OUTER HOUSE, COURT OF SESSION

[2023] CSOH 74

P447/23

OPINION OF LADY POOLE

in the Petition of

JOHN PATON & SONS LTD

Petitioner

against

GLASGOW CITY COUNCIL

Respondent

and

THE SCOTTISH MINISTERS

Interested Party

Petitioner: Lord Davidson of Glen Clova KC, T Young; Jones Whyte LLP
Respondent: R Crawford KC, S Donnelly; Harper MacLeod LLP
Interested Party: G Moynihan KC, T Haddow; SGLD

31 October 2023

Background

[1] The petitioner challenges the lawfulness of a low emission zone ("LEZ") scheme in the centre of Glasgow. Glasgow City Council ("GCC") brought that LEZ scheme into force on 31 May 2022. Vehicles which do not comply with emissions standards, and which are not exempt, are prohibited from entering the LEZ. After a statutory grace period, if a non-compliant and non-exempt vehicle is driven in the LEZ, penalties are imposed by GCC.

The penalties GCC imposes are specified by Scottish Ministers in the Low Emission Zones (Emission Standards, Exemptions and Enforcement) (Scotland) Regulations 2021 SSI 2021/177 (the "2021 Regulations"). Enforcement of penalties will commence for residents of the area covered by the LEZ on 1 June 2024, and already commenced for non-residents on 1 June 2023.

[2] The petitioner operates a business from premises within the LEZ, repairing vehicles in the Townhead area of Glasgow. Not all of the vehicles it repairs are compliant with emissions standards which must be met by vehicles driving within the LEZ, or are exempt. The LEZ scheme adversely affects the petitioner's business, because of its effect on the vehicles which can be driven in and out of its premises for repair without penalty.

[3] The petitioner challenges the lawfulness both of GCC's LEZ scheme, and the provisions of the 2021 Regulations made by the Scottish Ministers which fix the penalty levels reflected in the scheme. GCC and the Scottish Ministers resist the challenge, arguing that it is brought too late, and in any event there is no merit in the grounds of challenge. Parties assisted the court by providing written pleadings, notes of argument and oral submissions, all of which have been taken into account.

[4] For reasons set out below the petition is refused. The reasons commence by explaining why the arguments of GCC and the Scottish Ministers that the petition is barred by delay are rejected. Next, the statutory framework against which the substantive grounds of challenge fall to be determined is set out. Finally, reasons are given why the petitioner's three grounds of challenge are not well founded.

Delay

[5] Both GCC and the Scottish Ministers rely on the plea of mora, taciturnity and acquiescence to argue that the challenges to the LEZ scheme, and the provisions of the 2021 Regulations setting penalty levels used in the scheme, are barred. Mora is a common law plea and is only made out where all three elements of mora, taciturnity and acquiescence are present (*Kenman Holdings Ltd* v *Comhairle Nan Eilean Sar* 2017 SC 339 paragraphs 39 to 40). Mora connotes an unreasonable period of delay. Taciturnity is a failure of the petitioner to speak out in assertion of its right or claim. Acquiescence by the petitioner is something to be inferred objectively from delay and silence.

[6] It is unusual to see a mora plea taken in an application for judicial review brought after 22 September 2015. Time limits are primarily regulated by section 27A of the Court of Session Act 1988 (the "1988 Act"). Prior to the enactment of section 27A, unless there was an applicable statutory provision regulating time limits, mora pleas operated to control time periods for bringing petitions. Courts often did not sustain mora pleas, but in some cases they were successful (eg *Hendrick* v *Chief Constable, Strathclyde Police* 2014 SC 551, where there had been a 22 month delay between a decision and the petition being brought). The law was amended because mora pleas were thought unsuited to judicial review procedure. There was a public interest in decisions of public bodies being made promptly and resolved quickly. A time limit for bringing a petition of 3 months was therefore introduced, subject to extension if equitable in all the circumstances. Section 27A of the 1988 Act does not expressly abolish mora pleas, but it was intended to tighten time limits in applications for judicial review. If a petition has been found to meet the statutory time limits under section 27A, situations in which a petition is still barred by mora, taciturnity and acquiescence will be vanishingly rare.

[7] An interlocutor of 27 July 2023 already issued in this case found that the petition was brought timeously, after the time limits in section 27A of the 1988 Act were considered. For reasons given in a note to the interlocutor of 27 July 2023, the date on which the grounds for the application first arose was when the scheme was brought into force by GCC on 31 May 2022. The petition was brought on 30 May 2023, so was out with the 3 month lime limit in section 27A(1)(a) of the 1988 Act. Nevertheless, after balancing all of the various factors, it was found equitable to extend the time period under section 27A(1)(b), and the petition was permitted to proceed.

[8] The mora plea subsequently introduced into this case by GCC and the Scottish Ministers fails at the first hurdle. It is true that there was delay by the petitioner in bringing the application, both after the coming into force of the 2021 Regulations challenged in this case on 31 May 2021, and after the LEZ scheme was brought into force on 31 May 2022. The petition was not brought until 30 May 2023. But in all the circumstances that delay was not unreasonable. The considerations listed in the court's note of 27 July 2023 when considering equitable extension, of continuing effect, the bringing of the petition before enforcement started, the time taken by the petitioner trying to resolve matters informally and in instructing evidence, and the wider public interest, point to the delay being reasonable. The only significant thing that has changed since the court's decision under section 27A is the formal addition of pleadings about legislative competence of the parts of the 2021 Regulations setting penalty levels. However, at the hearing of 27 July 2023, at which the Scottish Ministers were represented, the level of penalties was a live issue. Although the 2021 Regulations were in force from 31 May 2021, the penalty levels in the challenged regulations only had direct enforceability in the Glasgow LEZ from 1 June 2023. The petition was brought before that date (in contrast, for example, to a successful mora plea

where a petition was brought eight and a half months after a scale of fares had been brought into effect; *Hanlon* v *Traffic Commissioner* 1988 SLT 802). The mora plea also runs into problems on the issue of taciturnity. Once GCC wrote directly to the petitioner on 13 January 2023 about the LEZ scheme, extensive correspondence with GCC was immediately entered into. When that was not fruitful, an action was brought. It cannot properly be inferred that the petitioner was silent, nor that he acquiesced in the matters challenged. The mora plea is rejected. It is therefore necessary for the court to consider whether the petitioner's three grounds of challenge are well founded.

Governing statutory provisions

[9] The LEZ scheme challenged in this petition was set up under powers in part 2 of the Transport (Scotland) Act 2019 (the "2019 Act"). Section 9 gives powers to local authorities (such as GCC) to make, amend and revoke LEZ schemes, subject to approval by the Scottish Ministers (section 10). Section 6 of the 2019 Act prohibits vehicles, which do not comply with specified emissions standards or are not otherwise exempt, from driving in the low emission zone. A penalty charge is payable in respect of a contravention. Sections 6(4) and 8 give powers to the Scottish Ministers to make regulations in connection with penalty charges, which may set amounts and include provision for discounts and surcharges. "Approved devices" and other equipment (sections 20-21) are used to detect non-compliant cars. Under section 27, GCC may only use money from penalty charges to facilitate the scheme's objectives, or to repay grants made by Scottish Ministers to set up a scheme.

[10] There are a number of statutory requirements imposed on local authorities before they may make a LEZ scheme. These include procedural requirements, such as prior consultation under section 11 of the 2019 Act. They also include substantive requirements

about the content of a scheme. Section 14(1) requires a scheme to specify the zone created, the date the scheme comes into effect, grace periods, types of vehicles to which it applies, and its objectives. Under section 14(4)(a) the scheme's objectives must include:

> "an objective of contributing towards meeting the air quality objectives prescribed under section 87(1) of the Environment Act 1995 (regulations about air quality)".

[11] The 2019 Act contains a number of provisions to mitigate the effect of penalties. Schemes must specify grace periods for residents and non-residents (sections 15 and 16). These are periods when the scheme will not be enforced even though it has come into effect. Schemes may also make provision for grant and renewal of exemptions of some vehicles under section 17 (examples of exempt categories being emergency vehicles, vehicles for disabled persons and historic vehicles). The Scottish Ministers have powers to make grants to help with costs of altering vehicles to reduce emissions (section 25).

[12] The 2019 Act also makes provision for schemes to be monitored after they have been adopted. Those provisions tie in with powers given to local authorities under section 9 to amend and revoke schemes. Local authorities must prepare annual reports, which are submitted to the Scottish Ministers and laid before the Scottish Parliament (section 29). The Scottish Ministers may direct reviews of operation and effectiveness of schemes, which can be followed by directions to local authorities about action to take (sections 30-31). One of the situations specified where the Scottish Ministers may issue directions is where "material changes in circumstances have rendered inappropriate" actions taken under the 2019 Act.

[13] Section 14(4)(a) of the 2019 Act refers to "air quality objectives" as defined in section 87 of the Environment Act 1995 (the "1995 Act"). Section 87 read with section 91 of the 1995 Act defines air quality objectives by reference to what is prescribed in regulations. Regulation 4 and the table in the schedule to the Air Quality (Scotland) Regulations 2000

(SSI 2000/97) (the "2000 Regulations") define air quality objectives. In summary, the level of polluting substances in the air is to be restricted to specified levels by a particular date, all as set out in the table. For the purposes of this case, substance 7 in the table is of most relevance - nitrogen dioxide ("NO_2"), which has an air quality objective of 40 micrograms per cubic metre or less, when expressed as an annual mean. The prescribed date, by which that objective ought to have been achieved, is 31 December 2005.

[14] The 2021 Regulations made under the 2019 Act contain provisions about penalties. The legislative competence of regulation 4 and Schedule 1 of the 2021 Regulations are challenged by the petitioner. Regulation 4 gives effect to a table in schedule 4 of the 2021 Regulations which set out penalties. The table provides as follows.

Table

Vehicle	*Description*	*Initial penalty charge*	*First surcharge*	*Second surcharge*	*Third Surcharge*	*Fourth Surcharge*
Column 1	**Column 2**	**Column 3**	**Column 4**	**Column 5**	**Column 6**	**Column 7**
light passenger vehicle		£60	£60	£180	£420	£420
minibus		£60	£60	£180	£420	£900
bus or coach		£60	£60	£180	£420	£900
light goods vehicle		£60	£60	£180	£420	£420
heavy goods vehicle	vehicle within category N2	£60	£60	£180	£420	£900
heavy goods vehicle	vehicle within category N3	£60	£60	£180	£420	£900
ambulance		£60	£60	£180	£420	£420
hearse		£60	£60	£180	£420	£420
motor caravan		£60	£60	£180	£420	£420
mopeds or motorcycles		£60	£60	£180	£420	£420

How this table is applied is explained in more detail in regulation 4. In essence there is a penalty for each day there is a contravention. Penalties in the table for cars start at £60 for a first contravention, but increase rapidly for subsequent contraventions. The escalation for subsequent penalties operates so that each time there is a contravention, the initial penalty charge in column 3 applies, but for each subsequent contravention added on to the column 3 figure is an additional surcharge in one of columns 4, 5, 6 and 7, depending on how many contraventions there have been. The penalty can be reduced by 50% under regulation 4(8), if

the penalty charge is paid before the end of the period of 14 days beginning with the date of service of a penalty notice. Equally if a penalty charge is not paid within 28 days, GCC may serve a charge certificate under regulation 7 with the effect, subject to representations and a right of appeal to the First-tier Tribunal, that the penalty charge is increased by 50% (regulation 4(9)). The 50% increases and decreases in penalties, depending on when they are paid, are exercises of the powers in section 6(4) of the 2019 Act to make provision for discounts and surcharges. Only one penalty charge can be incurred in a day (section 6(3) of the 2019 Act), and the escalation of charges by applying surcharges only applies to contraventions within a 90 day period (regulation 4(6)).

[15] Finally, section 6 of the Human Rights Act 1998 makes it unlawful for a public authority to act incompatibly with a convention right. Section 54 of the Scotland Act 1998 provides that it is outside devolved competence to make any provision by subordinate legislation which would be outside the legislative competence of the Scottish Parliament. Section 29 defines the legislative competence of the Scottish Parliament. One limit on competence is that if provisions are incompatible with any of the convention rights they are not law. Section 57(2) has the effect that the Scottish Ministers have no power to make any subordinate legislation, or to do any other act, insofar as the legislation or act is incompatible with convention rights. Article 1 of protocol 1 is one of the convention rights and provides:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties".

Illegality and irrationality

[16] The petitioner's first ground of challenge to the LEZ scheme focuses on air quality in Glasgow. The petitioner argues that the LEZ scheme is unlawful and irrational because it does not satisfy the requirements of section 14(4)(a) of the 2019 Act, in that it makes no obvious contribution to meeting air quality objectives and standards. The petitioner produces expert reports and an associated affidavit, and argues that emissions have reduced and will reduce sufficiently without the scheme.

[17] In determining whether GCC acted lawfully and rationally in making the scheme, three questions arise. First, is the petitioner entitled to rely on expert reports and an affidavit by their writer to argue that the requirement of "contributing towards meeting the air quality objectives" in section 14(4)(a) of the 2019 Act is not met? Second, was there information before GCC to entitle it to be satisfied the section 14(4)(a) requirement was met? Third, what is the proper interpretation of the words "contributing towards meeting the air quality objectives" in section 14(4)(a) of the 2019 Act?

The petitioner's expert evidence

[18] The petitioner produces two reports from Hilson Moran Partnership Ltd. The original report is dated 19 May 2023, and there is also an updated report dated 16 October 2023. The author of the reports, Mr Reade, also provided an affidavit dated 16 October 2023. On page 34 of the first report and page 36 of the updated report, Mr Reade expresses the opinion that compliance with air quality objectives will continue to be achieved without the implementation of the LEZ scheme. An abbreviated summary of the methodology Mr Reade used to reach his opinion was to start with data from monitoring points in Glasgow City Centre. That data was found to show only two readings in Hope Street

in 2021 that did not meet the NO_2 air quality objective, with others compliant. A trend analysis was then applied, of an overall downward trend in NO_2 concentration over the years, to project into the future. On this basis, Mr Reade considers that by 31 May 2022, the time GCC brought the LEZ scheme into force, air quality objectives were already being achieved and would continue to be achieved without the LEZ scheme.

[19] Lengthy affidavits are in turn provided by an employee of GCC, Mr Callaghan, who has been involved in the creation of the LEZ scheme. He indicates that Mr Reade used a different methodology from GCC. GCC's approach was to use modelling, in accordance with national guidance about the approach to LEZ schemes. The modelling showed a continuing problem with NO_2 in the city centre. That modelling gave a basis to conclude that without the LEZ scheme, air quality objectives would not be met in Glasgow City Centre.

[20] The expert evidence adduced by the petitioner cannot properly underpin an argument that GCC was wrong to decide the LEZ scheme would contribute to meeting air quality objectives. First, this is an application for judicial review, in which the court adjudicates on the legality of decisions taken by public authorities, not their merits. This approach seeks to ensure the appropriate separation of powers between the judiciary and government (*R (Law Society)* v *Lord Chancellor* [2019] 1 WLR 1649 at paragraph 36). Put another way, it is not for the court to decide if NO_2 air quality objectives in Glasgow were already met in May 2022 and would continue to be met, deciding between the opinions of Mr Reade and GCC (*RSPB* v *Scottish Ministers* [2017] CSIH 31 paragraph 203; *R (Law Society)* v *Lord Chancellor* [2019] 1 WLR 1649 paragraph 41). Rather, the court will review whether GCC had a proper basis for its conclusion that the low emission zone scheme would contribute towards meeting air quality objectives. In doing so, the court will consider

primarily what was before GCC at the time of the decision challenged, in this case the bringing into force of the scheme on 31 May 2022, and not an expert report which post-dated that decision by nearly a year.

[21] Second, the petitioner's expert opinion provides little assistance to the court because it did not use the methodology set out in statutory guidance. Section 32 of the 2019 Act provides that a local authority must have regard to any written guidance given by the Scottish Ministers. Transport Scotland published "Low Emission Zone Guidance" in October 2021. Page 10 of that guidance provides among other things that suitable modelling must be undertaken to establish the evidence base for the LEZ. It states that assessment and modelling must be undertaken using the SEPA National Modelling Framework. While the statutory guidance does not have the force of law, GCC had to have regard to it, and follow it unless there was good reason not to. The petitioner's expert opinion is reached with a different methodology, so its utility for present purposes is questionable.

[22] The petitioner submitted that its expert evidence could be looked at to assist the court in understanding scientific or technical concepts. But that is not what the petitioner's expert opinion seeks to do. Its primary focus is arguing that air quality objectives were already met and would continue to be met without the LEZ scheme. It is open to the petitioner to ask GCC and the Scottish Ministers to take into account the opinion in its expert evidence for the purposes of the ongoing review and monitoring provisions under sections 29 and 31 of the 2019 Act. But for the purposes of the challenge made in this petition, the utility of the petitioner's expert report is at best to reinforce the need for the court to satisfy itself that GCC had a rational factual and scientific basis to conclude section 14(4)(a) was met at the time it brought the scheme into force on 31 May 2022.

Information before GCC for its conclusion about air quality objectives

[23] By way of background, air quality has been recognised to be a problem in Glasgow for a number of years. Four air quality management areas have been declared in the past, with a view to improving air quality. An air quality management area remains in force for Glasgow City Centre. To protect human health and the environment, air quality objectives have been prescribed in legislation for a number of different substances. For the purposes of this case, it was not in dispute that the polluting substance remaining of most concern in Glasgow City Centre when GCC brought the LEZ scheme into force was NO_2. Under the 2000 Regulations, the air quality objective for NO_2 is to keep levels in the air to an annual mean of 40 micrograms per cubic metre or less. That objective should have been attained by 31 December 2005, and maintained or reduced thereafter. Section 14(4)(a) of the 2019 Act required the LEZ scheme to have an objective of contributing towards meeting air quality objectives, including the NO_2 objective.

[24] To decide whether GCC acted lawfully and rationally in deciding to adopt its LEZ scheme against the requirements of section 14(4)(a) of the 2019 Act, it is necessary to examine the information available to GCC when it decided to bring the scheme into force on 31 May 2022. But before turning to that information, there are two preliminary points made by the petitioner to be addressed.

[25] First, to bolster its argument that by May 2022 air quality objectives in Glasgow City Centre were being met, the petitioner relied on a prediction about a date by which NO_2 levels would be complied with. That prediction was made in a document dated September 2011 entitled "UK Overview Document – Air Quality Plans for the achievement of EU air quality limit values for nitrogen dioxide (NO_2) in the UK", created with input from DEFRA, DOE, and the Scottish and Welsh Governments. Table 1 looked at NO_2 exceedances, and

provided a date by which compliance with NO_2 limits was projected. The entry for the Glasgow urban area showed NO_2 exceedances in 2008 and 2011, but compliance was projected for 2020. This document does not assist the petitioner. It contained a prediction made over a decade before GCC adopted the LEZ scheme. GCC had to proceed on evidence available to it in May 2022. By then, the UK had been found by the Court of Justice of the European Union to have systematically and persistently exceeded the annual limit for NO_2, including in the Glasgow urban area, after being taken to court by the Commission for failure to comply properly with its air quality obligations since 2010 (*Commission* v *UK* [2021] Env LR 32).

[26] Second, the petitioner's approach, of seeking to confine GCC's justification of its decision to reasons given in one paragraph of a report to the Scottish Ministers for approval of the scheme of 19 April 2022 ("GCC's Report to the Scottish Ministers"), is rejected. That paragraph was repeated in a number of documents, and read:

> "All locations [of monitoring points], except for one diffusion tube, recorded levels within the objective in 2020; however, preliminary results for 2021 indicate a return to exceedances of the objective at a number of locations. Without decisive action, it is expected that NO_2 levels will rise further as the Covid-19 recovery progresses and are not anticipated to be resolved in a reasonable timescale. It has therefore been determined that additional intervention, in the form of an LEZ, is required to further reduce NO_2 levels within the City Centre [air quality management area] to an acceptable level."

Elsewhere in GCC's report to the Scottish Ministers, GCC referred to other matters, including modelling (eg Part 3 Strategy and Part 7 LEZ Appraisal/Modelling/Validation). Documents and information available to GCC must be read as a whole to decide if there was a reasonable basis for GCC's decision. It is an unrealistic and unduly narrow approach to confine GCC to monitoring station results when justifying its decision, when it is evident there was considerable other information available to GCC bearing on its decision.

[27] Turning to the information available to GCC when it brought the LEZ scheme under challenge into force, this was largely summarised in GCC's Report to the Scottish Ministers. As explained in the next section of this judgment, the requirement in section 14(4)(a) of the 2019 Act of an objective of contributing towards "meeting" air quality objectives, meant both attaining and thereafter maintaining those objectives. That exercise necessitates the making of projections about the future. GCC relied on extensive modelling to help it do this. While modelling involves a number of variables and uncertainties, the reality is that predicting the future can never be an exact science. GCC cannot be faulted for using modelling, because as set out in para [21] above, that was the approach suggested in statutory guidance to which GCC properly had regard.

[28] Mr Callaghan of GCC provides an explanation of the modelling process in his affidavit. For low emission zones, it starts with an emissions inventory being prepared. This is compiled by undertaking detailed traffic counts, including information on types of traffic. A national database of vehicle emissions is then applied to those types of traffic to work out emissions. An air pollution dispersal model is applied to combine the emissions inventory with other local information such as road details, traffic speeds, topography and weather information. Each time a baseline model is used, it is checked or validated against "real life" monitoring data taken from various measuring stations at roadsides, to ensure it is appropriate. The court was informed there were monitoring stations every 50 metres in the city centre, and SEPA modelling relied on by GCC used over 4000 points in its validation exercises. Modelling was therefore a more extensive exercise than examining data captured at limited points and locations in Glasgow City Centre, and applying a trend analysis.

[29] SEPA carried out some of the modelling relied on by GCC. It provided a report "Cleaner Air for Scotland – National Modelling Framework Air Quality Evidence

Report - Glasgow" dated 22 August 2019. The results in the 2019 report gave rise to concerns about average NO_2 concentrations, which were verified by comparison with monitoring data. The streets with the highest NO_2 concentrations also had the highest level of bus emissions. That was partially addressed by an earlier low emission zone specific to buses made in 2018 (which predated the powers in the 2019 Act and was made using Traffic Regulation conditions for bus operator licences). However, modelling in the 2019 report showed that a bus-only low emission zone would not lower emissions enough to satisfy air quality objectives. The 2019 report considered the position in 2017. It ran models to project areas of exceedances. The models showed exceedances of the objective of 40 mg per cubic metre of NO_2. Tables 11 to 14 in that report contain information about various LEZ scenarios. Those tables provided information to GCC that, without a LEZ, a significant percentage of roadside points would exceed the NO_2 air quality objectives, in 2017, 2019 and projecting forward to 2023. Indeed, modelling showed that without a LEZ, a number of locations in the city centre would have concentrations of above 55 mg per cubic metre of NO_2, well in excess of the air quality objectives.

[30] GCC then obtained a Traffic Modelling Report from Systra dated 25 June 2020. It tested scenarios including boundaries, and used a microsimulation traffic model and updated earlier modelling. Because the Covid-19 pandemic resulted in restrictions and changes in working patterns, which had a positive effect on air quality, Systra later prepared other notes, a LEZ post-Covid uncertainty note and a further traffic modelling report. A further unexpected difficulty was SEPA suffering a cyber-attack, with the effect that it was unable to produce a Glasgow Emissions Analysis Report until May 2021.

[31] In September 2021, SEPA provided a Low Emission Zone Glasgow Evidence Report, analysing NO_2 levels. The report used modelling to show there would be reductions of NO_2

with introduction of a LEZ scheme. In the report there are a number of graphs depicting the projected position both with and without a LEZ. Figures 14 and 15 on pages 31-32 looked at the situation without a LEZ. They identified many areas within Glasgow City Centre where the air quality objective for NO_2 would be exceeded. Figures 17 and 18 showed the modelled position if a LEZ was introduced, with a widespread reduction in NO_2, but still some exceedances in figure 18.

[32] As explained above, baseline models used in modelling exercises were validated against "real life" measurements from monitoring stations. In 2019, nine monitoring locations in Glasgow City Centre showed NO_2 objectives were exceeded. At least in part due to the effect of Covid-19 restrictions, that reduced to only one location in 2020. But in 2021, as restrictions lessened, there was an increase in NO_2 levels, with readings above the statutory levels at two diffusion tubes in the city centre. GCC considered this increase was likely to be sustained. (This view was borne out by four diffusion tube locations recording levels above the objective in Glasgow City Centre in 2022 (in Hope Street (two locations), Gordon Street and Heilanman's Umbrella), and significant increases at almost all city centre locations monitored by diffusion tubes. However, this information was not yet available at the time of GCC's decision to bring its LEZ scheme into force on 31 May 2022).

[33] The information put before the court, and available to GCC at the time it brought into force its LEZ scheme on 31 May 2022, adequately explained the facts and how the science of modelling was applied (*RSPB* v *Scottish Ministers* 2017 SC 552 at paragraph 204). The information entitled GCC to conclude the LEZ would contribute towards meeting the air quality objectives. The modelling in the two SEPA reports of 2019 and September 2021 available to GCC used models validated against monitoring station readings, and included the results in the tables and figures referred to above. These gave a clear basis for GCC to

reach the conclusion that, without the LEZ scheme, air quality objectives would not be met in a number of city centre locations. That was a serious matter, because there were legal obligations to meet NO_2 air quality objectives by 2005, yet information before GCC indicated those objectives were still not being achieved many years later. It was not a mistake of fact for GCC to reach its conclusion merely because other methodologies might be applied by other people to reach a different conclusion. The information available to GCC gave it a basis reasonably to conclude that if there was a LEZ, NO_2 levels in the city centre would decrease, and air quality standards would both be attained and maintained. The LEZ would contribute to meeting legally required air quality standards. It was lawful, and not irrational, for GCC to conclude the low emission zone properly had as an objective that it would contribute to meeting the air quality standards, as required by section 14(4)(a) of the 2019 Act. The petitioner's first ground of challenge is not well founded.

Section 14(4)(a) of the 2019 Act

[34] Ultimately parties were in agreement that the words "contribute towards meeting air quality objectives" in section 14(4)(a) of the 2019 Act encompassed measures bringing excess levels of pollutants down to statutory limits, and measures contributing to maintaining those levels. In other words, the word "meeting" in section 14(4)(a) is not just about hitting a target once, but also covers a situation in which a scheme's objective is to maintain air quality standards at a compliant level as part of a package of measures. The Scottish Ministers had responded to the petition in part because they considered this point was a matter of public importance. In those circumstances the reasons are recorded below why a scheme can have an objective of "contributing towards meeting air quality objectives" both

in a situation where it aims to reduce excess levels to statutory limits, but also where it seeks to ensure limits continue to be met thereafter.

[35] The background to section 14(4) of the 2019 Act is European Union law. Changes which will be made by the Retained European Union Law (Revocation and Reform) Act 2023 to section 5 of the European Union (Withdrawal) Act 2018 are not yet in force, and so section 5(2) has the effect that the principle of supremacy of EU law continues to apply so far as relevant to the interpretation of any enactment passed or made before 31 December 2020. Section 87 of the 1995 Act and the 2000 Regulations, which provide the definition of air quality objectives, and section 14(4)(a) of the 2019 Act, are measures which give effect to air quality obligations derived from EU law, and so the underlying EU law is relevant to their interpretation.

[36] There have been various directives over the years about air quality, but Directive 2008/50/EC of the European Parliament and Council on ambient air quality and cleaner air for Europe (the "2008 Directive") was a consolidating measure and remains in force at an EU level. Paragraph 2 of the preamble to the 2008 Directive stresses the importance of combating emissions of pollutants to protect human health, including implementing the most effective emission reduction measures at national level. "Limit values" of various substances are introduced by definition 5 in article 2 of the directive. Annex XI sets the limit value for NO_2 at the 40mg per cubic metre figure ultimately implemented in the 2000 Regulations. The limits are set on the basis of scientific knowledge, with the aim of avoiding, preventing or reducing harmful effects on human health or the environment as a whole. Since withdrawal from the European Union, provision has been made for these limit values to remain in Scots law; they cannot be amended, as expressly provided in regulation 7(2)(a)(i) of the Environment (Legislative Functions from Directives) (EU Exit)

Regulations 2019. The definition of "limit value" in article 2 of the 2008 Directive says it is to be attained in a given period and is not to be exceeded once attained. Article 12 of the Directive requires Member States to "maintain the levels" of pollutants such as NO_2 below the limit values. Given the wording of articles 2 and 12, the word "meeting" in section 14(4)(a) of the 2019 Act is to be interpreted as attaining and maintaining air quality objectives.

Human rights

[37] The petitioner's second ground of challenge focusses on article 1 of protocol 1 of the European Convention of Human Rights ("A1P1"). It is argued that the LEZ scheme is an unjustifiable interference with the petitioner's right to peaceful enjoyment of its possessions. It is also argued that the parts of the 2021 Regulations setting amounts of penalties are not law, because the levels are incompatible with A1P1.

[38] An affidavit is provided by Mr Paton, director of the petitioner. He explains that the business repairs vehicles, ordinarily on the instructions of insurance companies. Prior to penalties being enforced for non-residents under the LEZ scheme, about 35% of the vehicles brought for repair were not compliant with emissions standards. When Mr Paton first heard about the LEZ, the business took steps to ensure all business and staff vehicles were compliant with emissions standards. These included renewing their courtesy vehicle fleet, ensuring recovery vehicles were compliant, and offering interest free loans to assist staff with purchasing complaint vehicles. (The affidavit does not specify the costs of these business reorganisation measures, or consider the extent to which any of these costs would have been incurred in any event, even without the LEZ). While the business could take action so its own vehicles were compliant, it could do little about vehicles coming in for

repair. However, it hoped to be able to adjust bills to absorb any applicable LEZ charge, so business repairing non-complaint vehicles could be retained. It was thought this might be possible, if penalty levels were similar to charges to drive in LEZ zones in some cities in England. After GCC wrote to the business on 9 January 2023 explaining how the scheme would work, it became apparent to the petitioner that levels of penalties to be imposed were not something that could be absorbed. The result was that non-compliant vehicles would have to be rejected, and that might have a knock on effect on what other business was sent to the petitioner. At the end of May 2023, Mr Paton estimated that of work "in the pipeline", around about £37,000 of approved work still to be done was on non-compliant vehicles, and a further £70,000 or so for jobs on non-compliant vehicles was awaiting authorisation from insurance companies. If the business was able to continue trading, he estimated it would lose between £1.5 and £2 million, due to the effect of the LEZ.

[39] The Glasgow City Centre LEZ scheme undoubtedly creates serious issues for the petitioner's business. But not all adverse effects on businesses amount to violations of Convention rights. In my opinion, on application of the relevant legal tests, GCC has not acted incompatibly with the petitioner's A1P1 rights.

[40] To reach this conclusion a number of different stages are considered below. These are derived from previous cases setting out the principles for application of A1P1, including *In re Recovery of Medical Costs for Asbestos Diseases (Wales) Bill* [2015] AC 1016 paragraphs 44-45.

Victim status, possessions, and the nature of the interference

[41] GCC raised the issue of victim status. Only victims are entitled to rely on A1P1 rights in these proceedings (section 7(1) of the Human Rights Act 1998). Because the

petitioner's business has been directly affected by the coming into force of the Glasgow LEZ in ways set out below, it qualifies as a "victim" in relation to its challenge to GCC's LEZ scheme.

[42] Despite GCC's submissions to the contrary, on the facts of this case A1P1 is engaged. It is true that the LEZ scheme does not prevent access by non-compliant and non-exempt vehicles to the petitioner's premises - there are no barriers or bollards erected, and the petitioner recognises that non-compliant vehicles could in theory be moved onto the premises by transporter from outside the LEZ, albeit with financial and practical difficulties. Nevertheless, courts will look behind appearances and investigate the realities of the situation (*Cusack* v *Harrow LBC* [2013] 1 WLR 2022, quoting caselaw of the European Court of Human Rights at paragraph 35). The Scottish Ministers accept that the penalty levels set in the 2021 Regulations, reflected in GCC's LEZ scheme, are set at a level intended to dissuade non-compliant and non-exempt vehicles from entering the LEZ.

[43] The practical effect of dissuading non-compliant and non-exempt vehicles from entering the LEZ is first of all on the petitioner's own vehicles. In principle, money the business spent on ensuring its recovery, staff and courtesy vehicles were compliant, that would not have been incurred in any event without the LEZ, qualifies as a possession that is interfered with by the LEZ. Further, business will be lost repairing non-compliant and non-exempt vehicles. It is not all lost business that is protected by A1P1. "Possessions" is an autonomous Convention concept. Existing enforceable contracts, and goodwill derived from those contracts and earlier trading, are possessions within A1P1. By contrast, the right to a future income stream and any goodwill associated with that future income stream are not possessions within the meaning of A1P1 (*Breyer Group Plc* v *Department of Energy and Climate Change* [2015] 1 WLR 4559 paragraphs 42-43, 49). The consequence is that the £37,000

of approved contracts for non-compliant vehicles mentioned by Mr Paton in his affidavit, and goodwill associated with them and past business, are possessions within A1P1, but the millions of pounds of future income it is estimated may be lost are not.

[44] Further, this is not a case in which the petitioner has any direct complaint about its financial resources being interfered with due to having to pay penalties for driving in the LEZ. No penalties have been levied on the petitioner, and the petitioner does not take issue with the precise levels of any particular penalty charge notice. Mr Paton's affidavit explains that the petitioner's vehicles are compliant with emissions standards, as are its staff vehicles, so there is no reason to think that will change after 1 June 2024 when penalties become enforceable for residents. The petitioner's complaint is a more general one, that when penalties are set at a level that dissuades non-compliant and non-exempt vehicles from entering the LEZ and coming to its premises, there is an adverse effect on its own vehicles and on vehicles that can be repaired on its premises within the LEZ.

[45] On this basis, there is a limited interference with the petitioner's A1P1 rights. It is this limited interference which falls to be weighed in the balance of rights in later stages of the A1P1 analysis.

Conditions provided by law, legitimate aim, and rational connection with legitimate aim

[46] To be lawful, GCC must justify the interference with the petitioner's A1P1 rights. The LEZ scheme is in accordance with conditions provided by law, because it was made under the 2019 Act and associated regulations. The LEZ scheme pursued a legitimate aim. The three objectives of the scheme are stated at paragraph 6 of GCC's report to the Scottish Ministers. The first aim is to improve the public health of residents of and visitors to the City of Glasgow by contributing towards meeting the air quality objectives. The second is to

contribute towards emissions reductions targets through the promotion of low and zero emissions vehicles and the promotion of public and sustainable transport options. The third aim is to improve the amenity of Glasgow through GCC strategic themes of a vibrant city, a healthier city and a sustainable and low carbon city. These are all legitimate aims. It follows from the conclusions on the first ground of challenge that the LEZ scheme is rationally connected to the first of these objectives, and there was no dispute that there was a rational connection to the other two objectives.

Proportionality

[47] There are two final aspects to the justification analysis under A1P1 dealt with under this heading; whether the legitimate aims could have been achieved by a less intrusive measure, and whether, on a fair balance, the benefits of achieving the aim by the measure outweigh the disbenefits resulting from the interference with the petitioner's possessions (*In re Recovery of Medical Costs for Asbestos Diseases (Wales) Bill* [2015] AC 1016 paragraph 45).

[48] The background to applying these stages of the justification process is that air quality objectives exist to protect human health and the environment. Human health and the environment are important objectives, and it has been said that financial imperatives should not be afforded priority over those types of considerations (*Hamer* v *Belgium* ECHR 2007-V 73 paragraph 79). An area of discretion will be afforded by the courts to national authorities in areas involving environmental and health protection, reflecting the separation of powers (*R (SC)* v *SSWP and others* 2022 AC 223 at paragraphs 143-144, 159, 161).

[49] As far as less intrusive measures are concerned, measures already taken included GCC declaring an air quality management area in the city centre and introducing management measures, creating a bus only LEZ some years earlier, providing a retrofit fund

for taxis, and introducing charge points for vehicles. More widely, less polluting vehicles are gradually being introduced across the UK and taking the place of older polluting vehicles. But information to GCC indicated that these measures had not been sufficient to achieve the air quality objectives. GCC's LEZ scheme, in general terms, aimed to stop polluting vehicles driving in the affected area, and thereby emitting the pollutants that were the problem. The petitioner does not suggest any particular measure that was not a LEZ that could have been taken instead. Rather, the argument is that the LEZ scheme adopted could have covered a smaller area, or had charges set at lower levels that did not effectively stop non-compliant vehicles driving in the LEZ.

[50] The problem with a LEZ covering a smaller area, and enforced by charges at levels failing to dissuade non-compliant and non-exempt cars from driving in the zone, is that it would not have achieved the legitimate air quality aim. To meet that aim, the LEZ area needed to be wide enough to encompass areas identified as a problem, and penalties set at a level where they effectively deterred problem vehicles driving in that area and emitting pollutants. Absorbable and readily affordable charge levels, resulting in non-compliant vehicles still driving in the LEZ, would not achieve that aim. The underlying EU law background discussed above includes article 30 of the 2008 Directive, providing that penalties should be "effective, proportionate and dissuasive", so penalties at dissuasive levels were to be expected. The suggestion that a smaller zone could have been chosen was predicated on the petitioner's Hilson Moran report, and an assumption that it was really only Hope Street that was the problem. But GCC had modelling available to it which showed a much wider problem than only in one street. It was clear from GCC's report to the Scottish Ministers, in particular paragraphs 7.5, 7.8, 7.9 and 7.12, that considerable thought was given to where boundaries should be set, taking into account modelling and air

dispersal. This included reports from SEPA, and Systra testing boundaries. The LEZ scheme was limited to an area the court was informed covered approximately 1 square kilometre, not the whole of Glasgow. Against that background, and having regard to the area of discretion the courts recognise for GCC's decisions in this area, GCC cannot be faulted for deciding there were no less intrusive means to meet the objectives, in particular the air quality objective, than the LEZ scheme with the boundaries adopted, and penalties at levels designed to stop non-complaint and non-exempt cars coming into the city centre. (The issue of the precise penalty levels will be returned to in the discussion of the legislative competence challenge below).

[51] The final issue in the justification analysis is whether there is a fair balance between the benefits of the LEZ scheme and the disbenefits to the petitioner. In carrying out this balance, what must be weighed on behalf of the petitioner is the actual interference covered by A1P1 identified above. So it is not all of the petitioner's future loss of income, or a particular penalty level imposed. Rather, it is costs associated of ensuring the petitioner's vehicles which would be in the LEZ were compliant with emissions standards (to the extent these costs would not have been incurred in any event without the LEZ), together with the loss of existing contracts to repair non-compliant vehicles and associated goodwill. The petitioner's de facto loss of existing contracts has not been ameliorated by being granted an exemption or given compensation. (Exemptions are available in some situations under section 17 of the 2019 Act, and there are some scrappage and other grants (for example under section 25 of the 2019 Act), but they are not in practice available to the petitioner). The petitioner's possessions protected by A1P1 and interfered with by the LEZ scheme had significant value, but appear to have been in the thousands not millions of pounds.

[52] On the other side of the balance, there were strong collective interests in complying with legal obligations as to air quality, and protecting human health and the environment of the many people who live, work and visit in Glasgow City Centre. As already discussed, the legal requirement was that the NO_2 air quality objective should have been met from 2005, but the annual legal limit for NO_2, including in the Glasgow urban area, has been systematically and persistently exceeded (*Commission* v *UK* [2021] Env LR 32). Modelling and monitoring data suggests that legal requirement is still not met everywhere in Glasgow City Centre in 2023. It was inevitable that some interests would be adversely affected by introduction of the LEZ scheme. GCC was not blind to adverse impacts; it had available to it an Integrated Impact Assessment of the Glasgow LEZ scheme dated 1 June 2021, detailing adverse impacts and mitigation measures.

[53] Having regard to all of these interests, and given the strength of the collective interests concerned, the LEZ scheme represents a fair balance of interests. The interference with the petitioner's possessions is justified. The petitioner's second ground of challenge fails, insofar as it is directed at GCC's LEZ scheme.

Legislative competence of the 2021 Regulations

[54] The petitioner's challenge to the legislative competence of penalty provisions in the 2021 Regulations does not, on the facts, fall to be determined by the court in this particular action.

[55] The challenge is a focussed challenge to the levels of penalty set out in regulation 4 and Schedule 1 to the 2021 Regulations, on the basis they are too high. The petitioner does not challenge any particular penalty or figure in the 2021 Regulations, or suggest what an appropriate penalty level would be. There are main two problems with the petitioner's

legislative competence challenge. The first problem for the petitioner is that it does not appear to be a victim insofar as the imposition of penalties at particular levels are concerned (*Greek Federation of Customs Officers* v *Greece* (1995) 81 DR 123). Section 100 of the Scotland Act 1998 has the effect of applying the victim test already discussed in para [41] above to the legislative competence challenge in this petition. Penalties are ordinarily imposed on registered keepers of non-compliant vehicles (or in limited circumstances people using or keeping a non-compliant vehicle; regulation 5 of the 2021 Regulations). As set out in para [44] above, no penalties have been levied on the petitioner. Mr Paton's affidavit explains that all the business and staff vehicles are compliant with emissions standards, so it is difficult to see a future risk of penalties directly on the petitioner. The second problem is that because there is no interference with the petitioner's possessions from having paid or having to pay penalties, there is a difficulty carrying out the A1P1 balance of interests in relation to particular penalty levels (compare *R (Mott)* v *Environment Agency* [2018] 1 WLR 1022 at paragraphs 33 and 37). Insofar as the challenge is a more general one about penalties being at a level effective to dissuade non-compliant and non-exempt vehicles from driving in the LEZ, the court has already found that underlying approach is Convention compliant (para [46] to [53] above).

[56] Although the issue of legislative competence of the parts of the 2021 Regulations setting penalty levels does not therefore arise for decision in this particular case, the following comments may be made. There was a persistent and long standing problem with compliance with standards for air quality prescribed by legislation, which needed action. In the important areas of protection of health and the environment, the Scottish Ministers are entitled to an area of discretion in decisions about penalties in relation to schemes to address the issue (*R (SC)* v *SSWP and others* 2022 AC 223 at paragraphs 143-144, 159, 161).

[57] Nevertheless, there has to be a basis for the Scottish Ministers to conclude that less intrusive measures would not adequately achieve the important aims of the measure (*In re Recovery of Medical Costs for Asbestos Diseases (Wales) Bill* [2015] AC 1016 paragraph 45). The levels chosen must still represent a fair balance and be proportionate to the aim (*R (Mott)* v *Environment Agency* [2018] 1 WLR 1022 paragraph 33). The Scottish Ministers are entitled to take into account the derivation of the air quality objectives from annex XI of the 2008 Directive, and the requirement of article 30 of that Directive. In the wording of article 30, as well as effective and dissuasive, penalties must also be proportionate. Penalties should be no more than needed to meet the legitimate aim (*R (Client Earth)* v *Secretary of the State for the Environment* 2016 EWHC 2740 (Admin) at paragraph 51).

[58] The court was not referred to anything that demonstrated the Scottish Ministers had actively considered the issue of proportionality of the particular penalty charges imposed in the 2021 Regulations, relative to the legitimate aim, and why it had been decided that aim would not be achieved with less intrusive means such as lower levels of penalties, or less escalation of penalties for subsequent contraventions. While it has already been accepted that penalties could be set at dissuasive levels, there is nothing available to the court to explain why lower levels would also not be sufficiently dissuasive to meet the legitimate aim. The court was given links to six assessments carried out on either the 2019 Act or 2021 Regulations (Equalities Impact, Partial Business and Regulatory Impact, Integrated Impact, Data Protection Impact, Strategic Environmental, Business and Regulatory Impact Assessments), but there was nothing in these which obviously set out the rationale for the actual penalty levels chosen.

[59] A penalty level of £30, which is the sum under the 2021 Regulations if there is one contravention and the penalty is paid within 14 days, may be relatively straightforward to

justify. Other examples operate more harshly. For example, a non-resident visiting Glasgow, staying in the city centre for a long weekend from Friday to Monday and using a non-compliant and non-exempt car each day, failing to pay penalties within 28 days, might be subject to penalties totalling £1,350. Every further day within a 3 month period that vehicle returned to drive in the LEZ would attract an additional penalty of £480 (or £720 if not paid within 28 days). Those are not the highest levels of penalties that can be imposed on application of the 2021 Regulations.

[60] It is accepted that the 2019 Act and the 2021 Regulations take a different prohibition and penalty based approach from road charging provisions used to underpin some of the low emission zones south of the border. The daily licence fees charged in the English schemes may therefore not bear direct comparison with Scottish penalties, and in any event penalties imposed in England for failing to pay charges to use those roads can be significant (for example £180 for a car which does not pay the daily charge of £12.50 timeously, under article 14(5) of the Greater London Low Emission Zone Charging Order 2006). Nevertheless, because in human rights challenges the courts seek to make rights protection practical and effective and not theoretical and illusory, they will look behind appearances and at realities (*Cusack* v *Harrow LBC* [2013] 1 WLR 2022 at paragraph 35). Schemes elsewhere pursuing the same air quality objective, with markedly different financial provisions to enforce them, may suggest the need for inquiry into whether less intrusive financial levels would still meet the legitimate aim. If there should be a case in which there is a relevant interference with A1P1 rights due to imposition of a penalty, it will be for the Scottish Ministers, who set the penalty levels, to justify why the levels in regulation 4 and Schedule 1 of 2019 Regulations are no more than needed to meet the legitimate aim, and why less intrusive levels are insufficient.

The consultation process was unlawful

[61] The petitioner's third and final ground of challenge was that the consultation process which led to GCC bringing the LEZ scheme into force was unlawful. First, there was a failure to have regard to material considerations, being the position of businesses such as the petitioner's reliant not on footfall but on vehicles. Second, there was predetermination of the outcome of the consultation.

[62] This ground of challenge also fails. Turning first to the material considerations point, the petitioner had opportunities to submit representations during the consultation process on the Glasgow LEZ scheme, but did not do so. There had been a period of informal consultation on the design of a scheme between 17 February and 20 March 2020, eliciting 973 valid responses. There was then a statutory consultation, as required under section 11 of the 2019 Act. It lasted for 10 weeks from 24 June to 2 September 2021, and elicited 2941 valid responses. The views from the informal consultation informed the preferred scheme options presented in the formal consultation (consultation document page 3). A report on the consultation dated 23 November 2021 was produced by GCC. Paragraph 6 of that document was entitled "Consultation Actions", to be taken by GCC on specific consultation themes following the responses. Participation in the statutory consultation included various businesses (there is a summary of engagement, including with businesses, in section 8 of GCC's Report to the Scottish Ministers, in particular paragraphs 8.2, 8.16v and vi, 8.17).

[63] The particular situation of the petitioner's vehicle repair business was the type of consideration which fell within the third category of considerations identified in *Friends of the Earth* v *Secretary of State for Transport* [2021] 2 All ER 967 at paragraphs 116 and 120. The governing legislation did not say that GCC must expressly take into account businesses reliant on vehicles not footfall. Nor was the petitioner's individual position so obviously

material that as a matter of law it had to be directly and individually considered. GCC's consultation covered business interests. The petitioner is not the only city centre business to which people might drive vehicles. Business interests were taken into account, as part of an exercise necessitating the balancing of many different considerations. It was not necessary for GCC to work through every consideration which might conceivably be regarded as potentially relevant to the LEZ scheme, and positively discount them. If the petitioner now wishes to raise matters it did not put before GCC prior to it bringing the LEZ scheme into force, then the proper avenue for doing so is to make representations to GCC for the purposes of its annual reports under section 29 of the 2019 Act, or participating in any review ordered by the Scottish Ministers under section 31. The decision to bring into force the LEZ scheme on 31 May 2022 is not unlawful for having failed to take into account a material consideration.

[64] The challenge on the basis of predetermination also fails. The court was not pointed towards any clear evidence supporting this challenge (*Re Finucane* [2019] 3 All ER 191 paragraphs 77-78). Instead, the court was invited to draw inferences of predetermination from there being only minimal changes to the scheme during its design, and GCC continuing with the scheme despite negative views being expressed including in relation to boundaries, and despite limited evidence of NO_2 exceedances. No proper inference of predetermination can be drawn from those matters. GCC's report on the findings of the statutory consultation dated 23 November 2021 demonstrates that it analysed and considered responses. That consideration of responses predated GCC's final scheme design, put to GCC's Environment, Sustainability and Carbon Reduction City Policy Committee in March 2022 and to the Scottish Ministers in April 2022. As a matter of fact, some changes were made to the LEZ scheme following both informal and formal consultation. GCC's

report to the Scottish Ministers noted some of these, including introduction of a limited taxi fleet exemption (paragraph 2.5), and choice of a particular preferred boundary option (paragraph 8.6, figure 20, paragraph 8.12). Explanations were given for not making changes in relation to other consultation feedback (paragraph 8.19, and see also paragraph 6 and 7 of GCC's report on the findings of the consultation dated 23 November 2021). The duty in relation to negative views of the scheme was to take them into account, and GCC was not obliged to follow them. The modelling information before GCC entitled it to consider there remained a problem with NO_2 emissions that it required to address. In these circumstances, the inference cannot properly be drawn that there was an absence of conscientious and open-minded consideration of relevant matters by GCC. The LEZ scheme is not unlawful as a result of predetermination and improper consultation.

Conclusion

[65] The petitioner's grounds of challenge to the Glasgow LEZ scheme are not well founded. The petition, and the petitioner's motion for decrees of declarator and reduction, are refused.