

Miss Kelly Jane OWENS (Appellant) v LB Hammersmith & Fulham

Case No. 1990252172

On the 15th February 1999 the Appellant's Peugeot K169 PFR, parked in Starfield Rd W12, received a Penalty Charge Notice (PCN). The reason for this as given on the notice itself was that the vehicle was parked within a residents bay (which it was) and that there was no residents permit displayed (which there was not). However from the moment the PCN was issued it has been contested by the appellant on the grounds that the scheme requiring residents permits in that particular road was a new one and that she had received no notice whatever that the new scheme was about to come into force. The point of the case is therefore whether proper notice was given by the Local Authority and, if so, whether her ignorance of the scheme is sufficient to protect her from the normal consequences of unlawful parking.

It is clear from the Borough's evidence that the scheme was indeed a new one; in fact the 15th was the first day of its operation. Having considered carefully the Appellant's evidence, some of it put in fairly strong terms, I have no hesitation in accepting her statement that, as a matter of fact, she had no knowledge of the scheme until she received the PCN.

However that is not the end of the matter. The Appellant had parked her vehicle not in a car park or on some private ground but on the public highway. Parking on the highway is in the ordinary course of events not unlawful unless some obstruction is caused; but there is no absolute right in law to park a vehicle there and a person who does, does so subject to the multiplicity of rights and duties given to Local Authorities. These include of course the imposition of parking regulations whether permanent or temporary; and a motorist is not entitled to assume that no changes will be made affecting the legality of a parked vehicle. Whilst there may be no legal duty as such imposed upon the motorist to check it regularly (as the Borough appears to be saying), if the vehicle is left unchecked, or the motorist does not keep an eye out for notices warning of impending changes, he can hardly complain that changes took place without his knowledge.

What the motorist is entitled to demand and expect is strict compliance by the Local Authority with any applicable regulations in the implementation of a new scheme. Local Authorities cannot, as it were, change parking regulations on a whim but must abide by the provisions of (in this case) the Local Authorities Traffic Orders (Procedure) Regulations 1989. The key Regulation material to this case is Regulation 7 which reads as follows:-

7. (1) *An order making authority shall, before making an order*
- (a) *publish at least once a notice (in these Regulations called a notice of proposal<') containing the particulars specified in Parts I and 11 of Schedule I in a newspaper circulating in the area in which any road or other place to which the order relates is situated*
 - (b) *in the case of an order under section 6 of the 1984 Act, publish a similar notice in the London Gazette;*
 - (c) *take such other steps as it may consider appropriate for ensuring that adequate publicity' about the order is given to persons likely to be affected by its provisions and, without prejudice to the generality of this sub-paragraph, such other steps may include*
 - (i) *in the case of an order to which sub-paragraph (b) does not apply, publication of a notice in the London Gazette;*
 - (ii) *the display of notices in roads or other places affected b~' the order or*
 - (iii) *the delivery of notices or letters to premises, or premises occupied by persons, appearing to the authority to be likely to be affected by any provision in the order.*

It seems clear to me on the evidence provided by the Borough that the Borough complied with this Regulation in this case. Publication of the new proposals took place in the Hammersmith Fulham and Shepherds Bush Gazette and in the London Gazette on the 4th September 1998. Street notices were posted, and notices (in the form of an application pack) were sent by post to local addresses. It seems to me that the sending of these notices by post is not the same as "delivery" which connotes actual arrival at the address concerned: However it has to be borne in mind that on a true reading of Regulation 7 the Borough is only required to "*take such other steps as it may consider appropriate for ensuring that adequate publicity' about the order is given to persons likely to be affected by its provisions*" of which paras i) to iii) are only possible examples. There is nothing to prevent the Borough deciding to "send" a notice by post in discharge of its duty particularly in the context of the various other steps that had been taken.

I am therefore satisfied that the Borough had complied with the regulations by the 15th February and that the restriction was therefore lawfully in force and binding on the Appellant even in the absence of actual knowledge of it. I have to say it seems to me there is nothing inherently unfair in the legal position as the Appellant in common with all local residents had ample means available (press and local notices) to make herself aware of forthcoming changes had she chosen to do so.

EDWARD HOUGHTON
Adjudicator
23.2.2000