**PARKING AND ROAD TRAFFIC APPEALS**

**ANGEL HEARING CENTRE**

Before Adjudicator:

**Martin Wood**

**3663 First for Food Service**

-v-

**London Borough of Camden**

*Appeal number* 2090345232

Date of Decision: 14 August 2009

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

In this appeal the Appellant was represented by Mr Aldridge and the Council by Mr Coppel of Counsel.

The Appellant conceded that the contravention occurred. The issue in the case concerned the propriety of the Council's enforcement procedures and the effect of that on the Council's right to enforce the penalty.

The background to this case is that in January 2009 the Council started imposing an additional charge on the payment of penalties by credit card. The Council's documentation was amended to give notice of this charge in the following terms: "a credit card administration fee of 1.3% covering the council's costs for processing the payment will be added to the amount that is being paid". I will refer to this passage as "the statement".

Digressing slightly, I would, however, say this about the statement. I understood from Mr Coppel that the 1.3% is the sum deducted by the credit card company on passing to the Council the penalties collected, and the fee was intended to cover this deduction. But that is not how the statement is expressed; it describes the fee as an "administration fee" and as being for "the council's costs for processing the payment". The natural reading of this is that it is for the Council's own internal costs. So if the fee was intended to cover the deductions by the credit card company, the statement was badly expressed.

In any event, in *London General Transport Services Ltd v Camden* *(PATAS Case No. 2090198127* Adjudicator Greenslade decided that the Council was neither entitled nor empowered to impose any sum, whether for the method of payment or anything else, in addition to the penalty charge prescribed under the law. That case concerned a Penalty Charge Notice issued under the London Local Authorities Act 2003 for a moving traffic contravention. Mr Greenslade allowed the appeal on the ground that the penalty exceeded the relevant amount, one of the statutory grounds prescribed under the 2003 Act.

The Council has now abandoned the imposition of the "administration fee". For the purposes of this case the Council has accepted that it has no power to impose this fee and that any such charge is, accordingly, unlawful. The issue in this case is whether, having now abandoned the imposition of the fee, the Council can continue to pursue enforcement in cases where the documentation issued by the Council included the statement.

Mr Coppel sought to persuade me that the Council could do so. The basis of his argument was that the administration fee was a separate item from the penalty charge itself. He argued that Mr Greenslade was wrong in holding that the penalty exceeded the relevant amount, since, he said, so far as the penalty itself was concerned the Council had never sought payment of more than the amount prescribed; the fee was not part of the penalty sought but a separate item. The statement was, he said, merely a piece of information. The documentation complied with the statutory requirements and there was nothing in the law to prevent Councils including additional information in the documents. Nowhere does the legislation say that the inclusion of additional information renders the PCN invalid. The inclusion of the information did not amount to a "procedural impropriety" as defined in regulation 4(5) of the Civil Enforcement of Parking Contraventions (England) Representations and Appeals Regulations 2007.

Certainly there is nothing to prevent Councils including in their documentation matters additional to those they are required to include. Nevertheless, that does not mean that anything additional they include will not affect the lawfulness of the documentation simply by virtue of being additional and not required. Such additional matters have to be considered on their merits.

As to the statement in question, I cannot accept that it is merely a piece of information. It gave notice that in order to discharge the liability to the penalty by credit card the motorist would be required to pay not the amount of the penalty prescribed but that sum plus 1.3%. The statement gave notice that in taking payment of the penalty in that way the Council would refuse to accept the prescribed penalty but would require payment of a larger sum. That is far from being merely an innocuous piece of information. This is not a commercial, contractual transaction where the parties are free to determine the terms of their contractual relationship. This is the imposition of a penalty by an agent of the State, the Council, on the citizen. One is bound to take a serious view of a statement by the Council that it will decline to accept the penalty prescribed by law in settlement of that penalty but will require a greater sum. Such a statement taints the document in which it is included with illegality and debars the Council from pursuing enforcement of the penalty to which that document relates. The fact that the Council has subsequently abandoned the administration fee does not affect the illegality of the document itself and the consequences of that illegality, which are separate issues. It matters not to this conclusion whether one views the demand as amounting to increasing the penalty charge itself or whether it is technically a procedural impropriety.

I accordingly conclude that the fact that the Council has subsequently abandoned the administration fee does not allow it to pursue enforcement of the penalty in this case in which the Council concedes the documentation does include the offending statement. I will therefore allow this appeal.

As to the ground for allowing the appeal, the statement says that the fee "will be added to the amount that is being paid". However one seeks to analyse this, the substance of what it is saying is that to discharge the penalty the motorist will have to pay a sum greater than the penalty prescribed by law. It seems to me to be an entirely legitimate conclusion in the context that this amounts to increasing the penalty charge itself, as Mr Greenslade concluded. I will therefore in this respect follow Mr Greenslade's decision and allow this appeal on that ground. It may also well be that the circumstances amount to a procedural impropriety, a ground that is available in this case as the enforcement is under the 2007 regulations referred to above. But whether and whichever of these grounds applies, the appeal is in any event one that the Adjudicator could allow as a collateral challenge: see *R v Parking Adjudicator, Ex p. Bexley [1998] RTR 128*. Lengthy consideration of the application of the grounds is therefore an unnecessary exercise.

I should record that I have considered the three authorities to which Mr Coppel referred me: *In re Charge Card Services Ltd [1088] 1 Ch 497,* *Customs and Excise Commissioners v Diners Club Ltd [1989] 2 BTC 5084 and Scottish Exhibition Centre Ltd v Commissioners for HM Revenue and Customs [2006] CSIH* 42, all of which concern in one way or another the minutiae of how credit card transactions operate. However, given that it will be apparent from my above reasons that I have concluded that such minutiae are ultimately immaterial, I have not considered it necessary to refer to these authorities in any detail.