

Is there a real need for traffic management, or is this a matter of neglect and nimbyism? The TRO is all too frequently misused to address complaints about vehicles in the countryside; it is also wrongly used to circumvent maintenance and repair obligations; etc.

Cynical? Well, yes, because we are seeing the imposition of TROs on lanes that have not changed for decades, remaining in good condition regardless of use and lack of maintenance.

“It can easily be seen that Section 122(1) encompasses the general interest in road-users having convenient routes for transport. Thus ... a fundamental consideration prior to exercising the statutory powers includes the right of the general public, including the TRF, to use the road.” (Extract - Counsel’s Opinion)

### What is the evidence?

Elected Members act in a quasi judicial capacity when deciding on TROs and this means sticking to facts, policy and Government guidance. This is not a case of what the local Member wants, or what the residents want, but what the law allows. Once this test is met, then and only then can these other peripheral matters can come into play. There needs to be firm data to show that it is the users who would benefit from the Order and, specifically, that use by trail riders is at the root of the perceived problem. Mud, on its own, is not a material fact. Where a track cannot sustain the heavier user, due to geology, that is a fact that could reasonably be relied on to make an Order. But where there is major surface damage caused by water or a lack of maintenance combined with agricultural vehicles, then banning the public will make no difference and a TRO could not reasonably be made.

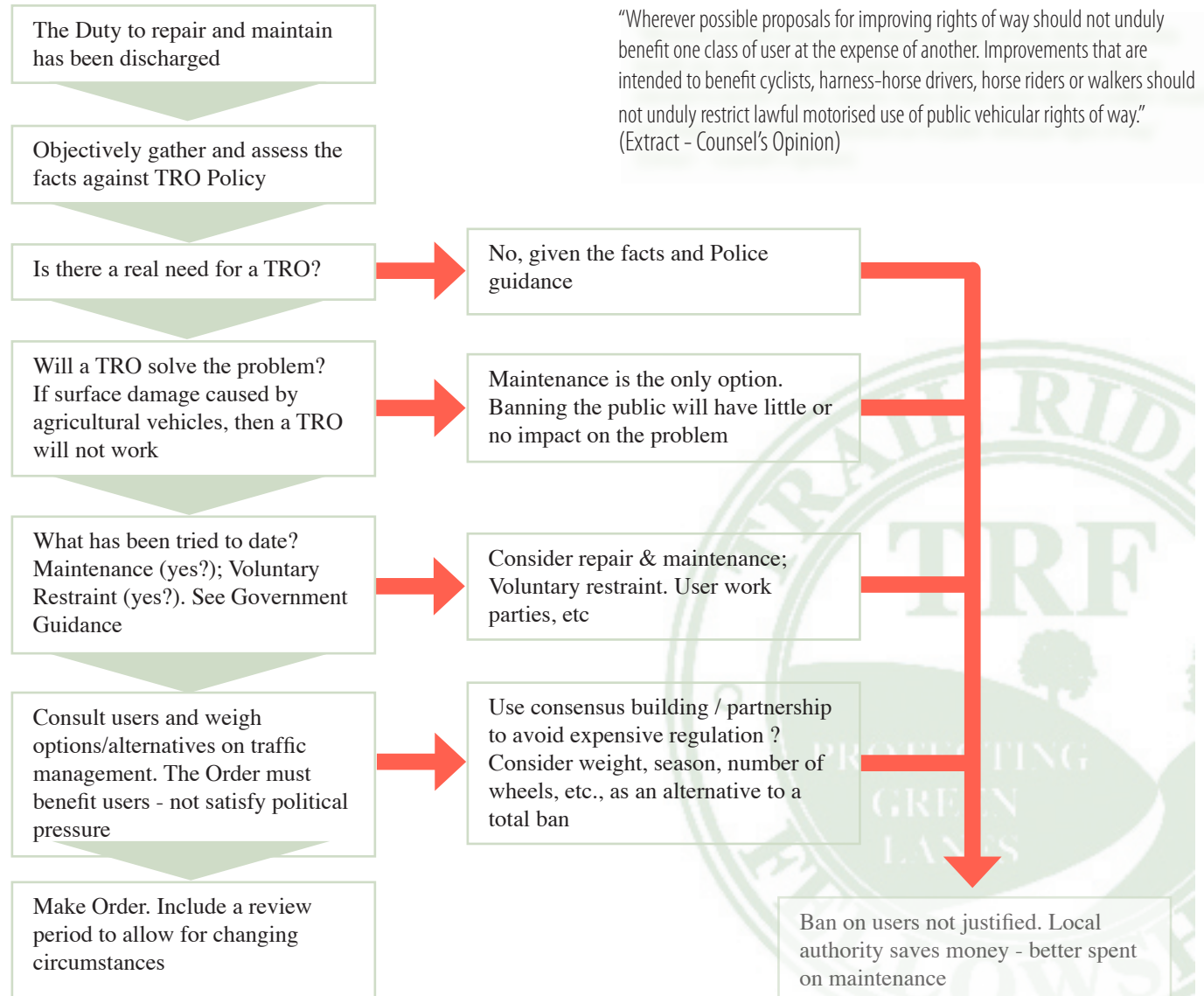
**The highway authority must demonstrate that alternative solutions have been considered and cogent reasons given for their rejection.** (see Regulation 17(3))

“...in the case of *R (Montpeliers and Trevors Association) and City of Westminster* [2005] EWHC 16 (Admin), the Court was prepared to entertain a challenge by way of judicial review of decision(s) of the authority to limit the options to be considered in deciding to make a TRO...” (Extract - Counsel’s Opinion)

Some highway authorities have made successful TROs that ban specifically selected vehicles (“with three or more wheels”), or ban vehicles at certain

## A step by step guide to TROs for motor vehicles in the countryside which complies with DEFRA’s best practice guidance.

When dealing with traffic management on rights of way (inter alia) Local Authority Members are acting in a quasi judicial capacity. Your in-house solicitors will be able to offer guidance on this aspect of the Elected Member’s role.





Disturbed ground and water-filled ruts can be an essential requirement for certain wildlife.

times, above certain weights, etc.

### Consultation with users and landowners

Because it is the users that must benefit from a traffic regulation Order it is the views of the users that matter in the first instance. The views of the various councils; of residents; of politicians; of non-user interested groups, etc, should not have a bearing on the initial decision.

A traffic regulation Order cannot be used to save the highway authority money. A Duty must be carried out in preference to the exercise of a Power, so the repair of a highway needs to be made before the imposition of a TRO (if still required), although there is nothing to stop that power being exercised thereafter – if still needed.

The Trail Riders Fellowship are constituted for the protection of green lanes and see the TRO as a valuable tool, but it is one that should be used

wisely and not as an 'escape clause' for all situations.

Although not against the reasoned use of traffic management, the TRF will oppose the abuse of powers granted by the Road Traffic Act. The primary goal for a highway authority is to have all public highways in good repair, and to "...assert and protect the rights of the public to the use and enjoyment of any highway..." (s.130 HA80). The TRO has a secondary role to play.

A byway that is in good repair is not an attraction to the irresponsible user that seeks challenge. A byway that is open to all higher rights users is the aim of the TRF.

*"In St Helens MBC v West Lancashire DC (1997) 95 LGR 484, Carnwath LJ considered that the words "so far as practicable" qualified the absolute nature of the primary duty in Section 122(1) i.e. that the authority should achieve that objective only so far as was practicable once one had regard to the considerations in Section 122(2). This approach has been followed in a number of later cases.*

*Nevertheless, the effect of Section 122(1) is that, in every case, the public interest of the road-user at large should be a primary consideration..." (Extract - Counsel's Opinion)*



The information in this leaflet is believed to be correct at the time of publication. We welcome feedback on any matter raised here.

[www.trf.org.uk](http://www.trf.org.uk)

## Dealing with Traffic Regulation

This leaflet has been produced by the TRF, in concert with other bodies to address the anomalous and ultra vires use of the Traffic Regulation Order.

The premise is that all citizens are equal before the Law: the Authority should treat any individual, or group of citizens, with equal regard: any representation made, especially where the suspension of a public right is concerned, must be given due consideration.

Evidence of this process should be apparent in any report; particularly where there may be challenge. The process should be entirely transparent, clearly indicating where data and objective evidence has been considered.

The suspension of a Public Rights is a serious matter and should be approached as such. Members are acting in a quasi judicial capacity and must demand of all involved the same standards of impartiality and diligence as is required in any other judicial arena. No weight should be given to speculation or prejudice. Where necessary, independent fact finding should be commissioned to establish the facts.

It is not good enough that those involved in the TRO management process sit in 'blissful ignorance': they should be thoroughly familiar with this aspect of Highway Law and current Government Guidance. **'Making the Best of Byways'** (MBoB), is the relevant guidance on this topic. In as much as local government Cabinet Office gives certain powers, similar to those of a magistrate, there should be commensurate diligence in carrying out the office.

### Is there a real need for traffic management?

Every highway authority has a range of Powers to facilitate their work carried out under the Duties imposed by statute. It is a fact that a duty must be discharged before a power is exercised. Given that there is a duty for every highway authority to maintain routes within its district 'for the local traffic' there should be no reason to preclude road users on a permanent basis due to a route not sustaining such traffic.