

**Case Name:** *Tchenguiz v Westminster City Council* [2022] EWHC 469 (Admin) (07 March 2022)

**Full case:** [Click Here](#)

**Commentary:**

The Claimant, a resident of Kensington Gore West ("KGW") successfully challenged two traffic management orders ("TMOs") made by the Defendant, Westminster City Council ("WCC"), in September 2021. These TMOs significantly restrict access to the Claimant's family home, which is in the immediate vicinity of the Royal Albert Hall.

The Claimant alleged that WCC acted unlawfully in making the TMOs on the grounds that it:

1. failed to have regard to the public sector equality duty ("PSED") under section 149 of the Equality Act 2010;
2. failed to have regard to the interference with the Claimant's rights under Article 8 and Article 1 of the First Protocol ("A1P1") of the European Convention on Human Rights ("ECHR") and/or reached a decision resulting in a disproportionate interference with those rights; and
3. improperly exercised powers under section 22C of the Road Traffic Regulation Act 1984 for purposes other than avoiding or reducing dangers connected with terrorism.

The claim was allowed on Ground 2 only.

Regarding the PSED (Ground 1), several failures were identified: there was no reference to the PSED or its objectives in the officer's report or the Statement of Reasons. In addition, contrary to WCC's policy, the traffic and parking restrictions were imposed without any equalities impact assessment.

The Court found that notwithstanding the lack of reference to the PSED, the substance of the duty under s.149 had been addressed. It was possible to draw an inference from the officer's reports that Blue Badge holders would not be disadvantaged by the relocation of Blue Badge parking bays and the net loss of one inaccessible Blue Badge parking bay. Moreover, the Court held that a failure to consider the position of disabled persons who previously arrived by taxi or car at the Claimant's residence did not result in an unlawful failure to discharge the PSED.

On Ground 2, the Court held that the TMOs clearly engaged Article 8 (right to respect for private and family life) of the Convention. It also found that the reason for the Anti-Terrorism Traffic Regulation Order (the second TMO), namely the prevention of danger connected with terrorism, was a legitimate interference with such rights. On the issue of proportionality, the Court noted that others affected by the counter-terrorism proposals, namely visitors to the Royal Albert Hall and residents in Kensington Gore

East, were subject to less intrusive and more favourable measures than the Claimant and his family (the only residents at KGW), without any convincing justification for such inconsistent treatment. Moreover, WCC considered it safe for a large number of vehicles to enter KGW at times when the Claimant, his family and visitors were prohibited from doing so.

In the Court's view, WCC could and should have considered whether the Claimant and his household should be able to come and go as they wish in a vehicle for their daily lives just as Royal Albert Hall visitors and contractors were allowed to come and go for the purposes of their business. It therefore held that WCC's failure to undertake a Convention-compliant proportionality exercise to consider the issue from the perspective of the human rights of the Claimant and his family meant that WCC's decision-making was flawed and that consequently the scheme operated in a manner which was disproportionate.

Accordingly, the claim was allowed on Ground 2 only.

Comment: this case provides a useful summary of the relevant principles on PSED and the discussion of ex post facto evidence at [47] may be of interest: unusually, this evidence was admitted - albeit accorded less weight since it was not contemporaneous evidence. Mrs Justice Lang's finding that Article 8 was engaged, and her careful proportionality assessment (from [106] onwards) are also of note. However, the case is arguably unusual in the existence of a ready comparator (between Kensington Gore East and West) and in the clear difference in treatment between Royal Albert Hall contractors and visitors to the Claimant's home.

*Case summary prepared by Stephanie Bruce-Smith*