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33 Horseferry Road  
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By email  
25<sup>th</sup> January 2019

To whom it may concern

## Enforcement of Mandatory Cycle lanes

### Introduction

1. This letter sets out the grounds on which Cycling UK may wish to challenge one or both of two decisions which appear to have been made by the Department for Transport (“DfT”), to change the legal definition of a mandatory cycle lane (“MCL”) so that it is no longer an offence for vehicles other than pedal cycles to be parked in them during their hours of operation.
2. We say “appear to have been taken” because it is unclear when or why these decisions were taken, and DfT itself denies that they have had any legal effect. We are therefore unclear at this stage about the nature of any legal challenge we may make, or the remedy or remedies that we might seek if our challenge were to be successful.
3. The first decision appears to have been taken in 2016, and concerns the wording which defines the legal meaning of the road markings associated with MCLs. This decision appears not to have been publicised in any way at the time, Cycling UK has only just become aware of it and we believe it has not previously come to light. The second decision is the forming of an opinion, expressed in DfT’s email to Cycling UK dated 9<sup>th</sup> January 2019, that those changes to the wording defining the legal meaning of MCLs do not amount to a change to the restrictions associated with MCLs. In this email, DfT claimed that “the restrictions associated with mandatory cycle lanes have not changed”.
4. Cycling UK believes this to be a wholly untenable claim. Prior to 2016, the legal effect of the solid white line denoting a MCL, as set out in the Traffic Signs Regulations and General Directions (“TSRGD”) 2002, was to prohibit vehicles other than pedal cycles from being “used” in a MCL during its hours of operation. This was changed in the new TSRGD 2016 to a prohibition on those vehicles being “driven or ridden” in MCLs during their hours of operation. We cannot see how the word “using” an area of road-space could be interpreted as including “driving or riding” in it, but not “parking” in it.
5. The consequences of this change are that local authorities cannot now take enforcement action against offences involving the parking of vehicles (other than pedal cycles) in MCLs during their hours of operation – or at least, not for those MCLs that were created after the TSRGD 2016 came into effect.
6. DfT also appears to have acted unreasonably or irrationally in forming the view, expressed in its 9<sup>th</sup> January email to Cycling UK, that the changes of wording made in TSRGD 2016 made no difference to the actual regulatory restrictions associated with MCLs. This view contradicts advice given by DfT itself (or its predecessor departments) in several guidance notes to highway authorities in previous years, some of which remain current. It also contradicts the public statement of the law contained in Rule 140 of the Highway Code, as issued by DfT in 2007.

7. Local authorities will therefore have introduced many MCLs with TROs which accorded with DfT's previous advice, assuming (we believe correctly) that it accorded with TSRGD 2002 (or with prior regulations, in the case of pre-2002 MCLs). It is therefore very likely that any TROs which prohibit parking or waiting in these older (pre-2016) MCLs will still be valid, and may even be enforceable by those local authorities (even though most, if not all, of them are likely to believe otherwise). These too are factors that DfT appears not to have taken account of in deciding to change the wording, and in forming the view that this change of wording did not affect the regulatory position.
8. We therefore request DfT to consider this effectively as a "letter before a 'letter before action'". Given the requirements of the courts to seek to resolve issues such as this quickly and, if possible, informally, we have prepared this letter as quickly as possible, without seeking legal advice on it at this stage. This letter should therefore not be seen as a definitive statement of Cycling UK's possible legal challenge, should we find it necessary to bring one, nor have we sought to be legally precise as to any remedy we might wish to seek from the courts.
9. Instead, we request a meeting to discuss how our concerns might best be resolved without needing to involve the courts. Nonetheless, the clock is, or may now be, ticking for any challenge we may feel we need to make to the decisions we became aware of through DfT's email of 9<sup>th</sup> January. We therefore also set out a request for disclosure, and seek confirmation within 5 working days of whether DfT is willing to comply with this request.
10. In the following section, we describe in narrative terms the legal framework which defines road traffic signs and markings, and their legal meanings – and in particular, the meaning of the solid white line which denotes a MCL. We start though by describing the legal framework which, since 2004, has allowed the enforcement of certain road traffic offences to be undertaken by local authorities, rather than by the police. The relevant statutes and statutory instruments are set out in full in Appendix A.

## **Legal background: a narrative summary**

### **The Traffic Management Act**

11. The Traffic Management Act (TMA) 2004 includes, in Part 6, provisions allowing local authorities to take over from the police the responsibility for enforcing certain road traffic offences – this is variously known as 'civil enforcement' or 'decriminalised enforcement'. Powers to decriminalise the enforcement of certain road traffic offences were included in Part 6 of the Traffic Management Act 2004 (see section 73).
12. [Schedule 7](#) of that Act defines four categories of offences that were to be subject to civil enforcement, as set out in Parts 1 to 4 of that Schedule. These were:
  - parking contraventions (see Part 1 of the Schedule);
  - bus lane contraventions (see Part 2 of the Schedule);
  - London lorry ban contraventions (see Part 3 of the Schedule);
  - moving traffic contraventions (see Part 4 of the Schedule).
13. When the TMA was still a Bill passing through the Lords in 2004, cycle advocacy groups including the London Cycling Campaign and Cycling UK (which was then known as CTC, the national cycling charity) were concerned to ensure that the offences to be decriminalised would include infringements of MCLs. Consequently, Lord Berkeley (who was then Secretary of the All Party Parliamentary Cycling Group, and who has since become a Vice-President of

Cycling UK) [moved amendment 105](#) at Report Stage in the Lords (on 29<sup>th</sup> June 2004), seeking to ensure that MCL infringements would be subject to civil enforcement.

14. In response, the Minister Lord Davies of Oldham had tabled a Government amendment number 107, whose effect was to insert the regulatory traffic sign for MCLs (along with four other traffic signs) into a table of regulatory traffic signs associated with the 'moving traffic offences' that would be subject to civil enforcement under Part 4 of the Schedule. The Minister explained that this would (among other things) allow civil enforcement of the offence of driving in a MCL during its hours of operation. However he also assured Lord Berkeley that the broader wording of his Amendment 105 (which also covered parking in MCLs) was not needed, as powers to enable civil enforcement against parking offences in MCLs were already contained in Part 1 of the Schedule. He said:

*"...Government Amendment No. 107 will enable enforcement of driving in a mandatory cycle lane or on a cycle track as moving contraventions under part 4 of Schedule 7. The provisions of part 1 of Schedule 7 already cover civil enforcement of parking in cycle lanes or on cycle tracks."*

### **Concerns over failure to fully implement the Traffic Management Act**

15. The Government has since brought into effect Part 1 of Schedule 7 but not Part 4. In other words, it has decriminalised the enforcement of parking offences but not the moving traffic offences. It has thus not fully implemented Part 6 of the TMA. It has been strongly criticised for this by local government organisations, parliamentary inquiries, cycling advocacy groups and others.

16. Specifically the Commons Transport Committee ("Transcom") has twice called for TMA Part 6 to be brought fully into effect. Following its 2011 inquiry on [effective road and traffic management](#), Transcom issued a report entitled "[Out of the jam: reducing congestion on our roads](#)". In this report, Transcom stated (at paragraph 16):

*"We can see no reason why Part 6 of the Traffic Management Act 2004 should not be fully commenced to enable local authorities to deal more effectively with moving traffic contraventions and we recommend that the Government bring this part of the Act into force, by 2013."*

17. Transcom later reiterated this point in the [report](#) of its [inquiry on road traffic law and enforcement](#). Having cited the calls for the full implementation of Part 6 from the Local Government Association, Transport for London and others, and the reasons given by successive governments over the years for not doing so, Transcom said (at paragraph 99):

*Granting local authorities the power to enforce against moving traffic offences makes sense. It allows enforcement to take place even where roads police numbers are in decline and it provides valuable local accountability. We see little evidence to support the Department's position that there is little support for this and find it difficult to understand the Minister's unwillingness to consider it. We repeat the previous Transport Committee's recommendation that Part 6 of the Traffic Management Act 2004 be commenced, and also recommend that the Government consider the case for allowing additional moving traffic offences to be subject to civil enforcement in London.*

18. Similarly, the 8<sup>th</sup> recommendation of the 2013 '[Get Britain Cycling](#)' inquiry, conducted by the All Party Parliamentary Cycling Group ("APPCG"), said:

*"The Department for Transport should approve and update necessary new regulations, such as allowing separate traffic lights for cyclists and implementing Part 6 of the Traffic Management Act 2004."*

19. DfT [responded](#) to the first of the two Transcom inquiries (in 2011) by arguing in effect that, when the Minister (Norman Baker) had consulted local authorities about their willingness to enforce the moving traffic regulations, their response had indicated equivocal support, hence there was a risk that implementation would be uneven. However it added that:

*“We are committed to keeping this matter under review, and have made clear we will be happy to reconsider the case for bringing forth regulations when there is good evidence of a higher level of commitment from authorities to taking them up. In the meantime we continue to encourage local authorities to make better and more consistent use of existing bus lane enforcement and parking enforcement powers, as evidence from such activities will help to establish the case for the further expansion of local authority powers.”*

20. Similarly, DfT [responded](#) to the APPCG ‘Get Britain Cycling’ inquiry (in 2013) by stating that :

*“Where local authorities have taken on Civil Parking Enforcement powers they can already use parking restrictions to enforce parking contraventions in cycle lanes.”*

It also acknowledged that there was:

*“...a strong desire from some local authorities outside London and from cycling groups for authorities to have extra powers in Part 6 of the Traffic Management Act to enforce moving traffic contraventions (such as driving in cycle lanes) as well as the Police”.*

DfT’s response then stated that:

*“The Department for Transport has agreed to consider this,”*

...adding that

*“No decision has been taken yet on commencing Part 6, but the matter is under consideration.”*

It said DfT would take account of evidence submitted by Transport for London and by Nottingham and Sheffield City Councils. It acknowledged that TfL’s evidence showed a 50% improvement in compliance rates, but that the enforcement activity had focused more on other moving traffic offences (such as yellow box junctions) rather than cycle lanes, and that it was unclear how what effects this improved compliance had had on safety or congestion.

21. However by the time DfT [responded](#) to Transcom’s second inquiry call for full implementation of TMA Part 6 (i.e. the traffic law and enforcement inquiry in 2016), DfT’s reasons for not doing so had changed. It explained these as follows:

*“Whilst the devolution of parking enforcement has been successful, it has not been without considerable concerns from motorists and, indeed, the Transport Select Committee. In its Report of 2013 into local authority parking enforcement, the Committee expressed concern about the way in which local authorities used CCTV for parking enforcement. There have been concerns around revenue raising, penalty levels and the number of penalty charge notices (PCNs) issued. In response to this, new legislation was enacted in March to restrict the use of CCTV for parking enforcement.”*

*“Against this background the Government remains to be convinced about the case for giving all authorities the powers to enforce moving traffic contraventions and the Government is not keen to see local authorities installing a raft of new cameras on yellow box junctions and elsewhere to issue PCNs for moving traffic contraventions. Freedom of Information requests have indicated that some councils have made large sums of money from some box junctions.*

*We have no plans at present to give local authorities outside London greater enforcement powers and in this context we do not consider it appropriate to give London further powers.”*

22. In other words, DfT’s grounds for rejecting calls to fully implement TMA Part 6 had shifted, from a concern that civil parking enforcement would result in moving traffic offences being unevenly applied, to a concern that these powers would be used primarily for revenue-raising.
23. Yet, to Cycling UK’s knowledge, nobody has suggested that local authorities stand to make large sums of money from enforcing mandatory cycle lane restrictions. On the contrary, we believe they are hugely important for cyclists’ safety.

### **Changes to the legal definition of a mandatory cycle lane, 2016**

24. It was at around this time that DfT changed the wording of the definition of a MCL in the new TSRGD 2016. This was done in the process of making a wider change, aimed at saving local authorities the costs and bureaucracy involved in making TROs for all MCLs. To do this, DfT effectively wrote into TSRGD 2016 a national generic TRO that would apply to all MCLs – or at least to those introduced since TSRGD 2016 came into effect.
25. TSRGD is a statutory instrument made under the Road Traffic Regulation Act (“RTRA”) 1984. Put simplistically, RTRA sets out the powers of highway authorities to make traffic regulation orders (“TROs”) and the offences involved in breaching them. Section 5 of RTRA 1984 makes it an offence to contravene a traffic regulation order in England outside London, while other sections create similar offences of contravening traffic regulations in London, experimental TROs etc. RTRA also contains powers for the Secretary of State to issue regulations as to the procedures that local authorities must follow when making TROs, and to issue further regulations which define the designs, sizes and regulatory meanings of traffic signs and road markings that highway authorities must choose from, in order to convey to road users what TROs are in force. TSRGD fulfils the latter purpose.
26. As stated in [DfT Circular 01/2016](#) (which explained the new TSRGD) at paragraph 3.48:

*“In order to reduce cost and bureaucracy associated with placing bus stop clearways, TSRGD 2002 removed the requirement to make an underpinning traffic order in respect of these markings. TSRGD 2016 extends this by removing the need for a traffic order for mandatory with-flow cycle lanes and stopping restrictions on school entrance markings.”*

27. Circular 01/2016 also explained (at paragraph 12.16) that highway authorities had greater freedom to vary the width of the solid white line denoting a MCL (n.b. this white line is known in TSRGD as the “marking to diagram 1049B”, referring to its numbering in the list of road markings that are ‘prescribed’, or authorised, under TSRGD). The paragraph states that:

*“The marking to diagram 1049B to indicate a mandatory cycle lane may now be varied up to 250mm in width.”*

28. Despite reporting on this and other detailed changes, the Circular made no mention of any other changes to MCLs. In particular, it made no reference to any change to the wording of the legal meaning of the white line denoting MCLs, from having previously meant that vehicles (other than pedal cycles) were prohibited from being “used” in them during their hours of operation, to a similar prohibition against these vehicles being “driven, or ridden” in them.

### **The Cycling and Walking Safety Review**

29. The Department [announced](#) in September 2017 that it would conduct what was originally intended as a review of cycling safety, to consider not only the possibility of new cycling offences but also what else might be done to improve safety for cyclists. The scope of the

review was later widened to include pedestrian as well as cycle safety, with the aim of support the ambitions, targets and objectives of the Government's [Cycling and Walking Investment Strategy](#) ("CWIS"), namely to increase both cycling and walking activity and to improve the safety of travel by these modes. It therefore came to be known as the CWIS Safety Review, and a ['call for evidence'](#) to inform it was issued in March 2018. Cycling UK provided an extensive [response](#) to this review (see [summary](#) or [full version](#)).

30. The Government summarised the input it had received in a [feedback report](#) issued in October 2018, followed by a [response document](#) issued the following month. The latter set out 50 actions that DfT would take forward to improve cycle and pedestrian safety.

31. One of these actions was to:

*"Clarify to local councils the powers they have to prohibit parking in cycle lanes through civil parking enforcement powers."*

#### **Clarifying local authorities' MCL enforcement powers: email exchange between Cycling UK and DfT**

32. The above statement caused some puzzlement to Cycling UK. Cycling UK's Policy Director Roger Geffen raised these concerns in a meeting on 6<sup>th</sup> December 2018 with DfT's head of walking and cycling policy, Guy Boulby. Boulby referred Geffen's question to Ryan McGowan, a Policy Adviser in DfT's Traffic & Technology division.

33. Accordingly, Geffen emailed Ryan McGowan on 11<sup>th</sup> December. This started an email exchange which is reproduced in full in Appendix [B?] to this letter. It is summarised in the following paragraphs.

34. In his first email, Geffen referred to his meeting with Boulby, saying:

*"During that meeting I questioned the commitment in the [CWIS Safety Review response](#) that DfT would 'Clarify to local councils the powers they have to prohibit parking in cycle lanes through civil parking enforcement powers'. I expressed puzzlement given that, unless I'm badly mistaken, English local authorities outside London still have no such powers."*

35. Geffen went on to explain his understanding that *"the relevant powers were created in Part 6 of the Traffic Management Act 2004 [...] but have never been brought into effect."*

36. As it happens, Cycling UK now suspects that this last statement was incorrect. It now appears to us that the power for local authorities to carry out civil enforcement against illegal parking in MCLs took effect at the time that other parking offences were decriminalised – namely on 31<sup>st</sup> March 2008, when the [Civil Enforcement of Parking Contraventions \(England\) General Regulations](#) were brought into effect. These regulations gave effect to the TMA 2004's provisions enabling the civil enforcement of parking offences, as set out in Schedule 7 Part 1 of the Act. As Lord Davies of Oldham had indicated during the passing of the Bill (see paragraph 14 of this letter), these offences covered include the parking of vehicles other than pedal cycles in MCLs during their hours of operation, where this is done in contravention of a TRO, and thus in breach of RTRA [section 5](#) (or [section 8](#) in London). It is only the offences of illegally driving or riding a vehicle (other than a pedal cycle) in a MCL during its hours of operation – i.e. 'moving traffic' offences in relation to MCLs, as covered by Part 4 of that Schedule – that have never been decriminalised.

37. However, even the above paragraph is correct, we suspect though that most (if not all) English local authorities were (and still are) unaware that they have had powers to carry out civil enforcement against parking offences in MCLs from that date. We have clear evidence that at least some authorities shared our belief that they could not do so - see paragraphs 69 and 70 of this letter.

38. Returning to Geffen's email of 11<sup>th</sup> December, he therefore sought clarification as to whether DfT intended to bring into effect the provisions of TMA Part 6. He also sought assurance that DfT did not instead intend to advise local authorities that they could enable civil enforcement of MCLs by introducing new TROs creating parking restrictions, and adding yellow lines accordingly. He said:

*"That would effectively be an acknowledgement that the money LAs have previously spent on obtaining TROs and painting in solid white lines was to no avail – and that they now need a second TRO, and additional yellow paint, if they want their mandatory cycle lanes to be enforceable. This would be a hugely inefficient solution, when the right one is simply to bring forward the Statutory Instrument needed to bring TMA 2004 Part 6 fully into effect."*

He concluded by seeking an assurance that the former option was not what DfT had in mind.

39. McGowan replied on 19<sup>th</sup> December. He started by saying that the TMA's Part 6 powers in relation to parking offences had already been commenced, and that these permit local authorities to take enforcement action against illegally parked vehicles in cycle tracks. However he then noted that this was not the case either for mandatory or advisory cycle lanes. Leaving aside advisory cycle lanes (which, as he noted, have no legal status), he then said the offences relating to MCLs are only 'moving traffic offences', not 'parking offences'.

40. McGowan then explained the difficulties of taking enforcement action against a vehicle found parked in a MCL. He noted that some MCLs only operate part-time, hence a vehicle found 'parked' in a part-time MCL could legally have been 'driven' into it outside its hours of operation. Even for full-time MCLs, *"someone else could have driven the vehicle there, it could have been pushed there, etc"*. He noted that there are similar difficulties taking enforcement against vehicles found parked on pavements, given that it is an offence to drive vehicles on pavements, but not to park them there.

41. McGowan then noted that ministers have decided to allow local authorities to use both fixed and vehicle-borne cameras to enforce a wider range of offences than those for which this is currently permitted (which is only school zigzags, bus clearways and a few others). However he added that this still requires them to introduce TROs and yellow lines to make their MCLs enforceable.

42. In his next email (dated 24<sup>th</sup> December), Geffen expressed puzzlement at McGowan's claim that MCL markings give rise only to a 'moving traffic offence', not a 'parking offence'. He suggested this was at odds with the advice given to all road users in rule 140 of the Highway Code (which states "You MUST NOT drive or park in a cycle lane marked by a solid white line during its times of operation") as well as with various advice notes to local authorities on traffic signs and markings.

43. He noted nonetheless that, as worded in the [relevant provisions of TSRGD 2016](#), the white line denoting a MCL (marking to diagram 1049B, shown at item 7 in [this table](#)) *"conveys the requirement that a vehicle, other than a pedal cycle, must not be **driven, or ridden**, in the cycle lane during the cycle lane's hours of operation (which may be all the time)."*

44. After seeking clarification of whether the above provisions were there to create a "national 'blanket' TRO" for MCLs (thereby meeting the commitment to save local authorities the administrative burden and costs of making TROs for every new MCL they introduce), he then pointed out that this wording was different from the wording of the previous TSRGD 2002. This had stated:

*"cycle lane" means a part of the carriageway of a road which—*  
*(a) starts with the marking shown in diagram 1009; and*

(b) is separated from the rest of the carriageway—

- (i) if it may not be used by vehicles other than pedal cycles, by the marking shown in diagram 1049; or
- (ii) if it may be used by vehicles other than pedal cycles, by the marking shown in diagram 1004 or 1004.1;

[N.B. As noted above, 'diagram 1049' shows a solid white line, while 'diagrams 1004 and 1004.1' show broken white lines, i.e. the markings for 'advisory cycle lanes', in which the driving, riding or parking of other vehicles can only be prohibited by other restrictions].

45. Geffen then sought clarification of whether the change of wording for the action that would give rise to an offence, from "used" to "driven, or ridden", had been made as part of the changes from TSRGD 2002 to TSRGD 2016. If so, he asked, why had this been done, and why had it not been explained in Local Authority Circular 01/2016, explaining the new TSRGD including the changes that had been made.
46. He then noted that local authorities would still have MCLs that had been introduced before TSRGD 2016 came into effect, that these would be backed by TROs prohibiting other vehicles from being parked (as well as driven or ridden) during their hours of operation (in accordance with DfT's previous advice to highway authorities, as set out in paragraphs 55 to 65 of this letter); that there are therefore bound to be discrepancies between the regulatory meaning of the white lines associated with older and newer MCLs. He therefore urged DfT to amend the definition of MCLs in TSRGD 2016, to accord with the Highway Code and DfT's advice on traffic signing to local authorities, rather than having to advise local authorities that their pre-2016 MCLs now needed new TROs and yellow lines, and to amend the Highway Code.
47. In his response dated 9<sup>th</sup> January, McGowan claimed that "*Rule 140 of the Highway Code is unclear*", adding that DfT is considering whether it should be revised as part of the review of the Highway Code. He also said DfT was aware that the traffic signing guidance cited by Geffen "may be unclear on the restrictions associated with mandatory cycle lanes as well". He then emailed again the following day to say that DfT now intends to revise this too.
48. McGowan's 9<sup>th</sup> January email confirmed Geffen's understanding of the new provisions relating to MCLs in TSRGD, namely to "*effectively abolish the need for a Traffic Regulation Order to give effect to a new mandatory cycle lane*", and that his was intended "*to make it quicker and easier for local authorities to introduce mandatory cycle lanes*".
49. In relation to the change of wording that Geffen had questioned, McGowan then explained that "*'used' meant driven ... and that the restrictions associated with mandatory cycle lanes have not changed, aside from the aforementioned elimination of the TRO requirement.*"

## **Contradictory views and advice from DfT**

50. Cycling UK believes that the above statement from DfT is irrational and/or was made without regard to DfT's own previous advice to local authorities on the meaning of the white lines denoting MCLs, or to the Highway Code, or to how local authorities had drafted TROs giving effect to MCLs prior to the introduction of MCLs.
51. This section of this letter summarises the evidence Cycling UK has so far identified which indicates (a) that the Government has issued statements and advice, both to local authorities and the public, which indicate that the Government has previously held views which are directly at odds with the above statement; and (b) that local authorities have observed practices which are at odds with this statement. In some cases, it merely summarises

statements from past Government documents or statements – in which case, the relevant documents or statements are quoted in full in Appendix C of this letter.

52. We reserve the right to seek further evidence of the above, in readiness for a possible legal challenge, should it not prove possible to resolve our concerns in other ways – though we very much hope this will prove to be possible.

53. The first and most obvious contradictory statement is [Rule 140 of the Highway Code](#). This states:

*You **MUST NOT** drive or park in a cycle lane marked by a solid white line during its times of operation.*

54. Given the statements in the [Introduction to the Highway Code](#) regarding its use of the words MUST and MUST NOT, it is clear that the Government regarded MCLs as indicating a prohibition against vehicles (other than pedal cycles) being parked, as well as driven (or ridden) in MCLs.

55. The same interpretation of the meaning of MCLs is apparent in guidance to local authorities on cycle-friendly highway provision, as set out in publications from DfT and its predecessors from 1989, 1996, 2004 and 2008.

56. In its Local Transport Note [LTN 1/89, 'Making Ways for Cyclists'](#), the Department (which was then known as the Department of Transport, or "DoT") said:

*"Mandatory lanes are bounded by a solid white line and signs as shown in Figure 4, which must be accompanied by a Traffic Regulation Order (section 1, 6 or 9 of Road Traffic Regulation Act 1984). The Order will prohibit the use of the lane by motor vehicles (except for emergency and statutory purposes), and prohibit waiting, but may permit loading and unloading outside the working day."*

57. It is clear from this that DoT at that time regarded the prohibition of motor vehicles as an intrinsic part of the TROs that would give effect to MCLs. It says nothing about waiting prohibitions being an optional extra, that would need to be indicated by yellow line parking restrictions.

58. The comparable advice in the publication 'Cycle friendly infrastructure' (not available online, but issued by DoT in 1996 and published jointly with other bodies including CTC, as Cycling UK was then known) is less clear-cut. However it too says nothing to suggest that MCLs required separate TROs and yellow-line markings to prohibit parking, in addition to the prohibition on other vehicles from entering them. It says (in paragraph 11.3.3):

*"[Mandatory cycle lanes] are indicated by a solid white line (1049) and with-flow cycle lanes signs (958.1 and 959.1). [...] They are mandatory in that motor vehicles may not cross into the cycle lane and therefore need to be supported by a traffic regulation order. [...] Waiting and loading must be effectively restricted, though not necessarily all day. Peak hour restrictions may be adequate."*

59. DfT's Local Transport Note [LTN 1/04, 'Policy, Planning and Design for Walking and Cycling'](#) is much clearer, containing the following statement (in paragraph 4.11.1):

*"Motor vehicles are not permitted in a mandatory cycle lane during its hours of operation, but cyclists are entitled to ride outside the lane. Mandatory lanes require a traffic regulation order to prohibit use of the lane by motor vehicles and to impose parking or waiting restrictions."*

60. Its successor, Local Transport Note [LTN 2/08, Cycle Infrastructure Design](#), was issued in 2008 and remains current, though it is due to be superseded early in 2019. It too is pretty clear that MCLs do not require additional TROs and yellow lines to prohibit parking (in addition to those which create the MCL). It says (at paragraph 7.2.1):

*“Mandatory cycle lanes are bounded by a solid white line (diagram 1049) and other traffic is excluded from them during their times of operation by a traffic regulation order (TRO).”*

61. It then continues (at paragraph 7.2.3):

*“Yellow lines (see Figure 7.3) are not strictly necessary, unless waiting or loading is prohibited during non-operational periods. However, if present, they discourage motorists from stopping in the lane and make it easier for enforcement officers to deal with any such encroachment.”*

62. These last words may reflect the fact that, by the time it was written (2008), the Traffic Management Act 2004 had been passed but the provisions to decriminalise the enforcement of ‘moving traffic offences’ (including those relating to MCLs) had not (and still have not) been brought into effect.

63. We also cite the advice given to local authorities in chapters 3 and 5 of DfT’s Traffic Signs Manual (“TSM”). Paragraph 17.6 of [TSM Chapter 3](#) (issued in 2008) states that the with-flow cycle lane sign (sign to diagram 959.1) is:

*“...a regulatory sign that prohibits motor vehicles from encroaching on the cycle lane”.*

64. The meaning of the word “encroaching on” is ambiguous, however there is nothing here to suggest that it merely means “entering” but not “parking”, and that additional TROs and yellow-line restrictions are needed to prevent parking.

65. Equally, there is nothing in [TSM Chapter 5](#) (issued in 2003) to suggest that additional TROs and yellow line restrictions are needed to prevent parking. It says (at paragraph 16.5):

*“Mandatory cycle lanes are parts of the carriageway which other vehicles must not enter except to pick up or set down passengers, or in case of emergency.”*

66. Conversely we are not aware of any advice from DfT prior to TSGRGD 2016 – or indeed subsequently – advising highway authorities that vehicles (other than pedal cycles) are NOT prohibited from parking in MCLs during their hours of operation, and that other restrictions are therefore needed to prohibit this.

67. We conclude this section by citing two sources from highway authorities, which indicate that those authorities believed (and probably still believe) that MCLs amounted to a prohibition on other vehicles being parked (as well as driven or ridden) in them during their hours of operation.

68. The first is from Highways England’s Interim Advice Note IAN 195/16, Cycle Traffic and the Strategic Road Network, issued as recently as 2016. Paragraph 1.5 defines a mandatory cycle lane simply as:

*“a cycle lane bounded by a solid white line which excludes motor traffic.”*

69. The second is a committee report from Manchester City Council to its councillors on [“the misuse of on-road cycle lanes”](#). The Council’s officers advised councillors that:

*“Mandatory cycle lanes, which have a solid white line along their edge, prevent vehicles parking or entering the lane during its hours of operation. Mandatory Cycle Lanes are supported by a legal traffic regulation order, which must be advertised to allow for any*

*objections to be considered, before the order can be formally made. Powers to enforce Mandatory Cycle Lanes (Solid White Line) currently remains with the Police as these powers have not yet been decriminalised, however this may change under the new Traffic Management Act, when the decriminalisation of some moving traffic offences is considered. As a result of the limited resources available to the Police to enforce, the City Council also promote waiting restrictions within mandatory cycle lanes, which allows Manchester Parking to issue Penalty Charge Notices to those motorists who illegally park.”*

70. It is clear from this 2006 report that Manchester City Council believed (and, we suspect, still believes) that MCLs involved a prohibition on vehicles from parking (as well as entering) them during their hours of operation. However it is equally clear that, following the non-implementation of still-recent TMA's provisions to decriminalise enforcement of moving traffic offences, the Council felt the need to create additional waiting restrictions, not because they were legally required for MCLs but to overcome the lack of enforcement by police officers that the Council was then starting to experience.
71. This is only an interim statement of the evidence that DfT is contradicting its past views and advice. Should we be unable to agree a satisfactory means of resolving these contradictions, Cycling UK will seek to identify further evidence in support of this contention, and the problems we believe will be caused by the wording in TSRGD 2016.

## **Remedies, or means of resolving our concerns**

72. At this stage, Cycling UK is unsure what remedy we would seek if we had to bring a legal challenge to address the concerns identified in this letter, and if this action were to be successful. However its effect would need to be a requirement for DfT to reconcile the conflict between the legal definition of the restrictions relating to MCLs in TSGD 2016 and the expression of those restrictions in the Highway Code and other guidance documents cited above, not to mention the TROs associated with MCLs introduced prior to TSRGD 2016 which prohibit other vehicles from waiting or parking in them (as well as entering them) during their hours of operation.
73. We reiterate our hope though that our concerns can be resolved without requiring legal action. Either way though, it is clear that DfT will need either to revise the definition of MCLs set out in TSRGD 2016, or to amend all of the other 'live' documents cited above, notably the Highway Code.
74. There are a number of problems with the latter option:
- It would involve changing the wording of the Highway Code in a way that was detrimental to cycle safety, as part of a forthcoming review of the Highway Code that is supposed to improve cycle safety.
  - It would involve advising local authorities that they had to amend TROs associated with MCLs they had introduced prior to 2016, either to remove any prohibitions on parking or waiting, or to allow the introduction of yellow line restrictions. This in turn would impose significant costs on them, as well as the installation of a good deal of yellow lining. This would be contrary to the stated aims of the TSRGD revisions to reduce the administrative burden on local authorities, and to reduce traffic signing clutter.
  - It would also require revisions to the Traffic Signs Manual chapters cited previously.
75. Accordingly, we seek to challenge one or both of the following:
- the decision to change the wording of the definition in 2016 and, furthermore, to do so without either consulting on this change or drawing the attention of local authorities and

other interested parties (including Cycling UK and other road user organisations) to the implications of this change; AND/OR

- the opinion expressed in DfT's email of 9<sup>th</sup> January 2019 that the above change of wording does not amount to a change to the restrictions associated with MCLs, on the grounds that it is contrary to the previous wording, to the advice that the Government had previously given to highway authorities on the legal effects of MCLs (including advice which is still current) and the advice that the Government continues to provide to the public on the legal meaning of MCLs in the Highway Code.

76. In the event of it proving necessary to proceed to legal action to resolve this matter (which we hope can be avoided) is that the court should be asked to order DfT to:

- withdraw the opinion expressed in its email of 9<sup>th</sup> January 2019 that the change of wording in TSRGD 2016 describing the restrictions associated with MCL white lines do not amount to a change to the restrictions themselves; and
- take action to reconcile the discrepancy that has now come to light between TSRGD 2016 (on the one hand) and the Highway Code and various guidance notes on cycling infrastructure and on traffic signs and markings

77. It will be evident that Cycling UK's strong preference that this reconciliation should be achieved by amending TSRGD 2016 to bring it into line with the Highway Code and DfT's advice on traffic signing etc, rather than doing the opposite. It would surely be very counter-productive for DfT to seek to amend the Highway Code in a way that would be detrimental to cycle safety, as part of a forthcoming review of the Highway Code whose stated intention is to improve cycle safety.

## Disclosure

78. To help inform Cycling UK on how this matter might best resolved – preferably without recourse to a legal challenge – we seek disclosure of the following:

- Any advice DfT has issued to highway authorities – either before TSRGD 2016 came into effect or subsequently – suggesting that MCL white lines do NOT indicate that vehicles other than pedal cycles are prohibited from being parked in MCLs during their hours of operation, and that other restrictions are therefore necessary to prevent this.
- Any internal correspondence or legal advice relating to the decision to replace the word “used” (in TSRGD 2002) with “driven, or ridden” (in TSRGD 2016), to describe what amounted to an offence if committed in a MCL with a vehicle other than a pedal cycle during its hours of operation.
- Any internal correspondence or legal advice relating to the decision not to explain the above change of wording, or its impacts to local authorities and other stakeholders, either as part of the consultation on TSRGD 2016 or in Circular 01/2016 or other documentation explaining TSRGD 2016 following its adoption.
- Any internal correspondence or legal advice relating to the forming of DfT's view, as expressed in its email to Cycling UK of 9<sup>th</sup> January 2019, that the changes of wording made in TSRGD 2016 did not amount to a change in the regulatory meaning of MCLs (or their associated white line markings).

79. We reiterate our request that DfT confirms to Cycling UK, within 5 working days of receipt of this letter, whether it is willing to comply with this disclosure request, treating this “letter before a letter before action” as if it were a “letter before action” in terms of the disclosure requirements under the civil procedure rules.

## Appendices

*[To follow]*