

BEFORE ADJUDICATORS:

Edward Houghton
Alastair McFarlane

Ruimy v LB Barnet (case number 2140171228)

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1. This is an application by Barnet Council for a review of one discrete part the Panel's decision made in the consolidated cases of Miller and Others v. Transport for London and Others (case number 214015350A, dated 26 August 2014). The Council seek a review in Mr. Ruimy's case of the Panel's decision (set out at paragraph 41) that the Council's Penalty Charge Notice failed to comply with the requirements of Regulation 3(2)(b) of Civil Enforcement of Parking Contraventions (England) Representations and Appeals Regulations 2007 ("the Appeals Regulations").

2. The Application was heard by the two remaining members of the Panel (Susan Turquet having since retired). The Council was represented by Mr Comyn of Counsel. Mr Ruimy did not appear and was not represented. He had not appeared at the original hearing in August 2014 and was not represented at it. The Panel noted that Mr Williams, who at the original hearing had represented Mr Miller and had assisted Mr Schreiber, sent an e-mail dated 23 September 2014 to the Tribunal, referring to Mr Schreiber as Mr Ruimy's representative, and stating that Mr Schreiber had asked Mr Williams to assist in the review of Mr Ruimy's case. As a result of that e-mail, the Tribunal wrote to Mr Ruimy seeking his signed authorisation that Mr Williams was instructed to represent him. No authorisation for anyone to appear on his behalf has been received by the Tribunal. However, the Panel noted that Mr Ruimy himself had submitted an e-mail, dated 27 October 2014, which specifically addressed the issues in this review. It made no reference to his representation or attendance at the hearing on 31 October 2014. Neither Mr Ruimy, nor Mr Williams nor Mr Schreiber attended the hearing. The Panel was satisfied in the circumstances that it was just and proportionate to determine the review application (and, if necessary, the merits) in the absence of Mr Ruimy.

3. The Panel took account of Mr Ruimy's original representations on this issue and the contents of his e-mail 27 October 2014.

4. The Council are seeking permission to have reviewed that part of the Panel's decision, made on 26 August 2014, set out at paragraph 41 of the decision. For us to be able to conduct a review of this decision, we must be satisfied that one of the grounds set out in Paragraph 12 of the schedule to the Appeals Regulations, applies.

5. The ground on which review is sought is that the "interests of justice" require it. Essentially the Council's position is that the Panel arrived at the wrong decision in the absence of full argument, and that in the light of the submissions on the law, set out in the Council's written application and in Mr Comyn's skeleton argument, the decision should not stand.

6. The Panel considered that these submissions could and should have been made at the original hearing. Although it is the Panel's clear recollection that the issue was not the main plank of Mr Ruimy's submissions, it was referred to in his Appeal. The Council (which was not legally represented at that hearing) made no application for an adjournment on the basis that it had been taken by surprise.

7. It will not normally be in the interests of justice to review a decision merely on the basis that a party wishes to advance arguments that it could have raised at the original hearing, but did not do so. However, given the very limited argument heard on this issue at the original hearing and the fact that the validity of the PCN would clearly have wide-reaching implications, the Panel considered it was in the interests of justice to grant permission for this part of their decision to be reviewed.

The Merits

8. Mr Comyn, on behalf of the Council, submitted written representations and made oral submissions. His primary contention was that in reaching its conclusion that the Barnet PCN failed to comply with Regulation 3(2) b), the Panel had failed to give sufficient weight to the wording on the front of the penalty charge notice.

9. In paragraph 41 of the decision, the Panel had 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."

10. The front of the Barnet PCN states as follows:

"A Penalty Charge of £60 is payable. The Penalty Charge must be paid no later than the last day of the period of 28 days beginning with the date on which the penalty charge notice was served. If the Penalty Charge is paid no later than the last day of the period of 14 days beginning with the date on which the penalty charge notice was served the Penalty Charge will be reduced by 50% to £30.

If the penalty charge is not paid before the end of the period of 28 days beginning with the date on which the penalty charge notice was served, a notice to owner may be served by the London Borough of Barnet on the owner of the vehicle. The person on whom the notice to owner is served will be entitled to make representations to the London Borough of Barnet against the penalty charge and may appeal to an Adjudicator if those representations are rejected.

If representations against the penalty charge are received at the address detailed overleaf before the notice to owner has been served, those representations will be considered; but if a notice to owner is served notwithstanding those representations, representations against the penalty charge must be made in the form and manner at the time specified in the notice to owner."

11. Mr Comyn submitted that the second paragraph addressed the circumstances provided for in Regulation 3(2) (a), where the recipient of the notice to owner may make representations. He stated that the third paragraph addressed the circumstances provided for in Regulation 3(2) (b) namely, the opportunity for the recipient of the PCN to make representations before a notice to owner has been served and informs the recipient that any representations so made shall be considered.

12. The reverse of the Barnet PCN states as follows:

"Challenging the Penalty.

Representations and informal challenges may be made online@www.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 with 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.

13. Mr Comyn contended that the recipient of the penalty charge notice knew from its front page, that he can make representations; and knew from the back page, how to go about it – in that the Council's addresses were provided. He stated that the recipient of the penalty charge notice knows from the first page that he can make representations, before the owner is informed. He argued that by the time the recipient gets to the second page of the penalty charge notice – where he sees the words "the owner of the vehicle may also make an informal challenge"– he already knows that representations can be made before the owner is involved. He contended that the paragraph stating that the owner of the vehicle may also make an informal challenge is exclusive information for the owner. He contended that the face of the PCN does not exclude the possibility of the recipient making representations. He referred the Panel to the decision it cited in the Miller case of *The Queen (on the application of Hackney Drivers Association Ltd) v. The Parking Adjudicator and Lancashire County Council* [2012] EWHC 3394 (Admin) . He contended firstly that the words used on the PCN expressly complied with the Regulations, but secondly, reading the penalty charge notice as a whole, it did convey what was required to be conveyed under Regulation 3(2). Mr Comyn also submitted as a general point, relying on the authority of *Clive Wolman v. Islington London Borough Council and the City of London* [2007] EWCA Civ 823 that when interpreting documents such as a PCN, the Panel should have regard to all the background facts or the context of it being issued to the vehicle and found and read by the returning motorist.

14. The Panel considered the original brief representations of Mr Ruimy on the point, as well as those contained in his e-mail 27 October 2014. It considered the decisions of other Adjudicators that he detailed, who, after the decision of this Panel in August 2014, adopted the reasoning and found the PCNs invalid, as well as the decision of Ms Adjudicator Brennan in *Lieberman v. Barnet* (case number 2140287854) made before the Panel decision. It bore in mind that decisions of other Adjudicators, including the Panel's own decision, are persuasive only and not binding on subsequent Adjudicators.

Conclusion

15. The issue in this case is whether the PCN, when read as a whole, substantially conveys the information required to be conveyed.

16. The information required to be conveyed is as set out in Regulation 3

(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

17. The wording on the first page of the PCN follows the wording of the Regulation. Although the Regulation does not expressly state that the recipient of the PCN can make representations, this tribunal and all authorities have always interpreted regulation 3(b) as meaning that the right to make pre-notice to owner representations is not limited to the owner. The Panel is satisfied that this must be correct. In any event, if there is any lingering uncertainty as to who exactly can make those representations this is something built into the drafting of the Regulation. Whatever it means, the requirement to state it on the PCN is, at that point, clearly satisfied.

18. As the PCN is therefore literally, not merely substantially compliant on its first page, the remaining question is whether the wording on the reverse is such as to undermine it i.e. to have the effect of leading the recipient to believe that representations received before the notice to owner is served, will not, or, might not, in fact be considered after all.

19. The Panel was not persuaded by Mr Comyn's interpretation of the paragraph beginning "The owner of the vehicle may also make an informal challenge..." as being information purely for the owner. Although read line by line it is an arguable interpretation, the difficulty is that the rest of the paragraph - and indeed the entirety of that part of the PCN under the heading "Challenging the Penalty" - in our view applies (and, would be taken to apply) to all challengers of the penalty, not just owners. The offer of an extension of the discount period if representations are rejected, is, in our view, clearly intended to apply to all representations from whatever source. (Granting the extension only to representations from owners, but not others would make no sense at all - and, in any event, the Council would not necessarily know at that stage into which category any given representation would fall).

20. Nevertheless, the Panel was persuaded that Mr Comyn's submissions were correct in that the Panel had previously given insufficient weight to the fact that, as a starting point, the wording on the front of the PCN was actually fully compliant.

21. Mr Ruimy's submission is that by stating that "The owner of the vehicle may also make an informal challenge..." the Council is incorrectly restricting the class of persons who may make representations, to owners.

22. Considering the entirety of the PCN as a whole, the Panel rejects Mr Ruimy's contention. The front of the PCN, following the wording of the Regulation, indicates to the recipient that representations can be made before the notice to owner has been served. The sentence that has caused the difficulty ("the owner of the vehicle may also make an informal challenge...") is to be read in the light of what has been stated on the front of the PCN as well as bearing in mind that it comes in three paragraphs set out under the heading "Challenging the Penalty". In this context, it is the Panel's judgment that the recipient of the PCN reading this, would consider that it means that the owner of the vehicle also has the right to make an informal challenge - as well as him. Further, and in any event, we do not consider that the words "The owner of the vehicle may also make an informal challenge..." so clearly amount to the statement that "no representations will be considered from anyone else" which would remove all force from the compliant statement on the front of the PCN.

23. Accordingly, the Panel determined to exercise its powers under paragraph 12 to the schedule of the Civil Enforcement of Parking Contraventions (England) Representations and Appeals Regulations 2007. It therefore revoked its finding at paragraph 41 of the Miller

decision and substituted this decision, namely that the Barnet PCN does, when read as a whole, comply with Regulations 3(2) (b).

24. This decision does not alter the outcome of Mr Ruimy's appeal, which was successful on other grounds.

Edward Houghton
Alastair McFarlane