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Department for Transport
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Enforcement of mandatory cycle lanes (MCLs)

I write to you to bring to your attention an issue that may gravely undermine the positive intentions behind one of your fifty actions proposed in the response to the Cycling and Walking Safety Review, namely the commitment to *"Clarify to local councils the powers they have to prohibit parking in cycle lanes through civil parking enforcement powers."* We have now been in dialogue with your officials over their plans to implement this measure and are very concerned by what we have learnt.

It turns out that, due to a small but important change of wording to the legal definition of mandatory cycle lanes (MCLs) when the Traffic Signs Regulations and General Directions (TSRGD) were updated in 2016, it is no longer an offence to park in MCLs introduced since then, during their hours of operation.

Attention was not drawn to this change at the time, either in the consultations which preceded TSRGD 2016 or in the Department's Circular issued afterwards. However it now risks being further entrenched by the actions now being planned to deliver the entirely positive intentions of your commitment referenced above.

We suspect that you will be as surprised and concerned about this issue as we are, however we do not believe that it can go unchallenged. We are therefore sharing this with you in the hope of achieving a swift and satisfactory resolution.

To explain a little more fully, there has long been an understanding that it was an offence both to drive or to park vehicles other than pedal cycles in MCLs during their hours of operation. This understanding was reflected in several past issues of DfT's design guidance on cycling (dating from 1989, 1996 and 2004), and indeed the current design guidance (from 2008, though we are now very much looking forward to its forthcoming replacement). It is also reflected in two different chapters of the Traffic Signs Manual: in chapter 3 (on regulatory signs, issued in 2008) and chapter 5 (on road markings, issued in 2003).

The situation started to change in 2004, when Parliament was debating the Traffic Management Bill (now an Act). One of the Bill's measures was to 'decriminalise' certain road traffic offences (i.e. allow local authorities to take over enforcement responsibilities from the police), including various parking offences and moving traffic offences. A Lords amendment tabled at the behest of Cycling UK and the London Cycling Campaign elicited an alternative amendment from the then transport minister, Lord Davies of Oldham. He agreed to include the traffic sign for MCLs among the list of 'moving traffic offences' to be decriminalised. He also assured the House that there was no need for additional action to decriminalise the enforcement of MCL parking restrictions, as these were already be covered by the Bill's wider measures to decriminalise parking enforcement more generally.

This last point went by unnoticed, including (admittedly) by ourselves. It seems that, when the secondary legislation to decriminalise parking offences was brought into effect in 2008, no action was taken to alert local authorities (or anyone else, for that matter) that they could now enforce MCL parking restrictions. It came to be widely (perhaps universally) believed that local authorities could not enforce MCL parking restrictions until the secondary legislation was put in place to enable decriminalisation of the 'moving traffic' aspects of the Traffic Management Act, including the MCL sign. This has not happened, despite repeated criticism from the Local Government Association, the Transport Select Committee (in two inquiry reports) and the All Party Parliamentary Cycling Group, as well as by ourselves.

I was therefore concerned to read the proposal to "clarify" the powers that local authorities have to enforce MCLs, as my understanding was that these powers had never been brought into effect. I asked whether the Department's intention was to "clarify" that councils could make new traffic regulation orders (TROs) to bring in new parking restrictions and mark yellow lines accordingly, just as they could for any other section of the kerbside. This would be tantamount to an admission that MCLs were largely useless, as it is the parking restrictions that really matter.

However your officials' responses to my questioning gave rise to even greater concerns. It transpired that, in 2016, the wording of the restrictions associated with MCLs had been changed, as part of an apparently well-intentioned initiative to reduce bureaucracy and signing clutter associated with TROs. One specific measure contained in TSRGD 2016 was a national generic TRO for MCLs, intended to save local authorities from the need to make separate TROs for subsequent new MCLs.

Unfortunately, in drafting this measure, the wording of the restrictions associated with MCLs had been changed. Under the previous TSRGD 2002 (and indeed previous versions of TSRGD), it had been an offence for a vehicle other than a pedal cycle to be *"used"* in MCLs during their hours of operation. In 2016, this verb was changed to merely *"driven, or ridden"*, thereby eliminating the prohibition against other vehicles being parked in MCLs – or at least, in MCLs introduced since TSRGD 2016 came into effect. This has created an absurd situation where there are now two types of MCLs: those which predate TSRGD 2016 in which parking is prohibited by local TROs (though this is widely believed, probably wrongly, to be unenforceable); and those introduced subsequently in which parking is not prohibited. Nobody looking at a given MCL could tell which type it is, and therefore what restrictions apply.

The real problem though is that the situation for post-2016 MCLs is now at odds with Rule 140 of the Highway Code. This rule says that *"You **MUST NOT** drive or park in a cycle lane marked by a solid white line during its times of operation"*. The capitalised MUST NOT makes it clear that breach of this rule is a criminal offence. It clearly reflects the Department's previous understanding of the restrictions associated with MCLs, and is also consistent with the traffic signing and cycling design guidance referred to earlier. Yet your officials initially tried to claim that the change of wording had not affected the legal status of MCLs. In an email to me dated 9th January, it was claimed that *"the restrictions associated with mandatory cycle lanes have not changed, aside from the aforementioned elimination of the TRO requirement"*. That claim has since been contradicted by a more recent statement, namely that *"TSRGD 2016 was drafted … to make mandatory cycle lanes consistent with bus lanes"*, an acknowledgement that the restrictions had in fact been changed. That begs the question as to why the change was not referred to at the time, either in consultations beforehand or in the Circular explaining the 2016 TSRGD changes once they had been made.

Still, given where we have now got to, it is clear that your Department now needs to resolve the matter in one of two ways:

- It can EITHER revise the adverse changes made in 2016 to the legal restrictions associated with MCLs;
- OR it will have to revise the Highway Code, along with the forthcoming new cycling infrastructure guidance and various bits of traffic signing guidance, to make it clear that it is no longer prohibited to park in MCLs during their hours of operation, unless signs and markings indicate that other parking restrictions are in place. This would be a very unfortunate retrograde step to take as part of a review of the Highway Code that is clearly and quite genuinely intended to improve cycle safety. It would also involve advising local authorities that they now need to introduce new TROs and/or yellow lining for any parking restrictions for their existing MCLs. This would be a very ironic outcome of TSRGD changes that were supposed to reduce local authority bureaucracy and signing clutter.

These issues are all explained more fully in the attached draft of a 'letter before action' which we shared with your officials on 25th January, hoping to avoid the need for legal action. Unfortunately our attempts to reach an agreed resolution of our concerns have so far not proved fruitful; the response we received to that letter on 26th February did not answer the requests for information disclosure that we had made. This was despite your officials having agreed firstly that they would respond to these by 15th February, and secondly that a full and shared understanding of the current legal position (which our disclosure requests were designed to elicit) was an essential starting point for agreeing a sensible resolution of this issue.

We have therefore had to start the process of seeking legal advice, to avoid time running out on a possible legal challenge should we fail in our efforts to resolve the issue by more diplomatic means. This letter is part of those efforts, as we have no doubt that you intended the clarification of MCL enforcement powers to be a genuinely beneficial measure to improve cycle safety.

In the meantime, your officials have now agreed to respond to our requests under the terms of the Freedom of Information (FoI) Act. We are concerned though that this could once again result in disclosure being delayed or withheld, using the time-limits, cost-limits and other exemptions under FoI Act; and that this could once again undermine our efforts to achieve an agreed resolution of this matter.

Could I therefore ask you to ensure we receive full and timely disclosure, in order to facilitate discussion of how best to rectify the adverse effect of the TSRGD 2016 changes, so that local authorities can use MCLs as a genuinely useful tool to boost cycle use and improve cycle safety in their areas? Having strongly welcomed your plans to review the Highway Code to improve pedestrian and cycle safety, we very much hope to be able to contribute to that review in a wholly positive manner, without having to consider legal action that we would undoubtedly rather avoid.

I very much look forward hopefully to a constructive and timely resolution of this issue. I would be more than happy to meet to discuss how best to do this if that would be helpful.

Yours sincerely

Roger Geffen
Policy Director