Neutral Citation Number: [2011] EWCA Civ 905

Case No: C1/2010/1446

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE ADMINISTRATIVE COURT
MR JUSTICE BEAN

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27/07/2011

Before :

LORD JUSTICE STANLEY BURNTON
LORD JUSTICE AIKENS
and
SIR DAVID KEENE

Between :

THE QUEEN ON THE APPLICATION OF NEIL HERRON & PARKING APPEALS LIMITED	**Appellants**
- and -	
THE PARKING ADJUDICATOR	**Respondent**
- and -	
SUNDERLAND CITY COUNCIL	**First interested party**
- and -	
THE SECRETARY OF STATE FOR TRANSPORT	**Second interested party**

Alun Jones QC and **Rupert Bowers** (instructed by **Jeffrey Green Russell**) for the **Appellants**
Ian Rogers (instructed by the **Traffic Penalty Tribunal**) for the **Respondent**
Stephen Sauvain QC and **Jonathan Easton** (instructed by **Sunderland City Council, Law and Governance Services**) for **Sunderland City Council**
The Secretary of State for Transport did not appear and was not represented

Hearing date: 12th July 2011

Approved Judgment

Lord Justice Stanley Burnton :

Introduction

1. This is an appeal by Neil Herron and Parking Appeals Ltd against the dismissal by Bean J of their claim for judicial review of the decision of Ms Kennedy, a Parking Adjudicator, rejecting their application for the review of the decision of another Adjudicator, Mr Keenan, who upheld 39 penalty charge notices ("PCNs", commonly referred to as parking tickets) issued in relation to alleged parking contraventions committed by the Appellants.

2. Although the decision under appeal is that of Bean J, as will be seen in essence the question before us is whether Mr Keenan erred in law in rejecting the Appellants' contention that by reason of proven irregularities in signage within the Sunderland Controlled Parking Zone ("the Sunderland CPZ") it was not a valid and lawful CPZ. The issue is understandably regarded as important by Sunderland City Council. It is also regarded as having more general importance, since this is the first time that the Court of Appeal has had to consider the validity or otherwise of a CPZ.

The legislation

3. Infringements of parking restrictions were originally criminal offences. They remain such unless the offences in question have been decriminalised, at the instance of a local authority and within its area, under the mechanism in the Road Traffic Act 1991 and subsequent legislation. If the applicable regime is the decriminalised regime, a PCN may be issued by the authority and is payable by the person responsible for a parking infringement. Thus paragraph 3 of Schedule 3 to the 1991 Act provides:

> (1) This paragraph applies in relation to any vehicle which is stationary in a permitted parking area, or special parking area, in circumstances in which an offence would have been committed with respect to the vehicle but for paragraph 1 or (as the case may be) paragraph 2 above.
>
> (2) A penalty charge shall be payable with respect to the vehicle, by the owner of the vehicle.
>
> (3) ...

4. The City of Sunderland (South Sunderland Area (Waiting and Loading and Parking Places) (Consolidation) Order 2003 ("the 2003 Order") imposes parking restrictions specified in the Schedules to the Order in specified streets in the City. The validity of that Order and of its provisions have not been challenged.

5. At the heart of this appeal is the definition of a CPZ in regulation 4 of the Traffic Signs Regulations and General Directions 2002 ("the TSRGD"), made under the power conferred by the Road Traffic Regulation Act 1984 ("the RTRA") and the Road Traffic Act 1988 ("the RTA"):

> 4. In these Regulations unless the context otherwise requires—
>
> ....

"controlled parking zone" means either—

(a) an area—

(i) in which, except where parking places have been provided, every road has been marked with one or more of the road markings shown in diagrams 1017, 1018.1, 1019 and 1020.1; and

(ii) into which each entrance for vehicular traffic has been indicated by the sign shown in diagram 663 or

(b) an area—

(i) in which at least one of the signs shown in diagram 640.2A has been placed on each side of every road; and

(ii) into which each entrance for vehicular traffic has been indicated by the sign shown in diagram 665;

...

Where in my judgment I refer to regulation 4 it is to regulation 4 of the TSRGD. We are concerned solely with alternative (a) in that regulation. The road markings to which it refers are single yellow lines (1017), double yellow lines (1018.1), single flash marks on pavements indicating loading restrictions (1019) and double flash marks (1020.1).

6. On-street parking restrictions are created by orders made by a local traffic authority under the provisions of the RTRA, sections 1 and 2 (orders prohibiting or restricting the waiting of vehicles or loading and unloading of vehicles); 32(1)(b) (parking for which no payment is required) and 45 (parking bays for which payment is made by the motorist). Other related traffic restrictions may be made by Orders made under other provisions of the Road Traffic Regulations Act 1984.

7. The making of these orders is governed by the procedures set out in Schedule 9 to the RTRA and by the Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996 ("the Procedure Regulations"). Regulation 18 of the Procedure Regulations provides:

18.— *Traffic signs*

(1) Where an order relating to any road has been made, the order making authority shall take such steps as are necessary to secure-

(a) before the order comes into force, the placing on or near the road of such traffic signs in such positions as the order making authority may consider requisite for securing that adequate information as to the effect of the order is made available to persons using the road;

> (b) the maintenance of such signs for so long as the order remains in force; and
>
> (c) in a case where the order revokes, amends or alters the application of a previous order, the removal or replacement of existing traffic signs as the authority considers requisite to avoid confusion to road users by signs being left in the wrong positions.

8. In relation to parking contraventions the relevant signs would usually be the yellow and double yellow road markings, yellow flashes on pavements to indicate loading restrictions, or white dashed lines marking out parking bays, together with upright signs indicating the nature of the parking or waiting restrictions applicable at the location in question.

9. Section 64 of the RTRA provides, so far as material:

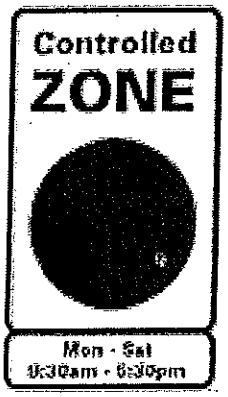
> (1) In this Act "traffic sign" means any object or device (whether fixed or portable) for conveying, to traffic on roads or any specified class of traffic, warnings, information, requirements, restrictions or prohibitions of any description—
>
> (a) specified by regulations made by the Ministers acting jointly, or
>
> (b) authorised by the Secretary of State,
>
> and any line or mark on a road for so conveying such warnings, information, requirements, restrictions or prohibitions.
>
> (2) Traffic signs shall be of the size, colour and type prescribed by regulations made as mentioned in subsection (1)(a) above except where the Secretary of State authorises the erection or retention of a sign of another character; ....

10. The TSRGD are the regulations made by the Ministers for the purposes of section 64(1)(a). They include detailed specifications of all road signs.

11. General Direction ("GD") 25 includes a table with three columns. The first column numbers each item (there are 20). The third column sets out road marking diagram numbers, and the third column sign diagram numbers, referring to signs specified in the Directions. GD 25 prescribes:

> 25(1) Subject to paragraph (2) a road marking shown in a diagram whose number appears and is in the form (if any) specified in an item in column (2) of the Table may be placed on a road only in conjunction with, and on the same side of the road as, a sign shown in a diagram whose number appears and in the form specified (if any) in column (3) of that item.
>
> (2) Paragraph (1) shall not apply to a road marking placed on a road within a controlled parking zone, if signs shown in diagram 663 or 663.1 have been placed at the entrances for vehicular traffic into the zone, except where the road marking is placed to indicate restrictions different from the restrictions indicated on those signs.

12. An example of the sign shown at diagram 663 (although there are permitted variants) is:



13. The effect of GD 25 is that otherwise than in a CPZ, a road marking 1017 (a single yellow line indicating the prohibition of parking for a period of time) should only be used in conjunction with certain specified signs (i.e. those shown in diagrams 637.2, 639, 639.1B, 640 or 650.3) that set out when that prohibition on parking applies. However, by virtue of GD 25(2), if the specified signs (such as that shown above) are placed at the entrances for traffic into the zone, it is unnecessary to place a sign giving details of the parking restriction. Clearly, the basis of the dispensation is that the information in the sign at the entrances to the CPZ informs the motorist of the restrictions, so that it is unnecessary to place signs near single yellow lines. Thus the existence of a valid CPZ has a relatively limited consequence.

14. The only other reference to a CPZ in the TSRGD is in GD 26, which restricts the placing of the specified CPZ boundary signs and specified signs marking the exits from CPZs to the boundaries of CPZs.

15. There was statutory right of appeal in the present case against the PCNs, on specified grounds, to a Parking Adjudicator, contained in paragraph 5 of schedule 6 to the Road Traffic Act 1991, now repealed. The present right of appeal is contained in the Civil Enforcement of Parking Contraventions (England) Representations and Appeals Regulations 2007.

The facts and previous proceedings

16. The Appellants are both based in the City of Sunderland. The First Appellant is a campaigner against parking restrictions. The Appellants were served with 55 penalty charge notices relating to various parking contraventions alleged to have been committed within the CPZ. They made representations in respect of each contravention to the parking adjudicator on the ground that "the alleged contravention did not occur," one of the statutory grounds under paragraph 2(4) and 5(2) of schedule 6 of the Road Traffic Act 1991 (and now to be found in regulation 4 of the 2007 Regulations).

17. The appeals to the Parking Adjudicator were on numerous grounds, and voluminous evidence was put before him. There was, and is, no challenge to the designation of the Sunderland CPZ as a CPZ. The only ground now relevant was that there were irregularities in the signage in the Sunderland CPZ, namely that there were signs that

did not comply with the statutory specification or that the requisite signs were lacking, so that it could not be said that every part of every road in the CPZ had been marked with one or more of the road markings listed in regulation 4 of the TSRGD. It appears that the submission to the Adjudicator was that any such irregularity invalidated the CPZ, and in the alternative that the totality of the irregularities viewed together was such as to invalidate the CPZ, since it did not comply with the statutory definition. In consequence, the traffic authority was not entitled to the exemption in GD 25(2). It followed that a restriction within the area of the Sunderland CPZ marked by a single yellow line was ineffective unless there was also in conjunction with it a sign in the prescribed form giving the details (i.e. the times) of the parking restriction. Since the parking infringements to which the PCNs relevant to this appeal related were on single yellow lines where there were no indicative signs, it followed that there had not been a contravention of a valid parking restriction.

18. The appeals were heard by Mr Andrew Keenan. In paragraphs (a) to (n) of his decision he considered the individual irregularities alleged by the Appellants. In at least one case, considered under paragraph (a), relating to the Blandford Street Pedestrian Zone, he held that there had been no irregularity. In other cases, he held that any irregularity did not of itself invalidate the Sunderland CPZ. By way of example, I refer to paragraphs (g), (i) and (k).

> (g) High Street West. It is submitted that the echelon taxi bays and the disabled bays in this area are not properly marked. As a result this becomes uncontrolled highway and invalidates the CPZ. I am of the view that that is not the correct approach and that such matters should only be considered in the event of a PCN being issued for parking in those particular areas.
>
> (i) Pan Lane – loading bay. This is referred to in binder 10 and page 129 of Mr Bentley's report indicates that the loading bay was not correctly signed and lined. As a result it is contended on behalf of the Appellant that the incorrect use of signs and lines for these loading bays makes the area an uncontrolled highway and therefore invalidates the general CPZ. I am of the view that this is only relevant in the case of an individual PCN being applied to that particular site and that it does not invalidate the CPZ as a whole.
>
> (k) Central Area Development. This is referred to in bundle 13 and at page 136 of Mr Bentley's report. The roads referred to in this area are in fact lined only with hatched markings which have no legal standing. Looking at the reality of the situation the roads referred to therein are in fact the entrance and exit to a multi-storey or other car park. There are no yellow lines and it is therefore submitted that the lining and signing of these roads invalidate the whole of the CPZ as it becomes an uncontrolled road. I reject that suggestion and it is a matter for an Adjudicator to consider each individual PCN which may or may not be the subject of this appeal. Additional evidence was submitted to me showing photographs taken on the 18 November where the council have now put double yellow lines

> on these roads. The fact that the Council has taken remedial action does not in my view indicate that they accept that the wider CPZ is unenforceable but merely emphasises to the motorist that parking on these entrance and exit roads is prohibited.
>
> Athenaeum Street. This is referred to at binder 16 and page 145 of the report. It is contended that the dual use bay for taxis and the disabled is incorrectly marked with double transverse terminal marks. It is suggested that these are unlawful. If they are then it is a matter entirely for the discretion of an Adjudicator when dealing with any specific PCN issued in that area but does not, in my view, invalidate the CPZ as a whole.

19. Having considered the specific allegations of irregularities, he set out his conclusions on the validity or otherwise of the Sunderland CPZ:

> The establishment of a controlled parking zone is dependent upon the provision of signing compliant with the TSRGD 2002. I am of the view that it is not necessary for there to be a Traffic Regulation Order to establish a controlled parking zone but only the restriction on parking or the provision of parking places within it. It is contended generally by the Appellant and Mr Bentley in his report that if part of a road within a CPZ is not marked in accordance with Regulation 4 that the CPZ should not be enforced. I have had produced to me a substantial number of instances, as outlined above, where there were incorrect markings or uncontrolled highway within the CPZ in Sunderland.
>
> In relation to this it is important in my view to refer to the case of *Cannadine v DPP* [2007] EWHC 383 (Admin) which decided that the fact that the back of a road sign showing a speed limit had been painted the wrong colour did not make the road de-restricted. There had been no question of the driver being misled and consequently the law was not troubled by trivialities.
>
> Looking therefore at the CPZ as a whole the absence of a yellow line, the fact that the single stretch of road had not been marked, or that some of the bays, taxi, disabled, bus-stops, etc had not been correctly marked, should be considered trivialities which could not mislead a driver who parked on a clearly marked restriction. I am of the view that applying that decision the CPZ in Sunderland stands and that contraventions against the TROs in particular streets should be considered on an individual basis within the CPZ depending upon the signings and linings where the vehicle was actually parked.
>
> ...

> ... I remain of the view that a motorist driving into an area which is a CPZ will be correctly notified of that by the entry signs and will know that there are restrictions in place for parking during the hours stated upon that. If the motorist then chooses to park on a yellow line he or she must expect a contravention to have occurred and if the motorist parks in a bay then he or she should abide by the restrictions and timings indicated on any plate relevant to that bay.

20. Importantly, he added:

> In the event the Appellant in this case is well aware of the restrictions imposed by the CPZ and in my view in the majority of cases has deliberately parked his vehicle to ensure the issue of a PCN so that he can challenge the validity of the CPZ as has been the case in these appeals.

21. Mr Keenan then considered the specific infringements that were the subject of the PCNs. None of these were in the immediate vicinity of the signage irregularities which were relied upon as invalidating the CPZ. He rejected the Appellants' contentions and dismissed 54 appeals but allowed one (due to an incorrect pay and display sign).

22. The Appellants sought and obtained the review of Mr Keenan's decision by another Adjudicator, Ms M F Kennedy. A number of grounds were put forward, including an allegation that Mr Keenan had lacked independence. They were all rejected, and with the exception of the issue in this appeal they have not been pursued. So far as is presently relevant, Ms Kennedy stated that she "saw no reason to interfere with Mr Keenan's conclusions on the law or its application to the facts he found".

23. The Appellants then applied for judicial review of Ms Kennedy's decision, on the ground that she had erred in law. Before Bean J, it was contended by the Appellants that the Sunderland CPZ was invalid not only by reason of irregularities in the signage that had been put before Mr Keenan, but also because there were pedestrian crossings, with zigzag lines, within the CPZ, which meant that not every part of every road within it was marked as stipulated in regulation 4.

24. In a short and pithy judgment, as mentioned above, Bean J dismissed the claim. In his unreserved judgment, he said:

> 23. In my judgment regulation 4 on its proper construction means that every part of every road in a CPZ, other than a parking bay, must be marked with a single or double yellow line (with or without the "loading and unloading" equivalents), *except* where an alternative parking prohibition is marked out such as that imposed by the zig-zags on the approach to a pedestrian crossing. Furthermore, I consider that any non-compliance, whether accidental or (if I am wrong on the previous point) arising from the presence of an alternative

parking prohibition, is immaterial if it is too far from the location of the particular motorist's contravention to have led him or her into error.

The parties' submissions

25. For the Appellants, Mr Jones QC submitted that regulation 4, which if satisfied provides a dispensation from the strict requirements of GD25, must be strictly construed. It requires that every part of every street must be marked with the signs (the single yellow lines etc.) referred to in that regulation. He accepted that other statutory signs, such as pedestrian crossings and zig-zags, that related to parking restrictions, would not affect the validity of a CPZ, even though they are not mentioned in regulation 4. He also accepted that there was a *de minimis* exception, on the basis that the law is not concerned with trivia, but contended that the irregularities accepted by Mr Keenan, considered together, exceeded any *de minimis* allowance.

26. For the Adjudicator, Mr Rogers' basic submission was that Mr Keenan had found that the irregularities relied upon by the Appellant, even viewed cumulatively, were trivial, and therefore within the *de minimis* exception. This finding was one of fact, which could not be challenged by the Appellants.

27. For the City of Sunderland, Mr Sauvain QC mounted a more fundamental challenge to the Appellants' case. He submitted that the ultimate question for the Adjudicator was to be derived from Regulation 18 of the Procedure Regulations: were there traffic signs conveying adequate information as to the effect of the parking restriction at the time and place at which the PCN had been issued? The requisite signing, referred to in GD25, was relevant to this issue, but a defect in signage in a CPZ remote from the parking infringement could not affect the question whether the infringement had been committed. It follows that Bean J had been correct to dismiss the Appellants' claim for the reason he gave, and that the Adjudicator had similarly been correct to reject their fundamental contention as to the invalidity of the Sunderland CPZ.

Discussion

28. In my judgment, Mr Sauvain's submissions are essentially correct. I reach this conclusion for a number of reasons.

29. First, regulation 4 does not require that every part of every street is signed in the manner it specifies. The Appellants' case involves reading the words "every part" into the definition. The fact that there are road signs regulating parking, and in particular those at pedestrian crossings, that are not referred to in regulation 4 renders it impossible to read it as requiring the specified signage in every part of every road. It does not follow from the fact that the form, size, colour and content of all road signs are tightly specified that the definition of a CPZ is to be so strictly construed as to read in words that are not there.

30. Furthermore, regulation 4 is a definition provision. It would be unusual to impose a strict requirement of the kind for which the Appellants contend purely by way of a definition, with no indication of the drastic consequences for which they contend.

31. Thirdly, the Appellants' case leads to anomalous results that, in my judgment, neither Parliament nor the Ministers could reasonably have envisaged. For example, road works are carried out in a CPZ, as a result of which a substantial part of a road, or even whole roads, do not have any yellow lines for a day or two, or more. During those days, on the Appellants' case, the CPZ ceases to be such, and anyone, no matter what his knowledge of the applicable restrictions, may park with impunity on a single yellow line elsewhere in the CPZ at any time, unless there is a sign with that yellow line indicating the applicable restriction. Next day, the yellow lines are painted; the CPZ presumably resumes its validity, and the same motorist with the same knowledge who parks his vehicle at the same time and at the same place commits a parking infringement. Again, what if the yellow lines painted on an entire road are significantly too wide or too narrow? If it is obvious what they are, and it is clear what the parking restriction is, why should the validity of the CPZ be affected?

32. Even where a statute is clear in imposing a duty, and does so in terms that are apparently mandatory, it will not necessarily be interpreted as invalidating steps taken by a public authority that are not in strict conformity with the duty. In *R v Soneji* [2005] UKHL 49 [2006] 1 AC 340, Lord Steyn said:

> 23. ... the rigid mandatory and directory distinction, and its many artificial refinements, have outlived their usefulness. Instead, as held in *Attorney General's Reference (No 3 of 1999)* [2001] 2 AC 91 the emphasis ought to be on the consequences of non-compliance, and posing the question whether Parliament can fairly be taken to have intended total invalidity. That is how I would approach what is ultimately a question of statutory construction. ...

33. Applying this principle of statutory construction, I reject the Appellants' submission that any departure (other than one which is trivial) from the definition of a CPZ in regulation 4 invalidates the CPZ.

34. There is an additional, more fundamental, reason, for rejecting the Appellants' submissions. The infringements of parking restrictions they were found to have committed were not infringements of the CPZ as such. As Mr Keenan pointed out, they were infringements of the parking restrictions imposed by and contained in the applicable traffic regulation order ("TRO"), in the present case the 2003 Order. The Appellants' offices are in Frederick Street, which was the location of a large number of the alleged contraventions. The applicable parking restrictions are set out in paragraphs 103 to 108 of the First Schedule to the Order. The validity of the 2003 Order is not challenged, and the restrictions it imposes are not dependent on the existence or validity of the Sunderland CPZ.

35. It has long been recognised that the enforceability of a TRO requires that adequate notice of the applicable restriction is given to the road user. This principle is derived from the duty imposed by Regulation 18 of the Procedure Regulations, which I have set out above. In *Macleod v Hamilton* 1965 S.L.T. 305 Lord Clyde said, at 308

> It was an integral part of the statutory scheme for a traffic regulation order that notice by means of traffic signs should be given to the public using the roads which were restricted so as

> to warn users of their obligations. Unless these traffic signs were there accordingly and the opportunity was thus afforded to the public to know what they could not legally do, no offence would be committed. It would, indeed, be anomalous and absurd were the position otherwise.

Lord Migdale said, at.309

> . . . the order is not effective unless and until the council complies with Regulation 15(c) and erects road signs at the locus. Signs were erected but they were not the proper ones nor were they clear.

The regulation to which Lord Migdale referred was in the same terms, so far as material, as Regulation 18 of the Procedure Regulations.

36. That principle was approved and applied by the Divisional Court in *James v Cavey* [1967] 2 QB 676. Giving a judgment with which the other members of the court agreed, Winn LJ said:

> ... regulation 15, by sub-paragraph (c) ... [prescribed] that the authority should take forthwith
>
> > "all such steps as are reasonably practicable to cause to be erected on or near to the said roads traffic signs in such positions as the local authority may consider to be requisite" - and here come the operative words in my opinion - "for the purpose of securing that adequate information as to the effect of the order is given to persons using the said roads ..."
>
> The authority should take all such steps as are reasonably practicable for the purpose of securing that adequate information is given to persons using the said roads.
>
> The short answer in my view which requires that this appeal should be allowed is that the local authority here did not take such steps as they were required to take under that regulation. They did not take steps which clearly could have been taken and which clearly would have been practicable to cause adequate information to be given to persons using the road by the signs which they erected. ...

See too *R (Oxfordshire C.C.) v. Bus Lane Adjudicator* [2010] EWHC 894 (Admin).

37. Applying this principle, the question for the Adjudicator was whether the local authority had taken steps to secure that adequate information was conveyed to the Appellants as to the parking restrictions that they had infringed. The definition in regulation 4, and whether the roads in the CPZ had been signed as it envisages, are relevant to that question. Provided in substance the requirements of the definition are satisfied, the CPZ is valid. The test for invalidity is not "Are the irregularities trivial?", but whether there is substantial compliance with the statutory definition.

38. There is an additional reason for treating the adequacy of conveying of the parking restriction as the touchstone for the validity of the CPZ. The basis of the exemption conferred by GD 25(2) is that the signs at the entrance to the CPZ sufficiently inform the motorist of the applicable parking restriction, "except where the road marking is placed to indicate restrictions different from the restrictions indicated on those signs". If the situation, viewed as a whole, is that the motorist is adequately informed of the parking restriction, there is in my judgment no good reason to render the restriction ineffective.

39. There is authority involving the offence of failing to comply with traffic signs in which a stricter approach has been taken. In *Davies v Heatley* [1971] R.T.R. 145, the Divisional Court held that the offence had not been committed where the sign in question did not comply with the statutory specification, even though the magistrates had held that the sign was clearly visible and recognisable, and could have left the appellant in no doubt as to its nature. However, in *Cotterill v Chapman* [1984] R.T.R. 73, a trivial departure from the statutory specification was held not to have invalidated the sign or to have exculpated the defendant. That decision was followed more recently in *Canadine v DPP* [2007] EWHC 383 (Admin).

40. The explanation of *Davies v Heatley* may be that the offence of failing to comply with a traffic sign requires that the sign is the statutory sign, so that anything other than a trivial departure from the specification results in the sign not being a traffic sign. The offences in the present case were not such offences. The present appeals concern infringements of parking restrictions that were undoubtedly validly imposed. I add, however, that I detect in the judgments in *Cotterill v Chapman* and the cases following it an understandable reluctance to follow *Davies v Heatley*, and it is difficult to reconcile the decision in that case with the modern approach to statutory interpretation exemplified by *Soneji*. Indeed, it is difficult to see what test should be applied in order to decide whether an irregularity is trivial other than: could it have misled a road user as to the significance of the road sign? I would therefore reserve my judgment as to whether *Davies v Heatley* should be followed today in a case in which the defendant could not have been misled by the irregularity in the road sign in question.

41. An apparently strict approach was followed in *Hassan v DPP* [1992] R.T.R. 209. However, in that case there had been no sign plate displaying the times of restricted parking. That was a failure to provide adequate information, and it is not surprising that the motorist's conviction was quashed.

42. The Appellants placed great reliance on the judgment of Ouseley J in *Moss v KPMG* [2010] EWHC 2923 (Admin), in which the argument for the claimant was similar to that advanced in this appeal. It was contended that because parking restriction signs had departed from the statutory specification, the applicable TRO was unenforceable, and any PCN was similarly unenforceable, and any income received as a result of its issue had been unlawfully received by the local authority. Ouseley J was referred to the decision of Mr Gary Hickinbottom (as he then was), a parking adjudicator in the Parking Appeals Service, on the review of the decision of the Chief Parking Adjudicator in *Burnett v Buckinghamshire County Council* in April 1998. Mr Hickinbottom had said *obiter* that signs had to comply with the Traffic Signs Regulations and General Directions, adding:

> ... in summary, as a condition precedent of a local authority enforcing a parking penalty, as a breach of a TRO made under the 1984 Act, the obligations of a motorist must be properly signed in accordance with the detailed provisions of the [1994 TSRGD]."

43. If, by "properly signed", Mr Hickinbottom meant that the sign had to be in substantial compliance with the statutory specification, and not such as to mislead or fail to inform the motorist, I would agree with this statement. If he meant that absolute and strict compliance with the specification of the sign is essential, even if the motorist is adequately informed of the restriction in question, he was wrong.

44. Ouseley J appreciated that there were two lines of authority to be considered. At paragraph 42 of his judgment, he said:

> In my judgment, the event which gives rise to liability to a PCN in the de-criminalised parking scheme (the equivalent of the offence under a criminal statute) is parking in contravention or non-compliance with a provision in the 2005 Consolidated Order. The provisions of the Order are couched in language such as "the prohibition on parking during controlled hours on a road within a specified zone or loading bay or taxi rank". Those controls may be specified other than by reference to specific markings. I assume that the provision prohibiting a stay longer than paid for in permitted on-street parking bays is in similar vein. It therefore seems to me that two approaches are possible although neither arises unless the signs depart from the prescribed form in a more than trivial way. The first approach, on what I have been shown of the Bolton MBC Orders, is not to ask whether the signs comply with the Regulations where contravention of the sign itself is not prohibited. It is to ask whether the signing of the restrictions was adequate to inform the average driver of what he should or should not do or where. This would reflect decisions such as *Hassan* and *James v Caley*. I have not been shown any provision of the TRO which makes non-compliance with a prescribed marking or sign, by itself, a contravention of the TRO. It appears to be the reverse. The sign informs the driver about the restriction in the TRO. And if the restriction is itself adequately conveyed by means other than the sign and the sign does not mislead about the nature or extent of the restriction, the TRO on that approach may be enforced by PCN.
>
> 43.The importance of this is that it may contrast with the language of the offences in *Davis v Healey* and *Canadine v Director of Public Prosecutions* in which the offence itself was contravening the prescribed road marking or sign. So any deficiency in the prescribed sign was directly in issue.
>
> ...

> 45. The alternative approach is to ask whether - subject to trivial non-compliance - the markings meet the prescribed requirements. If not, those markings should not have been placed on the road at all and the requirements or restrictions they indicated have no force, even though it may be perfectly clear from the deficient signs where and to what extent the restriction applies.

45. Ouseley J decided to follow the strict *Davis v Heatley* approach. He said:

> 47. I have not found this an easy issue to resolve, not least because of my uncertainty about the statutory provisions which I have actually received (late and incompletely perhaps), the differing lines of authority and also because the issues have not been argued either by the auditor or by Bolton MBC.
>
> 48. In the end, and without great confidence, I have concluded that what Mr Hickinbottom said in *Buckinghamshire County Council* should be taken to be the law. The purpose behind a common prescribed system of road signs and markings includes certainty for drivers wherever they are in the country. They are not therefore faced with different varieties of signs wherever they go for the same permitted parking, prohibitions and restrictions. The common system also regulates signs in order to avoid clutter and confusion to road users by regulating what can or cannot be put on the road surface or signs by its side.

46. In my judgment, Ouseley J's lack of confidence was appropriate. For the reasons I have given, I consider that his conclusion, which was to follow the approach in *Davis v Heatley*, was wrong.

47. In the present case, the Adjudicator held that, looking at the CPZ as a whole, the irregularities established by the Appellants were trivialities that could not mislead a driver. It is clear that he considered the cumulative effect of irregularities, which is why the sentence of his decision in question begins, "Looking therefore at the CPZ as a whole ..." It is not suggested that that finding, which is one of fact and degree, was not open to him; indeed, it was clearly justified by his findings as to the individual irregularities. In these circumstances, even applying the test put forward by the Appellants, the irregularities were *de minimis* and did not affect the validity of the CPZ. However, I would go further, and hold, as I have mentioned above, that a CPZ is to be treated as valid unless it can be said that in substance, because of the failure adequately to inform the road user, it could not be considered to be a valid CPZ.

48. The Adjudicator was right to hold that the individual contraventions by the Appellants would be considered on the basis of the signings and linings where the vehicle in question was actually parked. Similarly, Bean J was correct in holding that the irregularities relied on were immaterial if they were too far from the site of the contravention to lead the motorist into error.

49. There is no challenge to the Adjudicator's findings on the individual contraventions. I would therefore dismiss this appeal.

Lord Justice Aikens:

50. I agree.

Sir David Keene:

51. I also agree.