**PARKING AND ROAD TRAFFIC APPEALS**

**ANGEL HEARING CENTRE**

Before Adjudicator:

**Christopher Rayner**

**Ian Stuart Thomson**

-v-

**London Borough of Camden**

*Appeal number* 2140323858

Date of Decision: 11 November 2014

**D E C I S I O N**

1) Mr. Thomson attended the Tribunal on 15 September 2014 to present his appeal. In well drafted and attractively presented submissions, Mr. Thomson had raised significant legal issues, I adjourned the appeal on that occasion and reserved my decision. I apologise that it has taken so long to complete that decision, caused partly by the complexity of the issues and partly by infrequent sittings in the Tribunal.

2) Camden council, the enforcement authority, removed Mr. Thomson's car, LB54FVD, submitting that it had committed a contravention by parking unlawfully in a bay in Arlington Road on Sunday 8 June 2014. Mr. Thomson raises issues about nearly every stage of the procedure. In respect of the removal of the car in particular, Mr. Thomson raises issues that have been before the Tribunal on a number of occasions. In 2011 I decided case no. 2110405341 where I rejected a number of submissions very similar to those made by Mr. Thomson. That case has been followed by a number of my adjudicator colleagues since then. It has not, as far as I am aware, been "reversed" by any adjudicator either at first instance or on review. I am unaware of any motorist having taken the issue to the Administrative Court. For the reasons I give below, I have concluded that nothing that Mr. Thomson has raised contradicts my view from that time. He has however raised a number of other issues, which I also consider in the appeal. The Contravention.

3) The civil enforcement officer (CEO) records that Mr. Thomson's car, LB54FVD, was parked in a permit space in Arlington Road at 16:14 on Sunday 8 July 2014. The timeplate in the bay reads, "Permit holders only / T80 T81 T82 / …Sat & Sun 9.30 am - 5:30 pm." The car was not displaying any permit or other authority to park. He affixed a penalty charge notice (or at least a penalty charge notice envelope) to the windscreen. A series of clear photographs serve to demonstrate the contravention.

4) In relation to that contravention, Mr. Thomson submits that the driver made an honest mistake. He held a residents permit for Camden and had misread the sign, believing that it applied on Saturdays only, and that he had not appreciated the relevance of the trader symbols on the sign. He had not in any event displayed his resident permit, as he believed there was no restriction on Sunday parking.

5) Mr. Thomson submitted that the signage was inadequate and misleading, and the absence of any warning of being towed away would negate the sufficiency of the signage. I do not agree. The signage is absolutely clear, and its application to Sunday is unambiguous. There is no requirement to sign the fact that a vehicle may be towed away. I accept that the driver had made a mistake, and believed he could park, and certainly believed that he would not be removed. However, the traffic scheme in London is described as imposing "strict liability". The enforcement authority has to demonstrate only that a vehicle has committed the contravention. They have to demonstrate that they have provided lawful and reasonable signage, which they have done. They do not have to bring that signage specifically to the attention of every motorist or to demonstrate that the motorist was aware that he or she had acted unlawfully. Albeit the driver misunderstood the sign, he is bound by it. I am satisfied that the contravention is proved. Affixing the PCN to the vehicle

6) Mr. Thomson submitted that the evidence did not demonstrate that the CEO had affixed the PCN to the car windscreen. This was relevant because Regulation 11(5)(b) of the Civil Enforcement of Parking (Representations and Appeal) Regulation 2007 stipulates that it is a ground of appeal that, "a civil enforcement officer had not, in accordance with Regulation 9 of the General Regulations, fixed a penalty charge notice to the vehicle …. before the vehicle was removed." Although expressed as a ground of appeal in the Regulations, the burden is on the enforcement authority to demonstrate that the PCN was served in an appropriate manner. Mr. Thomson submitted that the CEO's photographs showed only an envelope on the windscreen at the scene, that the picture even at the scene suggests a "limp" envelope with nothing in it, and that the CEO may have made his record as a matter of routine. Mr. Thompson relied in part on the fact that the PCN was not in the envelope on the windscreen when he arrived at the vehicle pound. Mr. Thomson acknowledged that the PCN itself was available to the staff at the vehicle pound.

7) I have reviewed the evidence. I rely not only on the photographs of the CEO, but also his written account. He records in his note book that he attached the PCN to the vehicle. The envelope was open at the pound, whereas it was sealed when the CEO took photographs. The PCN was also available at the vehicle pound. The evidence points overwhelmingly to the fact that the CEO put the envelope and PCN on the windscreen at the roadside, that both documents went to the pound with the car and that the PCN was taken out of the envelope at the pound. I find no merit in this ground of appeal. Statutory grounds to remove the vehicle

8) Another ground raised in Mr. Thomson's appeal is that the enforcement authority does not have statutory authority to remove his car, or to demand payment before releasing it. Mr. Thomson describes the complex statutory provisions that authorise various bodies to remove motor vehicles, and the effect of those removals. He cites the amended provisions of section 99, 101 and 102 of the Road Traffic Regulation Act 1984. So far as relevant, those, and other relevant statutory provisions, read as follows.

9) Section 99(1) The Secretary of State may by regulations make provisions for the removal of vehicles which have been permitted to remain at rest - (a) on a road in contravention of any statutory prohibition or restriction, or (b) (not relevant here) (c) on a road or on any land in the open air, in such a position or in such a condition as to appear to an authority empowered by the regulations to remove such vehicles to have been abandoned without lawful authority.

10) Mr. Thomson's car was removed under The Removal and Disposal of Vehicles Regulations 1986 as amended, which Regulations were made under this provision.

11) Section 101 of the 1984 Act is headed "Ultimate disposal of vehicles abandoned and removable under this Act" and provides. (1) Subject to …. section 101A below, a competent authority may, in such manner as they think fit, dispose of a vehicle which appears to them to be abandoned and which has been, or could at any time be removed in pursuance of- (a) an order to which this section applies, or (b) regulations made under section 99 of this Act.

12) Section 101A of the 1984 Act is headed "Right of owner to recover proceeds of sale" and so far as is relevant reads, (1) If before a vehicle is disposed of by an authority under section 101 above it is claimed by a person who- (a) satisfies the authority that he is its owner, and (b) pays the relevant charges, the authority shall permit him to remove the vehicle from their custody within such period as they may specify or, in the case of an authority other than a local authority, as may be prescribed. (2) If before the end of the period of one year beginning with the date on which a vehicle is sold by an authority under section 101 above a person satisfies the authority that at the time of the sale he was the owner of the vehicle, the authority shall pay him any sum by which the proceeds of sale exceed the amount of the relevant charges. (3) In the case of a vehicle found in an area that is a civil enforcement area for parking contraventions, the relevant charges are- (a) any penalty charge payable in respect of the parking of the vehicle in the place from which it was removed, (b) such unpaid earlier penalty charges relating to the vehicle as may be prescribed, and (c) such sums in respect of the removal and storage of the vehicle- (i) as the authority may require in accordance with Schedule 9 of the Traffic Management Act 2004, or (ii) in the case of an authority other than a local authority, as may be prescribed.

13) Section 101B of the 1986 Act is headed, "Representations and Appeals" and reads, as far as is relevant, (1) The Lord Chancellor may make regulations entitling a person who is in the case of a vehicle found in an area that is a civil enforcement area for parking contraventions - (a) is required to pay an amount on recovering the vehicle under section 101A, …. to make representations to the authority concerned and to appeal to an adjudicator if the representations are not accepted.

14) The Civil Enforcement of Parking Contraventions (England) Representations and Appeals Regulations 2007 are specifically expressed as being made under the authority, inter alia, of section 101B of the 1984 Act. Part 4 of those Regulations, containing regulations 11 - 13, is headed "Representations and appeals in relation to removed vehicles". I have quoted from part of Regulation 12 above, and quote the relevant part of Regulation 11 below, (1) This regulation applies to a person where, as respects a vehicle which has been found in a civil enforcement area for parking contraventions and removed under regulations made under section 99 of the 1984 Act - (a) he is required to pay an amount on recovery of the vehicle under section 101A of that Act …..

15) Finally, section 102 of the 1984 Act is headed, "Charges for removal, storage and disposal of vehicles, and reads, as far as is relevant, (1) The provisions of this section shall have effect where vehicle - … (b) is removed from a road, or from land in the open air, in pursuance of regulations under section 99 of this Act. (2) In any such case - (a) the appropriate authority shall be entitled to recover from any person responsible such charges as may be prescribed in respect of the vehicle;…. (3) Any sum recoverable by virtue of this section shall … be recoverable as a simple contract debt in any court of competent jurisdiction ….

16) Mr. Thomson submits that Camden council could have been relying only on section 101A of the 1984 Act in removing his car and in demanding the release fee. He points out, by reference to Hansard and records of parliamentary debates, that section 101A was intended to be and must be read as subject to section 101. That section applies only to cars that have been abandoned under the provisions of section 101. Section 102 of the 1984 Act requires the relevant enforcement authority to recover any sum "as a simple contract debt", and not through the enforcement process.

17) While the statutory provisions are far from straightforward, I cannot adopt Mr. Thomson's analysis. Simply stated, section 101 of the Act does not require the abandonment to be evident at the time of contravention or removal. It requires the abandonment to be evident at the time of disposal. An enforcement authority has power to remove a vehicle that is parked unlawfully. Once the vehicle is removed, it may be returned to the person who appears to the enforcement authority to be the owner, on payment of the release fee. Alternatively, if it appears to be abandoned after it has been removed, the enforcement authority may sell it. Should the owner "come to light" after the sale, he or she may be eligible for a refund of part of the proceeds of sale. Denial of right to make representation against the PCN

18) Mr. Thomson submits that the process adopted by Camden council in pursuing this penalty denies him of the rights he would otherwise have to make informal representations, receive a notice to owner form, make formal representations and appeal against the PCN. If his car had not been removed, and Camden had not demanded payment before they released his car, Mr. Thomson could have pursued any or all of these remedies and only if they were unsuccessful would he have been required to pay the PCN.

19) I accept that the statutory process adopted when vehicles are removed means that a motorist's ability to make representations against the PCN are altered. However, I do not find that this makes the process unlawful. Camden was acting within the statutory framework in demanding the PCN penalty, and the removal fee, before allowing Mr. Thomson to have his car and to pursue his appeal rights. Section 101A of the Road Traffic Regulation Act 1984 above is relevant. "Payable" in Regulation 101A(3)(a) refers back to "the relevant charges" in section 101A(1)(b) so that it must be paid prior to release, not after a separate enforcement process to be undertaken in respect of the PCN and separate from the payment of the release fee.

20) I find further support for this view in the overall construction of the enforcement, representations and appeal regulations for parking contraventions. There are at least four different enforcement procedures, each with different rights in the process and different appeal right, in relation to parking contraventions: "on street" Regulation 9 PCNs; photographic regulation 10 PCNs; immobilisation cases; and removal cases. Each process is self-contained and the fact that, for example, the enforcement and appeal process for removal cases may contradict some of the processes for Regulation 9 PCN enforcement does not, in my view mean that the enforcement authority somehow has to adapt the removal enforcement process to accommodate the Regulation 9 process. Camden council is entitled to rely on the clear language relating to the enforcement of penalties when cars are removed, even if that is different from the processes for enforcement of regulation 9 PCNs.

21) I also note that in any event, the motorist is not denied an opportunity to appeal against the PCN. Most of the grounds of appeal available to a motorist for a PCN issued under Regulation 9 are available to him under the removal procedure. The difference is that he must pay the penalty before he can have his car released and pursue his appeal. "Payment" or "loan".

22) When Mr. Thomson paid the release fee at the vehicle pound, he explained to the member of staff that he was not paying the release fee but was making a loan equivalent to the release fee. Mr. Thomson wrote that on his copy of the document. The member of staff advised him that this was his right. Mr. Thomson submits that a loan does not amount to a payment and therefore Camden council has followed the incorrect procedure. As he had not paid a release fee, he should have been afforded his rights under a Regulation 9 PCN, including a notice to owner form.

23) The process for enforcement of parking contravention is statutory. It is not a contract between the enforcement authority and the motorist. It is not open to either party to step outside of the enforcement process and describe actions taken as part of the enforcement process as something other than what they are described in that process. The only statutory interpretation of the transaction between Mr. Thomson and Camden council is that he made them a payment.

24) The fact Mr. Thomson described it as a "loan" does not make it so, or alter its statutory characteristics. It was a payment made in the context of a statutory procedure for the release of his car. However Mr. Thomson chooses to characterise it - payment, loan, gift, contractual consideration etc., - I am satisfied that he has "paid" the release fee. Had he not done so, he would not have been entitled to the release of his car. If this is a loan, he can of course request its return from Camden council in whatever terms the loan was agreed. Duress and unreasonable and excessive distress.

25) Mr. Thomson bases his final substantial ground of appeal in part on the Statute of Marlborough (or Distress Act) of 1267. In essence, Mr. Thomson submits that the process was draconian and unnecessary. In particular the refusal to release the vehicle until the penalty was paid was unreasonable and severe.

26) Again I do not accept Mr. Thomson's submissions. Parliament has expressly given enforcement authorities the power to remove vehicles as part of the decriminalised enforcement of parking penalties. They have provided certain limitations on the exercise of that power, such as for vehicles displaying a disabled badge, and those which have been in contravention for less than half an hour after the expiry of paid for parking. None of those statutory limitations apply here. Camden council has followed a process prescribed by law and imposed lawfully fixed fees.

27) There may be mitigating circumstances that do make the rigorous application of the law inappropriate. The law however does not give me as an adjudicator authority to cancel a PCN or direct the return of a release fee on the ground of mitigation alone. Camden council has that power, but is not prepared to exercise it here. That is a matter legitimately for them. I do have power, when refusing an appeal, to recommend that the enforcement authority exercises its discretion in a motorist's favour, if I find there are "compelling circumstances". I have considered Mr. Thomson's submissions, but do not find any compelling circumstances. I refuse this appeal.