Please note that part of this decision has been reviewed under the case of Ruimy v LB Barnet (case number 2140171228)

MILLER and Others -v- Transport for London and Others

Introduction

1. On 10 June 2014, a specially convened panel of Adjudicators (Edward Houghton Alastair McFarlane and Susan Turquet) made an order under paragraph 14 of the Schedule to the Civil Enforcement of Parking Contraventions (England) Representations and Appeals Regulations 2007 ("The Appeals Regulations") consolidating proceedings in 12 appeals involving a variety of technical challenges on the ground that common questions of law and fact arose in the appeals and that it was desirable for these issues to be determined together. None of the parties objected to the making of this order.

The Appeals

2. The cases before the panel were the appeals of:
   - Mr Miller v. Transport for London 214015350A
   - Mrs Lock v. Transport for London 2140122073
   - Mr Baum v. Transport for London 2140141475
   - Mr Ayiro v. Transport for London 2140098922
   - Mr Makengo v. Transport for London 2140184467
   - Mrs Goldmeier v. London Borough of Barnet 2140078594
   - Mr Ruimy v. London Borough of Barnet 2140171228
   - Mr Schreiber v. Transport for London 2140158092
   - Mr Krausz v. Transport for London 2140212201
   - Mr Stirling v. Transport for London 2140217555
   - Mr Bush v. London Borough of Hounslow 2130424484

Representation

3. None of the Appellants, save for Mr Schreiber, appeared before the Panel. Mr Schreiber, in addition to representing himself, appeared on behalf of Mrs Goldmeier. He was assisted by Mr Williams, who also appeared on behalf of Mr Miller. Mr Levy, appeared on behalf of Mrs Lock and Mr Baum. The other Appellants were not represented and had all been given the opportunity to attend the hearing. The Panel was satisfied that it was just and proportionate to determine their appeals in their absence on the documentation before the Panel.

   Transport for London ("TfL") was represented by Mrs. Turner, Ms. Murray, Ms. Dawson

and Ms. Giwa; the London Borough of Barnet was represented by Mr Moorwood, Mr Wild and Mr Harris and the London Borough of Hounslow was represented by Mr Rummley.

The Approach of the Panel

4. In the majority of the appeals there was either no dispute or the Panel was satisfied on the evidence provided, that the parking or stopping was unlawful and that absent technical challenges, the contraventions occurred.

An increasingly large number of appeals that come before this Tribunal raise detailed technical challenges to the validity of the Penalty Charge Notices (PCNs) and to the other documentation that the Authorities are required to serve, namely, the Notice to Owner and the Notice of Rejection.

The Panel had at the forefront of its considerations that an essential part of the Tribunal's duty to determine cases justly is to ensure that a proportionate allocation of time and resources is made. Adjudicators have increasingly encountered appeals, (frequently, but not exclusively, where "professional" lay representatives act for Appellants) where a multiplicity of highly detailed technical challenges to each stage of the enforcement process are taken. The proliferation and length of such appeals has the potential to derail the proper and proportionate allocation of resources for determining the appeal of what is, after all, a relatively low value, civil penalty.

While the Panel was mindful that the decision of any Adjudicator (including a Panel decision) is not binding upon another Adjudicator, it was the express intention of this Panel, to provide detailed decisions on each of the arguments raised, so that Appellants, Enforcement Authorities, the public and Adjudicators may have in one decision an authoritative determination on these issues. Accordingly, the Panel was particularly concerned to ensure that all parties were given the widest opportunity to raise all the arguments they wished on the technical challenges.

Procedural Impropriety

5. The Panel carefully considered the submissions of all parties, both oral and documentary and has determined each of the technical objections raised by the Appellants. The Panel addressed each of the technical objections separately.

In each of the cases the main,or one of the grounds of appeal is that of procedural impropriety.

Procedural impropriety is defined in regulation 4(5) of the Appeals Regulations as

follows:

"In these Regulations 'procedural impropriety' means a failure by the enforcement authority to observe any requirement imposed on it by the 2004 Act, by the General Regulations or by these Regulations in relation to the imposition or recovery of a penalty charge or other sum and includes in particular -

(a) the taking of any step, whether or not involving the service of any document, otherwise than -

(i) in accordance with the conditions subject to which; or
(ii) at the time or during the period when,
it is authorised or required by the General Regulations or these Regulations to be taken;"

The Panel had specific regard to the following authorities in determining its approach as to what constitutes a procedural impropriety.

In The Queen (on the application of the London Borough of Barnet) v. The Parking Adjudicator [2006] EWHC 2357 (Admin) (a case dealing with penalty charge notices under the previous parking regime set out in the Road Traffic Act 1991) Jackson J stated:

"There are good policy reasons why PCNs should comply with statutory requirements. These documents are issued in large numbers. They often change hands. A PCN may, for example, be issued to a driver on one date, and handed over by the driver to the owner on a later date. When a PCN reaches the owner, he or she may wish to pay the discounted charge. There must always be certainty about the date when the notice was issued and the dates when the various periods the payments will expire."

He held that section 66 Road Traffic Act 1991 required two dates to be stated on a PCN - the date of the contravention and the date of the notice. In approving the decision of this tribunal in Al's Bar and Restaurants Ltd v. The London borough Wandsworth (28th of October 2002 Case No 2020106430), he confirmed that:

"literal compliance with section 66 was not required. It was sufficient that there was substantial compliance".

On the merits, Jackson J found that the absence of the date of the notice on the PCN meant that it did not *"achieve substantial compliance with section 66 of the 1991 Act."*

The Council argued that even if their penalty charge notices did not comply with the Act, they should not be regarded as valid because no prejudice was caused to the Appellant. Jackson J gave this argument short shrift. He stated that he did not accept this submission and that:

"Prejudice is irrelevant and does not need to be established. The 1991 Act creates a scheme for the civil enforcement of parking control. Under this scheme, motorists become liable to pay financial penalties when certain specified statutory conditions are met. If the statutory conditions are not met, then the financial liability does not arise."

In the London Borough of Camden and the Parking Adjudicator [2011] EWHC 295 (Admin), (a case where Camden had applied at 1.3% administration charge for those paying penalties by credit card), Burnett J considered the meaning of procedural impropriety. He stated that the purposes of the Appeals Regulations, the term procedural impropriety:

"...has the meaning given to it by regulation 4 (5) and nothing wider. It is a 'failure by the enforcement authority to observe any requirement imposed on it by the 2004 Act' or by the Appeals or General Regulations. In particular, it is a failure to take a step 'otherwise than (i) in accordance with the conditions subject to which; or (ii) at the time or during the period when, it is authorised or required by either set of regulations to be taken. The Appeals Regulations make clear that procedural impropriety as defined is fatal to the recovery of a penalty charge. It is therefore incumbent upon enforcing authorities to comply meticulously with the requirements of the statutory scheme if they are to recover penalty charges."

In The Queen (on the application of the Hackney Drivers Association Ltd) v The Parking Adjudicator and Lancashire County Council [2012] EWHC 3394 (Admin), (a case concerning whether the PCN was compliant with the requirements of Regulation 3(2)(b)(i) of the Appeals Regulations) HHJ Raynor (sitting as a deputy High Court Judge) referred to the decisions in Barnet and Camden (above) and was asked whether there must be literal compliance with the regulation or whether, as Jackson J held as regards the previous scheme, it was sufficient that there is substantial compliance. The learned judge stated:

"... In my view, it is important to read Regulation 3(2) as a whole, because in my view its provisions are intended to be cumulative."

He held that "read as a whole, this penalty charge notice does convey what is required to be conveyed under regulation 3(2)." The ratio of the decision is therefore, whether, reading the document as a whole and cumulatively, it fairly conveys what is required by the regulations to be conveyed.

6. Applying these authorities, the Panel reached the following conclusions:

i. If an Adjudicator determines that procedural impropriety has occurred, it is fatal to the Authority's case and the appeal must be allowed;

ii. Enforcement Authorities must comply meticulously with the requirements of the statutory scheme. In this context, "meticulously" means that the Authority must do each and every thing that the statutory scheme requires. It does not mean that any failure to follow the *exact* wording of the Act or the Regulations in their PCNs or other documents, is automatically a procedural impropriety. Burnett J's observations must be read in the light of the Barnet and Hackney Drivers Association decisions - both of which were specifically addressing technical wording of documentation. Literal compliance with the Act or Regulations is not required. Authorities may use language in their documentation that differs from the Act or the Regulations, but if they do, they run the risk that the document may be held to be non-compliant. In each case, the document, when read as a whole, must fairly convey what is required by the Act or the Regulations to be conveyed to the recipient of the document;

iii. The Panel saw no difference between "substantial compliance" (per Jackson J) and ensuring that the document fairly conveys all it is required to convey (per HHJ Raynor).

iv. The Panel applied the following test to the technical arguments raised on the documentation: *"reading the document as a whole, does it fairly convey the information that the regulations require it to convey?"*

The Technical Points

Failure to offer choice of offices for viewing the CCTV footage

7. A "Regulation 10" Penalty Charge Notice ("PCN") is one that has been served by the Enforcement Authority under Regulation 10 of The Civil Enforcement of Parking Contraventions (England) Traffic Signs Regulations and General Directions 2002 Regulations 2007 ("The General Regulations"). The PCNs before the Panel are "camera" PCNs in that they are made "on the basis of a record produced by an approved device" (Regulation 10 (1)(a)).

Both the General and Appeal Regulations specify what a Regulation 10 PCN must contain.

In relation to this point, Regulation 3(4) of the Appeals Regulations states:

> *"A penalty charge notice served under regulation 10 of the General Regulations must... include the following information - ...*
>
> *(e) where the penalty charge notice is served by virtue of regulation 10(1)(a) of the General Regulations (evidence produced by an approved device), the effect of paragraphs (5) and(6).*

Regulation 3(5) states:

> *"The recipient of a penalty charge notice served by virtue of regulation 10 (1)(a) of the General Regulations may, by notice in writing to the enforcement authority, request it-*
>
> > *(a) to make available at one of its offices specified by him, free of charge and at the time during normal office hours so specified, for viewing by him or by his representative, the record of the contravention produce by the approved device, pursuant to which the penalty charge was imposed; or*
> >
> > *(b) to provide him, free of charge, with such still images from that record as, in the Authority's opinion, establish the contravention.*

Regulation 3(6) states:

> *"Where the recipient of the penalty charge notice makes a request under paragraph (5), the enforcement authority shall comply with the request within a reasonable time"*

8. Transport for London's PCN states:

> *"You are entitled to view a recording or obtain images free of charge. To view a recording or obtain still images of the alleged contravention, write to us by post to Transport for London,PO Box 194, Sheffield, S98 1LZ. If you (or another person nominated by you) wish to view a recording then that must take place in our offices, Monday to Friday, 0900 to 1700 hours, further details will be provided upon receipt of request. Alternatively, we can send you a copy of the recording for a fee of £10. We will respond to your enquiry within two weeks and your case will be put on hold until the still images/recording have been sent to your address or the recording has been viewed."*

9. The Appellants firstly maintained that the wording used in the PCN failed to mention that the recipient of the PCN could ask for a viewing at one of Transport for London's offices

specified by him. Secondly, they assert that the PCN does not inform its recipient of the Authority's duty to comply with a viewing request within a reasonable time and/or that the twoe week period referred to is not a reasonable time.. Thirdly, it was contended that even if the penalty charge notice is compliant with the Regulations, TfL failed to allow the Appellant to specify the office at which he wanted to view the recording. Three Appellants (Mr Schreiber, Mr Miller and Mr Krausz) made virtually identical requests in writing to view the recordings, requesting three choices of location, in order of preference. These were Manor House tube station, TfL's registered office at 200, Baker Street, NW1 and their offices at 13, Allsop Place NW1. Mrs Lock only requested viewing at 200 Baker Street. It was contended that the recipient of the penalty charge notice has an unfettered right to specify the office at which the recording should be viewed. It was argued further that any office could provide a laptop computer to enable viewings to take place, and that it was unreasonable to expect the recipient to have to travel from North London to Croydon to view the footage. The purpose of the right to specify was for the convenience of the recipients of the notices.

TfL's response to, for example, Mr Schreiber's request was:

> *"We regret we are unable to facilitate your request to view the video evidence at Manor House station/200 Baker street or 13 Allsop Place because our fully equipped viewing centre is based in our notice processing office in Croydon. Arrangements may be made to view the CCTV footage free of charge by telephoning our office on (0845) 603 4545..."*

Mr Williams submitted that the "absolute minimum requirement" in order to discharge the duty was for TfL to provide one viewing centre per London borough. Sending a copy of the DVD by post (which TfL stated they have done, free of charge, for the last year) did not achieve the purpose of the legislation.

Mr Levy argued that it was inappropriate to import "reasonableness" into the legislation and that even if it was unreasonable that the recipient has an unfettered right to specify, the legislation was clear it was his choice of office. He referred to the decision of Adjudicator, Mr Chan in *Fresh Direct* (18th of March 2014). and a decision of Adjudicator, Mr Houghton in *Benjamin Bard* (supplying the DVD does not remedy the situation)

10. TfL submitted that it was clear from Regulation 3(4) that the PCN had to contain "the effect of" Regulations 3(5) and 3(6) and not the exact information. Mrs Turner emphasised the steps which TfL take in their attempts to make the penalty charge notices as easy to understand as possible, including how they consult with the Campaign for Clear English on the words used in their notices, while attempting to reflect accurately

the legislation.

TfL contended that the wording used on the PCN was substantially compliant with the Regulations and left the recipient in no doubt as to his options. It was submitted that a purposive approach to interpreting the legislation should be adopted and that the purpose of the Regulations, was to inform the recipient of the penalty charge notice, how he can view the recording. In relation to the argument as to the recipient's right to specify, it was contended that this was not an unfettered right and had to be interpreted as to what was reasonable. TfL was a large organisation, which had numerous offices for different purposes. For example, it had offices that ran the Bakerloo line, offices dealing with finance and offices for traffic and parking enforcement. It was reasonable to offer viewings where TfL had the staff, facilities and security systems in place to allow the public safe access to those viewing facilities. It was argued that Parliament cannot have intended the right to specify to apply to any one of TfL's 200 or so "offices" and that it would be utterly unreasonable that any office should the required to open its doors to the public for viewing of the recordings. It was contended that the choice expressed in the legislation must be interpreted as a choice of what is available. TfL stated that they only had one office with the necessary equipment and security staff and this was their Croydon viewing centre. At this centre they had there a team of 40 staff allocated to the process of enabling the public to view recordings. Mrs Turner explained the process for a member the public viewing the recording at the centre. Security staff take the initial details of the attender. An officer then collects him and he is signed in. After his identity is confirmed, he is escorted to the viewing room. During the viewing at least two members of staff are with the person viewing the recording.

The Panel was referred to a number of decisions where Adjudicators had found the absence of wording on the PCN giving a right to specify the office, to be fatal. The Panel noted that these cases were decided without the benefit of detailed argument.

Conclusion

11. Adopting the wording of Regulation 3(4)e), the Panel firstly considered the effect of paragraphs 3(5) and 3(6), and then considered whether the wording used on the PCN conveyed that effect.

Regulation 3(5)

In our judgment the effect of Regulation 3(5) is that the recipient of the penalty charge notice has the right to view the camera recording free of charge. The Authority must make the recording available for viewing during normal office hours "at one of its offices".

Regulation 3(5) does not mean that the recipient has an unfettered right to specify or choose at which one of TfL's offices he wishes to view the recording. Such an interpretation could lead to the ludicrous consequence of a penalty charge notice being struck down because the recipient had requested to see the footage in the cleaning department's office or Chief Executive's office. The Panel observed that if the Appellants are correct in their interpretation, they could require any office where there was a desk and computer, to be opened up for them. This cannot have been the intention of the legislature.

In relation to the phrase "specified by him", we conclude that the effect of Regulation 3(5) means that where there is more than one office available for viewing the recording, the recipient of the PCN is entitled to specify which of them, he wants to go to and when he wants to attend. Indeed, he must do this so that the Authority know when to expect him and when to have the respective footage available.

However, TfL has designated only one office for the purpose of receiving the public to view the footage, and this is at their Croydon viewing centre. In such circumstances, we are satisfied that the right to specify does not arise.

We reject the Appellants' argument that having only one office for the whole of London is unreasonable. Transport for London is a London-wide organisation covering the whole of Greater London. The office in Croydon is in Greater London. In the Panel's judgment, it is reasonable for TfL to have a designated viewing centre. In deciding whether or not to have more than one centre, TfL is entitled to take account their duty to provide safe and secure premises, and issues including security, technical support, health and safety and financial cost. The argument that all that is needed is a laptop computer and a desk ignore the realities of these issues. We conclude that it is not unreasonable for motorists to travel across London to view the CCTV recording. Commuters make such journeys every day. In any event, in determining what is reasonable, we cannot ignore the fact that recipients of a PCN may not live in London at all.

Having determined that the effect of Regulation 3(5) permits TfL to make viewing available at one office, the Panel asked itself whether the wording used on the PCN fairly conveyed the effect of the rights granted in the legislation.

The Panel found that the wording used - *"if you ... wish to view the recording then that must take place in our offices, Monday to Friday, 0900 to 1700 hours, further details will be provided upon receipt of the request"* - does inform the recipient of the right to view the recording and that this must take place in TfL's offices. Accordingly, the Panel is satisfied that the wording used fairly conveys the information which is needed - namely the right to see the recording and that this has to be at their offices. The Panel notes that the only address mentioned on the PCN is TfL's correspondence address and a PO Box in Sheffield. The Panel would comment that it might be an improvement if the PCN

indicated that the viewing centre is in Croydon - but, it repeats this is not required by the Regulations.

Regulation 3(6)

The obligation under Regulation 3(6) is "to comply with the request within a reasonable time". The Panel considered that "complying with the request" means "facilitating" the viewing or making the arrangements to view the footage, which includes confirming the appointment and admitting the viewer to their premises. TfL's PCN states that it will respond to the enquiry within two weeks and that the case will be put on hold until the recording has been viewed. The Panel is satisfied that reading the PCN as a whole it fairly conveys the effect of Regulation 3(6). The Panel's view is that the responding to the enquiry is only the start of the process of facilitating the viewing. The fact that the actual viewing will almost invariably take place after a period of two weeks does not mean that the authority has failed to comply with the request within a reasonable time. The duty in Regulation 3(6) is not simply responding to the request, but complying with it i.e. arranging and effecting the viewing. Whether the reasonable time for completing the viewing has been exceeded will depend on the facts of each case.

However, in each of the cases before the Panel, given the Panel's decision that with only one office in Croydon as a viewing centre, the right to specify does not arise, the obligation to comply with the request within a reasonable time under regulation 3(6) also does not arise. As a matter of courtesy, where a request is made to view the footage at another office, TfL would be well advised to the respond timeously - but failure to do so cannot amount to a breach of Regulation 3(6) because the duty to do so does not arise.

NSL's Offices

12. The Appellants submitted that the offices were not, in any event, those of TfL, as the Croydon viewing centre was owned and operated by a company called "NSL". Therefore, the office was someone else's office, rather than TfL's, and the PCN should fail on that basis. The Panel rejects this argument. NSL are clearly TfL's appointed agents, the company to whom TfL had outsourced their enforcement. In the absence of any authority to the contrary, there seems to the Panel no reason why TfL should not delegate the carrying out of this function to a company as their agents, in what is a very common arrangement. Similarly there seems to the Panel no reason why TfL's agents should not make the VQ4 request to the DVLA for the details of the registered keeper on behalf of the enforcement authority.

Having regard to the Secretary of State's Guidance

13. The Appellants submit that in exercising its powers of camera enforcement, TfL has not had regard to the guidance issued by the Secretary of State, as they are required to do under Section 87 Traffic Management Act 2004.

Section 87 of the Traffic Management Act 2004 states:

> *(1) The appropriate national Authority may publish guidance to local authorities about any matter relating to their functions in connection with the civil enforcement of traffic contraventions.*
>
> *(2) in exercising those functions, a local authority must have regard to any such guidance."*

The Guidance was issued by the Secretary of State in February 2008, and is entitled *"The Secretary of State's Statutory Guidance to Local Authorities on the Civil Enforcement of Parking Contraventions."* We set out the relevant paragraphs:-

> *1. This Statutory Guidance is published by the Secretary of State for Transport under section 87 of the Traffic Management Act 2004 (TMA).*
>
> *6. Where the Guidance says that something must be done, this means that it is a requirement in either primary or secondary legislation, and a footnote gives the appropriate provision. In all other instances, section 87 of the TMA stipulates that local authorities must have regard to the information contained in this Guidance.*
>
> *9. Authorities must have regard to this Statutory Guidance (as stipulated by section 87 of the TMA) when exercising their functions. These functions include developing, implementing and reviewing their CPE* [Civil Parking Enforcement] *regimes. They should also read this Guidance in conjunction with the more detailed Operational Guidance (the replacement for Local Authority Circular 1/95). The Statutory Guidance sets out the skeleton for how CPE should be operated which is given greater depth in the Operational Guidance*
>
> *48. TMA Regulations give the power to authorities throughout England to issue PCNs for contraventions detected with a camera and associated recording equipment (approved device). The Secretary of State must certify any type of device used solely to detect contraventions (i.e. with no supporting CEO evidence). Once certified they may be called an 'approved device'. The*

Secretary of State recommends that approved devices are used only where enforcement is difficult or sensitive and CEO enforcement is not practical. Approved devices should not be used where permits or exemptions (such as resident permits or Blue Badges) not visible to the equipment may apply.

49. It is recommended that the authority sends a copy of the record of the contravention (in the form of a still image or images) with the PCN.

50. The primary objective of any camera enforcement system is to ensure the safe and efficient operation of the road network by deterring motorists from breaking road traffic restrictions and detecting those that do. To do this, the system needs to be well publicised and indicated with lawful traffic signs.

In addition, the Department for Transport issued *"Operational Guidance to Local Authorities: Parking Policy and Enforcement"* in March 2008.

The relevant paragraphs are:

1.2 advises all English enforcement authorities of the procedures that they must follow, the procedures to which they must have regard and the procedures that the Government recommends they follow when enforcing parking restrictions.

1.3 this Operational Guidance is good practice guidance. It is not the guidance issued under section 87 of the Traffic Management Act 2004, although it quotes from that guidance - see paragraph 1.4 below.

1.4 wording in this document in bold and Comic Sans MS typeface is part of the Secretary of State for Transport 's Guidance (often referred to as the Statutory Guidance), which ***is published under section 87 of the Traffic Management Act 2004. Section 87 of the TMA stipulates that local authorities must have regard to the information contained in that Guidance*** *which is available as a separate document.*

3.8 Enforcement authorities should run their CPE operations (both on- and off-street) efficiently, effectively and economically. The purpose of penalty charges is to dissuade motorists from breaking parking restrictions. The objective of CPE should be for 100 per cent compliance, with no penalty charges

7.6 The organisation London Councils has produced a code of practice covering the operation of CCTV cameras, to ensure consistency of

> *enforcement across London. Elements of this code could act as a guide to authorities outside London. You can get copies of this code of practice from London Councils*

London Councils issued its *"Code of Practice for Operation of CCTV Enforcement Cameras "* in December 2009. The relevant paragraphs are:

> *Enforcement by approved devices*
>
> *8.78 TMA regulations give the power to authorities throughout England to issue PCNs for contraventions detected with a camera and associated recording equipment (approved device). The Secretary of State must certify any type of device used solely to detect contraventions (i.e. with no supporting CEO evidence) as described in Chapter 7. Once certified they may be called an 'approved device'. Motorists may regard enforcement by cameras as over-zealous and authorities should use them sparingly. The Secretary of State recommends that authorities put up signs to tell drivers that they are using cameras to detect contraventions. Signs must comply with TSRGD or have special authorisation from DfT The Secretary of State recommends that approved devices are used only where enforcement is difficult or sensitive and CEO enforcement is not practical. Approved devices should not be used where permits or exemptions (such as resident permits or Blue Badges) not visible to the equipment may apply.*
>
> *8.79 The primary objective of any camera enforcement system is to ensure the safe and efficient operation of the road network by deterring motorists from breaking road traffic restrictions and detecting those that do. To do this, the system needs to be well publicised and indicated with lawful traffic signs*

14. The Appellants referred us to two cases on the status of statutory guidance: R (on the application of X) v London Borough of Tower Hamlets [2013] EWHC 480 (Admin) and R (Munjaz) v Mersey Care NHS Trust [2006] 2AC 148. Neither case was concerned with the statutory guidance in the cases before us. In the Tower Hamlets case, the Court was concerned with guidance relating to the Council's arrangements for foster parents and in Munjaz with guidance relating to mental health patients. In the light of these decisions it is clear that although the Guidance does not have the force of legislation it should normally be followed unless there is a cogent reason why not.

15. The Appellants contended that the Guidance stating that camera enforcement should be

used "*only where enforcement is difficult or sensitive and CEO enforcement is not practical"* had not been followed and that there were no cogent reasons for departing from it. They contended that the locations were not ones where enforcement by a patrolling CEO was "difficult or impractical". They suggested that the locations were ordinary lengths of road, where there are no particular obstacles or dangers preventing a CEO from patrolling and issuing PCNs. In addition, they argued that as there is an exemption in the Traffic Management Order allowing for the boarding/alighting of disabled passengers, these were locations where there was an exemption "not visible to the equipment".

16. TfL contended that it had had proper regard to the Guidance. It submitted we should take into account that, on a red route, the contravention is a stopping contravention, not a waiting or parking contravention. Therefore, contravening vehicles would often not remain in place long enough for a PCN to be issued by a CEO; and that in the absence of cameras, it would be impracticable, bearing in mind resource constraints, to maintain the level of CEO presence necessary to ensure the free flow of traffic. There were 400 miles of red routes and these were important arterial routes in relation to which TfL had a statutory duty to keep traffic moving. Cameras were necessary to maintain effective and cost-effective enforcement.

17. The Appellants also submitted that there are that there were no signs at the locations, warning of the presence of cameras. TfL, whilst accepting that there were no camera warning signs at the actual locations, contended that there was widespread camera signage across the red route, which covered the whole of London. Further, that the existence of enforcement by cameras had been in force for over a decade and was well known to the public.

Conclusion

18. The statutory requirement is to "have regard" to the Guidance not to "comply with" it. In the light of the cases cited above it is clear that the Guidance should be followed in the absence of good reason for not doing so. However it seems to the Panel that this does not mean that the Guidance must be construed word by word as if it were a statute but must be read as whole and given a purposive interpretation.

Practicality

19. TfL must have regard to the recommendation of the Secretary of State that camera enforcement only be used where enforcement is difficult or sensitive and CEO enforcement is not practical. The intention is clearly that camera enforcement should not be used routinely or willy-nilly, but only where there is a good reason for doing so, where there would be some problem in relying on CEOs alone. In the Panel's view

"enforcement" in this context means effective enforcement, that is to say enforcement which achieves a high level of compliance (the quoted objective in the Operational Guidance being 100%). The overall enforcement situation must be looked at, and it does not assist a motorist to say that in his particular case, in his particular situation, there would have been nothing at that moment to prevent the presence of a CEO and the issue of a PCN by hand.

The Panel accepts that there may be nothing physically to prevent a CEO walking by these lengths of carriageway (although there might be some health and safety concerns for the CEO patrolling in the middle of the night). At least, on some occasions, if the vehicle were there long enough, he would be able to issue a Regulation 9 (on- street) PCN. Indeed, from time to time PCNs are issued by CEOs patrolling on red routes (Mr Baum's PCN was issued by a CEO), although camera enforcement is much more common. However, in our view, it is legitimate for TfL to wish to have a high level of enforcement to carry out its duty to keep the red routes clear for traffic and to take in to account its efficient use of public money in doing so. The Operational Guidance itself speaks of running the operation "*efficiently, effectively and economically".* Therefore, in the Panel's judgment, TfL has sufficiently followed the Guidance. This is because CEO enforcement is not practical on the red route given its extent, the nature of the contraventions - namely, stopping ones and the duty upon TfL to keep traffic flowing on the red routes.

Exemptions etc. not visible to the equipment

20. We are prepared to accept that the display of a disabled badge may not always be visible to the camera. However, on red routes, display of a badge does not of itself provide exemption. The exemption only applies in cases of boarding/alighting by disabled badge holders. This is a general exemption incorporated into all red route Traffic Management Orders and applies to all the lines and bays that comprise the red route. If the Appellants' submission is correct, the Guidance would effectively prohibit camera enforcement anywhere on the red route - something which we doubt the Secretary of State would have contemplated. It seems to the Panel that the Guidance is intended to refer to situations where the display of the badge alone, i.e. without any further conditions to be applicable, would provide exemption.

Warning signage

21. In relation to the issue of signing camera enforcement, we accept TfL's evidence that the presence of cameras is widely signed across the red route and has been since 2004 and that camera enforcement is well known to the public in London.. The Guidance is that the "system" be signed, not necessarily every individual bay or length of street. If Parliament had intended it to be the law that a camera sign at every individual location, be a

precondition of enforcement, it seems to us that it would have said so in terms in legislation. In our judgment TfL's signage is sufficiently widespread as to comply with the recommendation in the Guidance.

22. We therefore find that TfL has had sufficient regard to the Guidance and that no procedural impropriety has occurred by the use of camera enforcement.

Duty to consider representations

23. Under Regulation 5(2) of the Appeal Regulations, the Enforcement Authority is required:

> *"(a) to consider the representations and any supporting evidence which the person making them provides; and*
>
> *(b) within the period of 56 days beginning with the date on which the representations was served on it, to serve on that person notice of its decision as to whether or not it accepts that -*
>
> > *(i) one or more of the ground specified in regulation 4 (4) applies; or*
> > *(ii) there are compelling reasons why, in the particular circumstances of the case, the notice to owner should be cancelled and any sum paid in respect of it should be refunded."*

24. The Appellants contended that there was a duty on the authorities to give detailed reasons in order to establish that they have discharged the duty under Regulation 5. Mrs Goldmeier, in her written submissions, referred to the decision in Makda v. The Parking Adjudicator [2010] EWHC 3392 (Admin) (a case concerning the interpretation of an alighting and boarding exemption) where Burnett J stated:

> *"A local authority is obliged to consider any representations made and respond to them. If the representations are not accepted, the reasons must be set out in a "Notice of Rejection", which is provided for by Regulation 6 of the 2007 Regulations."*

She emphasised the learned judge's reference to the need for the reasons being set out.

25. The Panel noted that Makda v. The Parking Adjudicator was not a case concerning procedural issues this point was not the subject of legal argument in the case. The comment that reasons "must" be set out is to be viewed as *obiter dicta*, and therefore not

binding authority for the proposition that reasons are always legally required. In our view the true position in the light of the actual wording of the Regulation is as set out below.

Regulation 5 (2) imposes a duty on enforcement authorities to consider the representations made, and then to serve a notice as to whether they accept, either that one or more of the Regulation 4(4) grounds applies or that there are compelling reasons why the notice should be cancelled. There is no express requirement in the Regulation to give reasons. The Panel noted that Regulation 6 of the Appeal Regulations specifies only three things that must be included in a Notice of Rejection. These are: A warning that a charge certificate may be served; the nature of the Adjudicator's power to award costs: and a description, in general terms, of the form and manner in which an appeal must be made. Regulation 6 (2) specifies that beyond these three matters, a Notice of Rejection *"may contain such other information as the enforcement Authority considers appropriate"*.

The duty on the Authority, therefore, is "to consider" the representations. In the Panel's judgment, this consideration must be a proper consideration. The Panel found it difficult to imagine circumstances where an Authority could be said to have properly considered, and then rejected, representations, if it had no reasons for doing so. If an Authority has reasons for rejecting representations, the Panel's view is that these should be communicated to the motorist - albeit, even if they are only brief reasons.

The Panel noted that Authorities frequently do give reasons. The Panel commends this as good practice. The provision of reasons clearly will assist an Authority in establishing that it has complied with its statutory duty of proper consideration. Further, the provision of good reasons may help discourage meritless points being taken on appeal, and provide motorists with a proper understanding of why they were in error.

26. In the appeals before the Panel, there were examples of responses from Enforcement Authorities at both ends of the spectrum in terms of the level of detail given. In Mr Schreiber's case, his representations against the notice to owner were set out in his letter dated 27 January 2014. The letter ran to 7 pages and listed 16 separate paragraphs with representations at points a) to o). The Notice of Rejection from TfL is dated 27 February 2014 and runs to 5 pages of detailed reasons for rejecting Mr Schreiber's arguments.

In Mrs. Goldmeier's case, the copy of the representations, in the documents before the Panel, consisted of only two sentences. The London Borough of Barnet's response in their Notice of Rejection, was equally pithy:

> "We have considered everything you said in your letter. However, I do not feel that you have made any grounds the cancelling the Notice or the Notice to Owner."

27. The Panel would stress that each case is fact specific and it is a matter for the

Adjudicator, in any given case, whether or not he is satisfied that the duty to give proper consideration has been discharged. While there is no obligation in the Regulations to provide reasons, the absence of any reasoning runs the risk of an Adjudicator drawing an inference that the representations have not, in fact, been properly considered. This is not, of course, the equivalent of saying that each authority is required to give reasons for every single point, no matter how unmeritorious, raised in representations by an Appellant.

Electronic Signature

28. Mr Williams submitted that the Authorised Officer witness statement accompanying the PCN is invalid as the signature is in electronic form. In the absence of any authority cited to us, we cannot see any reason why a signature should not take this form.

Camera Certification

29. A copy of the certificate issued by the Vehicle Certification Agency on behalf of the Secretary of State approving the camera ("the VCA Certificate") has been supplied and we do not consider it open to us to go behind the certificate. We are satisfied that the camera used is an "approved device" within the meaning of Section 92 of the Traffic Management Act 2004.

The absence of FAX number

30. The issue was raised by Mr Schreiber about there being no fax telephone number on the TFL Penalty Charge Notices in respect of where representations are to be sent. The wording states that "representations must be made in writing to Transport for London PO Box 194 Sheffield S98 1LZ or Online at www.tfl.gov.uk/redroute representation.. A telephone number for enquiries was given.

The relevant parts of Regulation 3 of the Appeals Regulation provide as follows:-

(3) A notice to owner served under regulation 19 of the General Regulations must, in addition to the matters required to be included in it under that regulation, include the following information….—

(c) the address (including if appropriate any email address or FAX telephone number, as well as the postal address) to which representations must be sent and the form in which they must be made;

(4) A penalty charge notice served under regulation 10 of the General Regulations must, in addition to the matters required to be included in it under paragraph 2 of the Schedule to those Regulations, include the following information—

(c)the address (including if appropriate any email address or FAX telephone number, as well as the postal address) to which representations must be sent and the form in which they must be made;

There is no absolute requirement for a FAX number in the Regulations. What is the appropriate method for receiving representations is a matter for TFL. The only obligation is to include an address to which representations must be sent. The FAX number only has to be included "if appropriate". TFL explained why it was appropriate for representations to be sent in writing to a given address, and not by fax. Post is noted, scanned, and recorded on arrival, and is then dealt with by the appropriate person. Faxes are archaic and not easy to keep track of. The email address is an enquiry email and not dedicated to representations. It is not an Appellant's right to choose how he makes representations. In the view of the Panel it was appropriate only to give the address where the representations would be dealt with in the most efficient manner. It was therefore not appropriate to include the FAX number.

The Parking and Traffic Appeals Service ("PATAS") Procedure

31. Mr Williams submits that the extension by PATAS of the time limit for the service of evidence was unlawful.

Paragraph 3(3) of the Appeals Regulations provides:-

(3) Upon receipt of a copy of the notice of appeal sent to it under subparagraph (2), the enforcement authority shall within 7 days deliver to the proper officer copies of-
(a) the original representations; .
(b) the relevant penalty charge notice (if any); and .
(c) the relevant notice of rejection

Paragraph 15 provides:-

15. (1) An adjudicator may, if he thinks fit-
(a) extend the time appointed by or under this Schedule for the doing of any act notwithstanding that the time appointed has expired; .
(b) if an appellant at any time gives notice of the withdrawal of his appeal, dismiss the proceedings; .
(c) if an enforcement authority consents to an appeal being allowed, allow the appeal;
(d) if both or all of the parties agree in writing on the terms of a decision to be made by

an adjudicator, decide accordingly; or .
(e) adjourn a hearing.

(2) An adjudicator may exercise the powers conferred by this Schedule (other than paragraph 12) on his own motion or on the application of a party.

32. In all the cases before us the time limit had been extended to allow the enforcement authority to serve the evidence required by the Regulations at the same time as the rest of the evidence an Enforcement Authority is expected to provide (other correspondence CEO's notes, site photographs, CCTV evidence etc etc), and which an Appellant is entitled to receive in advance as part of the right to a fair hearing. The extension is routinely granted in each case by an Adjudicator, in practice the Chief Adjudicator, and has been for very many years without objection. Mr Williams submits that this is in the nature of a standing direction which, he would submit, an Adjudicator has no power to give.

33. Paragraph 15 gives the Adjudicators wide case management powers to ensure that cases are justly and efficiently dealt with. These powers specifically include the power to extend time limits. In order to ensure a fair hearing the Appellant is entitled to receive all the evidence on which an enforcement authority relies in support of its case, not merely the items specified in Paragraph 3(3). The granting of an extension in each case is clearly designed to avoid the inconvenience to both parties of evidence being sent and received in a piecemeal fashion. In the Panel's judgement it is manifestly reasonable and in the interests of efficient case management to extend time in this way. The essential factor is to ensure that the Appellant has all the evidence in good time to prepare for the hearing.

34. In the Panel's view the extension of time is a proper exercise of Adjudicators' case management powers, which cannot prejudice the Appellant - indeed quite the reverse. (for the avoidance of doubt, this challenge does not fall within the scope of procedural impropriety by the enforcement authority but is a challenge to the exercise of powers by the Tribunal itself ; and in these circumstances the presence or absence of prejudice is a matter that can be legitimately taken into account).

Service of Documents at the proper address.

35. Some Appellants drew attention to the fact that, in some cases, documents relating to the Appeal had not been sent to the address specified for correspondence on the notice of appeal form. This was particularly the case where the "professional" lay representatives had given their address for service.

Part 2 of the Schedule to the Appeals Regulations details the procedure relating to appeals. Paragraph 2 states:-

Please note that part of this decision has been reviewed under the case of Ruimy v LB Barnet (case number 2140171228)

Initiating an appeal

2. (2) A notice of appeal—

(a) must be in writing signed by the appellant or someone authorised by him to sign on his behalf; .

(b) must state the name and address of the appellant; .

(c) may specify some other address as being the address to which the appellant wishes documents to be sent to him in connection with the appeal; .

Paragraph 17 makes provision for the service of documents. It states:-

Service of documents on the parties

17. (1) This paragraph has effect in relation to any notice or other document required or authorised by these Regulations to be sent to a party to an appeal.

(2) Any document shall be regarded as having been sent to that party if it is—

(a) delivered to him; .

(b) left at his proper address; .

(c) sent by first class post to him at that address; or .

(d) transmitted to him by fax or other means of electronic data transmission in accordance with subparagraph (3). …

(6) For the purposes of this Schedule, and of section 7 (references to service by post) of the Interpretation Act 1978(3) ("the 1978 Act") in its application to this paragraph—

(a) the proper address of the appellant is the address for service specified pursuant to paragraph 2(2)(c) or, if no address is so specified, the address specified pursuant to regulation 2(2)(b), ….

The effect of these Regulations is that where an Appellant specifies an alternative address for service of the documents, the Authority should serve the documents on that address,

as that address is now the "proper address" within the meaning of Paragraph 17. Where an alternative address is specified on the appeal form, it is a simple matter for the Authority to take note of it and send the documents to that specified address. Where they do not do so, they run the risk committing a procedural impropriety.

The Appellants referred to previous decisions of other Adjudicators (for example *Reich PATAS 2130189216*) where posting the documents to the Appellant's address, where a representative's address had been specified on the appeal form, was held to be a procedural impropriety. This was so despite the fact that as it would appear from the decision, the documents had actually been received by the Appellant.

The Panel carefully considered these decisions, but was unable to agree with this approach. The Panel found that if the Adjudicator was satisfied that the Appellant, a party to the appeal, had actually received the documents, he could be satisfied that they had been " delivered to him" in accordance with 17 (2) (a). Paragraph 17 was complied with, because the required documents were "sent" to a party to the appeal by one of the prescribed methods in 17 (2). The fact that they were not left at, or sent by first class post to, the proper address, as defined in 17 (6) (a), does not affect the fact that they have been "delivered".

However, the panel found that where an Adjudicator was not satisfied that the documents have actually reached the Appellant where an alternate address has been specified, the failure to send the documents to the specified i.e. proper address would be a procedural impropriety. It is clear from the Regulations that the failure to serve at the specified address can only be cured by proof of "delivery " of the documents to the Appellant. It cannot be cured by proving that the documents were left at the Appellant's address posted to the Appellant's address because that address is no longer the "proper address".

(In the event that the Adjudicator is satisfied that the Appellant has received the documents, it is reasonable to expect him to have informed his representative or family member of this and to have ensured that all documents are with the representative in time for the hearing etc. The Panel would also expect lay representatives to act responsibly in a similar manner to a professional representative and if they have not received the evidence pack to check whether the documents are with their client).

Absence of "compelling reasons" on PCN

36. A camera PCN must contain the nature of the representations which may be made under Regulation 4 of the Appeals Regulations. Regulation 4 details that the representations must be to either or both of the following effects:

(i) that, in relation to the alleged contravention … one or more of the

> *grounds specified in paragraph (4) applies: or*
> *(ii)*
> *(ii) that, whether or not any of those grounds applied, there are compelling reasons why, in the particular circumstances of the case, the enforcement authority should cancel the penalty charge and refund any sum paid to on account of the penalty charge."*

TfL's penalty charge notice provides all the grounds – in tick box form – that are specified in paragraph (4) of Regulation 4. It then states:

> *"The representations may include mitigating circumstances not listed below, as to why you believe that the penalty charge is not payable."*

Mr Levy, for Mrs Lock, criticises the use of the phrase "mitigating circumstances" and states that the use of this phrase instead of "compelling reasons" amounts to a procedural impropriety, as they are not the same thing. He referred to a series of decisions from other Adjudicators, who have accepted his argument that mitigating circumstances not always amount to compelling reasons, and that therefore the PCN fails to comply with the statutory requirements.

The Panel carefully considered the decisions by other Adjudicators referred to and is unable to agree with those decisions. It noted that the majority of these decisions were made before the Lancashire case. In the Panel's judgment, the key information required to be conveyed is that the recipient of the PCN can put forward matters beyond the statutory grounds, that may persuade the Enforcement Authority not to pursue the PCN.

The Panel is satisfied that, reading the PCN as a whole, it fairly conveys the information the Regulations require it to convey. The Panel was not persuaded that there was any real difference between mitigating circumstances and compelling reasons. Any distinction is merely a question of degree. "Mitigating circumstances" certainly *include* "compelling reasons". No recipient of such a PCN can complain if the Authority indicate they are prepared to consider in their discretion a wider scope of mitigation. The assessment of whether the strength of mitigation in any given case reaches the threshold of "compelling reasons" is inevitably a matter for and discretion of the Enforcement Authority. The Panel rejected the argument that the use of the phrase "mitigating circumstances" in the PCN could, in any way, amount to a procedural impropriety.

Time limit for payment on PCN

37. It was submitted in some cases that the PCN was defective in that it stated "A penalty

charge is payable and must be paid before the end of the period of 28 days beginning with the date on which this Penalty Charge Notice is served".

The Schedule to the General Regulations Para 1(g) provides that the PCN must state "*that the penalty charge must be paid not later than the last day of the period of 28 days beginning with the date on which the penalty charge notice was served"*

A number of decisions of Adjudicators were relied on where it was decided that the exact words of the Regulations must be used. However, we are unable to agree with these decisions. When the relevant period is calculated under each form of wording, it is identical. The "end of the period" of 28 days is the same as "not later than the last day of" that period. Although the exact words of the Regulation are not used, the PCN conveys the correct time limit and we therefore find it to be compliant.

Form of representations/pink form

38. Mr Schreiber submitted that the he was entitled to be provided with a specific "pink form" for the making of representations, prescribed by London Councils. He referred to Para 2(2) of Schedule 6 to the Road Traffic Act 1991, which provided that representations in response to an NTO "*must be made in such form as may be specified by the London authorities, acting through the Joint Committee".* However, Schedule 6 was repealed by Schedule 12 Part 1 of the Traffic Management Act 2004. Regulation 4(2)(a) of the Appeals Regulations provides that representations must be made "*in such form as may be specified by the enforcement authority*", in this case, TfL. TfL is not required to use the "pink form".

Requirement to sign the reprsentations.

39. TfL's PCN at the end of that part of it setting out the grounds for representations, contains the following:

"Please make sure you sign the following declaration if you want us to consider your representations.

I confirm that the above information is correct to the best of my knowledge. I understand that making a false statement may result in prosecution and a possible fine of up to £5000."

There then follows a space for name and signature.

It was submitted that there was no requirement in any of the Regulations for representations to be signed, and that by including this requirement the PCN was non-

compliant. The Panel is unable to accept this submission. Although the Regulations contain no specific requirement for a signature or declaration, Regulation4(2)(a) of the Appeals Regulations provides that representations must be made "in such form as may be specified by the enforcement authority.". It seems to the panel perfectly reasonable for that form to include a requirement to sign it and declare its contents to be true.

Abence of Longitude and Latitude in the CCTV footage

40. There is no dispute as to the location of the contraventions. The Panel considered this had no merit at all

Barnet PCN – wording of right to make informal represntations.

41. It was submitted that the wording on the Penalty Charge Notice relating to informal challenges was non-compliant.

The relevant part of the Appeals Regulations provides as follows:-

PART 2 REPRESENTATIONS AND APPEALS IN RELATION TO NOTICES TO OWNER

Scope of Part 2 and duty to notify rights to make representations and to appeal

3. (2) A penalty charge notice served under regulation 9 of the General Regulations must, in addition to the matters required to be included in it under paragraph 1 of the Schedule to the General Regulations, include the following information—

(a) that a person on whom a notice to owner is served will be entitled to make representations to the enforcement authority against the penalty charge and may appeal to an adjudicator if those representations are rejected; and

(b) that, if representations against the penalty charge are received at such address as may be specified for the purpose before a notice to owner is served—

(i)those representations will be considered;

(ii)but that, if a notice to owner is served notwithstanding those representations, representations against the penalty charge must be made in the form and manner and at the time specified in the notice to owner.

Please note that part of this decision has been reviewed under the case of Ruimy v LB Barnet (case number 2140171228)

The wording on the Barnet PCN under the heading "Challenging the Penalty" is:

> *Representations and informal challenges may be made on line at WW. Barnet.gov.uk/parking or alternatively by post Barnet Parking Service PO Box 4894 Worthing BN11 9WT.*
>
> *The Notice to Owner provides the opportunity to either pay the outstanding penalty at the full charge or to make formal representations.*
>
> *The owner of the vehicle may also make an informal challenge against this penalty prior to the Notice to Owner being issued. Should an informal challenge be received by the Council before the end of the period of 14 days beginning on the date on which the Penalty Charge Notice was served the Council will hold the penalty at the reduced rate while the challenge is investigated and considered. If the challenge is rejected, the penalty will be held for a further 14 days from the date of service of the Council's response, at the reduced charge.. Making an informal challenge does not prevent the owner from making a formal challenge upon receipt of the Notice to Owner.*

The Panel found that the wording of the Barnet PCN fails to comply with Regulation 3(2)(b). The Panel concluded that the wording used limited the right to make informal representations to the owner of the vehicle. This could easily inhibit the recipient of the PCN who quite possibly might not be the owner, from making representations promptly or at all.

Reading the document as a whole the Panel was not satisfied that the wording used fairly conveyed what the Regulations required. The PCN is therefore not a proper PCN in law and no payment may be demanded on the basis of it; or, in the alternative, its issue amounts to a procedural impropriety.

Barnet NTO - failure to state form and manner of appeal

42. It is submitted that the Notice to Owner issued by Barnet is defective in that it fails to comply with Regulation 3(3)(e) of the Appeals Regulations , which require the Notice to Owner to include "*in general terms the form and manner in which an appeal may be made.*". The NTO, so far as is relevant, reads as follows:-

> [If representations are rejected] "*you will have a period of 28 days beginning with the service of the Notice of Rejection in which either to pay the penalty charge or appeal against our decision to the independent adjudicator. The adjudicator will then reconsider the case and make a decision based on all the evidence provided. We will tell you how to do this when we write to you*"

The Council stated that the rejection notice will provide these details and that "*this is the statutory procedure and that to provide details on the NTO on how to file an appeal could give the appellant the false impression that an appeal can be filed without following the statutory process*". We doubt this is so, but in any event the information contained in Regulation 3(3)(e) is itself a part of the statutory procedure, and is mandatory.

Adjudicators have stated in a number of previous decisions, cited by the Appellants (e.g. Marvin (2013) Case No: 213008458A), that the Regulation requires the information to be given there and then, on the NTO itself, not on some future occasion.

Whilst we accept that an Enforcement Authority is not required to provide a massive amount of detail at that stage as to the appeal process, it must say *something* about it, in order to comply with the requirement to describe "*in general terms the form and manner in which an appeal may be made*".

In the Panel's judgement, the NTO when read as a whole, contains nothing that can fairly be described, even briefly, as the "form and manner" of a future appeal. The NTO is therefore defective, and its issue a procedural impropriety.

TfL NTO - failure to ste form and manner of appeal

43. Mr Baum submits that TfL's NTO is similarly defective. However in TfL's case (by contrast with that of Barnet) the NTO contains the following information on page 4 :-

> "*The Notice of Rejection will state that you must either pay the Penalty Charge or appeal in writing against the decision to an independent adjudicator, including any further representations you wish to make. Appeals must be made before the end of the period of 28 days beginning with the service of the Notice of Rejection…"*etc.

This gives the information that the appeal must be made in writing, the Appellant will have the opportunity to make further representations, and that there is a time limit. It is the Panel's view that, reading the document as a whole, it fairly conveys the information the Regulations require it to convey.

Determination of each Appeal

Please note that part of this decision has been reviewed under the case of Ruimy v LB Barnet (case number 2140171228)

Mr Miller

Mr Miller's vehicle was recorded on the red route in Stamford Hill when no stopping is permitted at any time on 18 December 2013 at 00.13. He submitted over 1000 pages of documentation- something that appears to the Panel to be wholly disproportionate to the appeal of a parking ticket. It seems to the panel that his grounds of appeal are essentially as follows.-

i. **PCN not offering right of specification of office for viewing the CCTV footage.**

The Panel rejects this argument for the reasons set out in paragraph 11 above.

ii. **TfL not complying with his request to view CCTV footage at, for example, Manor House station**.

The Panel rejects this argument for the reasons set out in paragraph 11 above.

iii. **Complying with requests to view CCTV footage within a reasonable time under regulation 3(6)**

The Panel rejects this argument for the reasons set out in paragraph 11 above.

iv. Representations not properly considered.

The panel is satisfied the Notice of Rejection deals more than comprehensively with the representations. It refers to paragraphs 23 to 27 above.

v. Absence of fax number, e-mail address on PCN

The Panel rejects this argument for the reasons set out in paragraph 30 above.

vi. Form of representations/pink form

The Panel rejects this argument for the reasons set out in paragraph 38 above.

vii. Signing the representation

The Panel rejects this argument for the reasons set out in paragraph 39 above.

viii. NSL point

The Panel rejects this argument for the reasons set out in paragraph 12 above.

ix. VQ4

The Panel rejects this argument for the reasons set out in paragraph 12 above.

x. Longitude Latitude

The Panel rejects this argument for the reasons set out in paragraph 40 above.

xi. Camera certification

The Panel rejects this argument for the reasons set out in paragraph 29 above.

xii. Use of CCTV/Guidance

The Panel rejects this argument for the reasons set out in paragraphs 13 to 20 above.

xiii. CCTV signage

The Panel rejects this argument for the reasons set out in paragraph 21 above.

xiv. Traffic Management Order

TfL has now supplied a complete copy of the relevant Traffic Management Order. On looking at it, it appears that the extracts previously provided are sufficient to show that the location is a part of the red route where stopping is prohibited at all times. Article 3(2) states:-

> *Subject to the provisions of paragraph (3) of this article and of articles 4,5,6,7,9,and 10, [*which are not applicable in the present case*] no person shall cause any vehicle to stop **at any time** on a length of red route specified in Schedule 4.* (emphasis added) .

The relevant length of road appears at item 66 in Schedule 4. The CCTV shows the presence of the double red lines required to indicate this prohibition; and these lines are shown in the Secretary of State's red route authorisation of the 26th October 2011 (Diagram V). No time plates are required by this authorisation to accompany the lines. We are satisfied the prohibition on stopping was correctly and clearly indicated.

Accordingly, as the Panel was satisfied on the evidence that the contravention

occurred and that the penalty charge notice was lawfully issued, the appeal is refused.

Mrs Lock

The Panel has noted that TfL sought to "DNC" (i.e. not to contest) the appeal at a late stage. However the Panel has determined not to allow this, as it considers it should give a decision on the matters raised.

The CCTV footage shows Mrs Lock's vehicle on the red route outside 143 to 149 Clapton Common at 18.25 on 29 December 2013. No stopping is permitted on any day from 8a.m. to 7p.m., save for loading for a maximum of 20 minutes or disabled parking for a maximum of three hours between 10 a.m. and 4 p.m.

i. Absence of "compelling reasons" on PCN

The Panel rejects this argument for the reasons set out in paragraph 36 above.

ii. PCN not offering right of specification of office for viewing the CCTV footage.

The Panel rejects this argument for the reasons set out in paragraph 11 above.

iii. Complying with requests to view CCTV footage within a reasonable time under regulation 3(6)

The Panel rejects this argument for the reasons set out in paragraph 11 above.
.

iv. Camera Certification

The Panel rejects this argument for the reasons set out in paragraph 29 above.

v. Use of CCTV/Guidance

The Panel rejects this argument for the reasons set out in paragraphs 13-20 above.

vi. NTO not describing form and manner of appeal Regulation 3 (3) e)

The Panel rejects this argument for the reasons set out in paragraph 43 above.

vii. Time Limit for payment on PCN

Please note that part of this decision has been reviewed under the case of Ruimy v LB Barnet (case number 2140171228)

The Panel rejects this argument for the reasons set out in paragraph 37above.

Accordingly, as the Panel was satisfied on the evidence that the contravention occurred and that the penalty charge notice was lawfully issued, the Appeal is therefore refused.

However, given the fact that TfL sought to discontinue, the Panel assumes that TfL will not be seeking to enforce this penalty. TfL is directed to confirm the position within 14 days.

Mr. Baum

38. The CCTV footage shows Mr. Baum's vehicle on the red route outside 200 Stamford Hill at 1135 on 24 October 2013. No stopping is permitted on any day from 8a.m. to 7p.m., save for loading for a maximum of 20 minutes or disabled parking for a maximum of three hours between 10 a.m. and 4 p.m.

i. Time Limit for payment on PCN

The Panel rejects this argument for the reasons set out in paragraph 37 above.

ii. NTO not describing form and manner of appeal Regulation 3 (3) e)

The Panel rejects this argument for the reasons set out in paragraph 43 above.

iii. Service of Notice of Rejection at the proper address.

Once TfL had pointed out that the requirement in the Schedule to the General Regulations applied to appeals and not to the notice of rejection, Mr Levy, for Mr Baum, sensibly abandoned this point.

Accordingly, as the Panel was satisfied on the evidence that the contravention occurred and that the penalty charge notice was lawfully issued, the appeal is refused.

Mr. Ariyo

The CCTV footage shows Mr. Ariyo's vehicle stopped on a pedestrian crossing area marked by zigzags on the red route outside 84 to 94 Lee High Road at 1444 on 27 June 2013. No stopping is permitted at the location at any time.

His arguments were:

Please note that part of this decision has been reviewed under the case of Ruimy v LB Barnet (case number 2140171228)

i. Time Limit for payment on PCN

The Panel rejects this argument for the reasons set out in paragraph 37 above.

ii. He **did not receive a reply to his representations**

Following the issue of the PCN, the Appellant exercised his right to view the CCTV images. Having done so, he made representations, which were rejected. TfL, in the rejection notice honoured the undertakings it had effectively previously given to preserve the opportunity to settle at the discounted rate, pending the viewing. Unfortunately, the Appellant never received the notice, but this does not amount to any form of procedural impropriety on TfL's part.

iii. **The driver only waited momentarily the car to pull out of a parking space and when the car exited that space, his vehicle took it.**

The Panel considered the CCTV footage, which shows that the vehicle was stopped for over 40 seconds at the location. This is more than merely minimal. There is no exemption permitting a vehicle to stop on the zig-zag area, even briefly, whilst waiting for a lawful parking space to become available. The vehicle was in contravention and the PCN was lawfully issued.

Although the appeal must be refused, the Panel is firmly of the view that this is a case where, out of fairness, the Appellant should be offered a further and final opportunity to pay at the discounted rate. Whilst we have no power to order TfL to do so, we direct TfL to inform the Appellant as to whether it will exercise its discretion to do so within 14 days. In default, or in the event of any further failure of communication, the Appellant must assume the full amount remains due and pay promptly in accordance with the Order printed at the head of this decision.

Mr. Makengo

. The CCTV footage showed Mr. Makengo's taxi stationary for just over half a minute on double red lines outside 77 Brompton Road, at 15.13 on 17 March 2014.

It is clear from the subsequent footage that this length of red route is commonly used by cab drivers waiting to draw up in front of Harrods, a little further down the road on the far side of the pedestrian crossing, where there is presumably a ready supply of clients. There is, however, no sign of a passenger boarding, or alighting from, the vehicle, and it seems to the Panel that the Appellant was, in effect, treating this part of the red route as a cab

rank, albeit only briefly. The vehicle was in contravention and the PCN was lawfully issued.

For reasons set out above we are satisfied that the PCN itself is compliant. The appeal is therefore refused.

Mrs. Goldmeier

. Mrs Goldmeier sought a review of the decision made by Adjudicator Mr Burke when he refused her appeal on 20 March 2014. For the Panel to be able to conduct a review of this decision, it must be satisfied that one of the grounds set out in Paragraph 12 of the Civil Enforcement of Parking Contraventions (England) Representations and Appeals Regulations 2007, applies.

Mrs Goldmeier has based her application on the ground that the "interests of justice" require a review. She seeks review of the decision on "one legal point" only - namely that the Notice of Rejection does not address or refer to the particulars of her representations.

Adjudicator Mr Burke's decision on the point was as follows:

> *"Mrs. Goldmeier asserts a further procedural impropriety in that the Notice of Rejection does not address or refer to the particulars of her representations. Regulation 5 The Civil Enforcement of Parking Contraventions (England) Representations and Appeals Regulations 2007 sets out the duty of an Enforcement Authority to which representations have been made. Regulation 5.(2) requires that within 56 days of receipt of the representations the Enforcement Authority must consider them and serve notice as to whether they accept that one of the grounds or compelling reasons for cancellation has been established. There is no legal requirement that a Notice of Rejection set out the representations made. The Notice of Rejection in the present case states 'We have considered everything you said in your letter however, I do not feel that you have made any grounds for cancelling the Notice or Notice to Owner'. Again I am satisfied that the Notice of Rejection is substantially compliant."*

The Panel refers to its observations set out at paragraphs 23-27 above.

The Panel is not persuaded that any basis has been established for it to review the decision The Adjudicator found as a fact that the Authority had complied with the duty

to consider the representations. Those representations, as in evidence before Mr Burke, were brief. In the Panel's judgement, he was entitled to form the view that they had in fact been considered, in reliance on the Council's similarly brief assertion to that effect. There is no error of law or factual error in that decision that would constitute any ground for a review.

Therefore, Mrs Goldmeier's application for review is refused.

Mr. Ruimy

The Council's case is that the Appellant's vehicle was parked without payment of the parking charge in Burroughs Gardens car park on the 7th January 2014. This does not appear to be in dispute.

i. Barnet NTO - failure to state form and manner of appeal

Mr Ruimy submitted that the NTO issued by Barnet was defective because it failed to comply with Regulation 3(3)(e) of the Appeals Regulations. His submission succeeds for the reasons set out at paragraph 42 above. Accordingly this appeal is allowed.

Mr. Schreiber

The CCTV footage shows Mr. Schreiber's vehicle on the red route outside 74 to 88 Stamford Hill at 1641 on 26 December 2013. No stopping is permitted on any day from 7 a.m. to 7 p.m., save for loading for a maximum of 20 minutes or disabled parking for a maximum of three hours.

i. PCN not offering right of specification of office for viewing the CCTV footage.

The Panel rejects this argument for the reasons set out in paragraph 11 above.

ii. Complying with requests to view CCTV footage within a reasonable time under Regulation 3(6)

Mr Schreiber sent an e-mail request on 16 January 2014 to TfL at 14.35 to view the CCTV recording at Manor House Station or at Baker Street. He requested that the viewing take place on 20 January at 11 a.m. Mr Schreiber then made the

detailed representations, referred to above, in his seven-page letter, dated 27 January 2014.

TfL responded to the request in its Notice of Rejection, dated 24 February 2014. This was contained in its detailed five page response to all the representations Mr Schreiber had made. Mr Schreiber contended that this five-week delay cannot amount to complying with the request within a reasonable time as set out in Regulation 3(6).

The Panel repeats its conclusion that the obligation is to facilitate the viewing within a reasonable time. Given the nature, detail, and volume of the representations surrounding this request, no criticism in the Panel's view, can be made of TfL for taking five weeks before issuing a response. They would have had even longer to facilitate the actual viewing had they been required to do so.

However, given the Panel's decision that with only one office in Croydon as a viewing centre, the right to specify does not arise, the request to view at Manor House station or Baker Street was not a proper request which the Authority had an obligation to facilitate within a reasonable time. Thus the obligation to comply with that request within a reasonable time under Regulation 3(6) did s not arise.

.

iii. Absence of fax number, e-mail address on PCN

The Panel rejects this argument for the reasons set out in paragraph 30 above.

iv. Form of representations/pink form

The Panel rejects this argument for the reasons set out in paragraph 38 above

v. Service of Documents at the proper address.

The Panel rejects this argument for the reasons set out in paragraph 35 above

vi. Signing the representation

The Panel rejects this argument for the reasons set out in paragraph 39 above.

vii. NSL point

The Panel rejects this argument for the reasons set out in paragraph 12 above.

Please note that part of this decision has been reviewed under the case of Ruimy v LB Barnet (case number 2140171228)

viii. VQ4

The Panel rejects this argument for the reasons set out in paragraph 12 above.

ix. Longitude and latitude

The Panel rejects this argument for the reasons set out in paragraph 40 above.

x. Camera certification

The Panel rejects this argument for the reasons set out in paragraph 29 above.

xi. Use of CCTV/Guidance

The Panel rejects this argument for the reasons set out in paragraphs 13 to 20 above.

xii. CCTV signage

The Panel rejects this argument for the reasons set out in paragraph 21 above

Accordingly the Panel was satisfied the contravention occurred and that the PCN was lawfully issued. The appeal is therefore refused.

Mr. Krausz

The CCTV footage shows Mr Krausz's vehicle stationary on the red route outside 124-132 New Cross Road at 17.21 on the 12th February 1 2014. No stopping is permitted on any day from 7a.m. to 7p.m., save for loading for a maximum of 20 minutes or disabled parking for a maximum of three hours between the hours of 10.00 am and 4.00pm.

Mr Krausz's grounds of appeal are contained in his detailed letter of the 24th February 2014. The Panel noted that these were virtually identical to the submissions made in by Mr Schreiber in his letter of the 27th January 2014. The Panel s considered each those submissions and rejects them for the same reasons as set out above.

Accordingly, the Panel was satisfied the contravention occurred and that the PCN was lawfully issued. The appeal is therefore refused.

Please note that part of this decision has been reviewed under the case of Ruimy v LB Barnet (case number 2140171228)

Mr. Sterling

The CCTV footage shows Mr Sterling's vehicle stationary on the red route outside 174-180 Seven Sister's Road at 11.42 on the 10th February 1 2014, a time when the bay was suspended and all stopping prohibited.

Mr Sterling's grounds of appeal are contained in his detailed letter of the 18^{tth} February 2014, which the Panel noted was virtually identical to those of Mr Krausz and Mr Schreiber. Again, the Panel has considered each of these submissions and rejects them for the same reasons as set out above.

Accordingly the Panel was satisfied the contravention occurred and that the PCN was lawfully issued. The appeal is therefore refused.

Mr. Bush

44. The Appellant parked in what was a Council car park and duly purchased a P&D ticket. Although the machine was clearly in less than pristine condition there seems to the Panel no reason to doubt it issued the correct ticket for the payment made. However, on entering Asda he noticed a sign, of which he has provided a photograph, stating that he could "*receive up to the value of 2 hours (3.20) free parking when you spend £5 or more in Asda*". On the basis of this, he was in the process of making what he thought would amount to the qualifying purchase, when he discovered that the offer did not apply to the Council's car park but only applied to the store's own car park. By the time he got back to his vehicle the PCN had been issued.

It seems to the Panel that his misunderstanding of the supermarket's sign is not a matter that can be laid at the door of the Council; and that the reference on the sign to a "pay station" might have alerted him to the fact that this could not apply to a P&D car park where tickets are purchased and payment completed at the time of parking. It cannot be said that the PCN was issued other than lawfully.

The Appellant submitted that the PCN was defective in that it does not comply with the requirements of Para. 1(g) the schedule to the Civil Enforcement of Parking Contraventions (England) General Regulations 2007. This provides that the PCN must state "*that the penalty charge must be paid not later than the last day of the period of 28 days beginning with the date on which the penalty charge notice was served*,.

The relevant part of the PCN reads:-

Please note that part of this decision has been reviewed under the case of Ruimy v LB Barnet (case number 2140171228)

A penalty charge of £60 is now payable and ***unless this PCN is challenged*** *must be paid not later than 27/09/12 that date being the last day of the period of 28 days beginning with the date on which this PCN was served" (emphasis added).*

The Appellant *submitted* that the addition of the extra words renders the PCN non – compliant. He referred to the case of *Taylor (2010) PATAS 2100010686,* where an Adjudicator accepted that submission. The Council submitted that this extra wording was inserted merely to assist the motorist and does not affect the clarity of what the Regulation requires the PCN to convey

In the Panel's view the addition of the extra words, though unnecessary, does not undermine the clarity of the PCN, when read cumulatively and as a whole. The information required to be given is the time limit for the making of payment, and that if payment is not made within that time limit a Notice to Owner may be served. It seems to the panel that the words "unless the PCN is challenged" mean, and would reasonably be taken by the motorist to mean, no more than that payment should not be made if the PCN is to be challenged, and that the motorist challenging the PCN should await the issue of the NTO. We find the PCN to be substantially compliant.

As the contravention occurred and a lawful PCN was issued, the appeal must be refused. , the Panel has some sympathy with the Appellant, who made a genuine mistake as a result of a sign put there by the store. The Panel regard this as a case where the mitigation is compelling and recommend that the Council exercises its discretion not to enforce the penalty.