which they are interested, but which was not in effect, or had ceased to have effect at the time with which the general enquirer is concerned. Clear guidance needs to be given to the general enquirer using the TRO library of these limitations and of the need to consult the Council for accurate information as to the relevant TRO.
- c) The inclusion of this information on the tribunal's website will prompt enquiries to the tribunal about that information, and it is not appropriate for the tribunal to deal with such enquiries. The tribunal will need to develop resource and procedures for dealing with these enquiries – which will need to be directed to the Council concerned.

7. Implementation

The tribunal is currently reviewing its communications with both appellants and councils to take account of this new initiative. The initiative will be closely evaluated during the initial period so that any practical issues can be addressed prior to a formal launch.