PARKING APPEALS SERVICE

AUTOLEASE LIMITED -and- THE LONDON BOROUGH OF BARNET

AND OTHER CASES

DECISION

Introduction

In each of these cases, the Appellant is a person who has hired out or lent a vehicle and, during the period of the hire or loan, a penalty charge notice or "parking ticket" ("PCN") has been issued to the vehicle. The circumstances in which the vehicle was hired or lent were various, and cover short term commercial hiring contracts by a vehicle hire firm to a member of the public, longer term leasing contracts, arrangements concerning taxi cabs and the loan of a car by a garage to a customer during the period that that customer's car was off the road being serviced or repaired. However, all of the cases raise similar issues as to who is liable for contraventions of the new decriminalised scheme for the enforcement of parking regulations under The Road Traffic Act 1991. I propose covering these general issues first, before considering the individual cases currently before me.

I will be referring to a number of statutory provisions, and it may assist if, at the outset, I give a list of abbreviations of these that I propose using :

The Road Traffic Act 1974: "the 1974 Act".
The Road Traffic (Owner Liability) Regulations 1975: "the 1975 Regulations".
The Transport Act 1982: "the 1982 Act".
The Road Traffic Regulation Act 1984: "the 1984 Act".
The Road Traffic Offenders Act 1988: "the 1988 Act".
The Road Traffic Act 1991: "the 1991 Act".

The Statutory Background

Generally, the statutory scheme of the 1991 Act is such that, whoever is driving or in charge of the vehicle at the time of a contravention of the parking regulations, the owner of the vehicle is liable for any resulting penalty (the concept of so-called "owner liability"). Under Section 66(2) of the 1991 Act:

> "....a penalty charge is payable with respect to a vehicle, by the owner of the vehicle..."

However, it is important to note that, under the scheme, although the general principle of "owner liability" prevails, when a PCN is served at a time when someone other than the owner is in charge of the car, that person can of course pay the penalty. Under the scheme, anyone is able to pay a penalty. If a driver pays within 28 days, then the owner may know nothing about the contravention, because a notice to owner ("NTO") requiring payment cannot be sent to him within 28 days of the PCN, and no NTO will be sent to him if the penalty is paid within that period. The principle of "owner liability" only bites if the driver does not pay. Then, enforcement steps can only be taken against the owner, despite the fact that the owner (if not the driver at the relevant time) may not know anything about the contravention and, depending on the circumstances, may not even be able to find out anything about the circumstances of the contravention if, for example, he has lost touch with the person who was driving at the relevant time. The possibility that an owner may be liable for a penalty without fault or wrong-doing on his part, and in circumstances in which he cannot even ascertain whether there may be a ground for not paying the penalty, is an inherent feature of the scheme.

Representations to a local authority against a penalty charge may be made only on specific grounds, set out in Paragraph 2(4) of Schedule 6 to the 1991 Act. Similarly, an appeal to a Parking Adjudicator from the rejection of representations by an authority can only be made upon the same grounds (Paragraph 5(2) of Schedule 6). So far as relevant to these appeals, the grounds include:

"(a) That the recipient [of the NTO]

(i) never was the owner of the vehicle in question;
(ii) had ceased to be its owner before the date on which the alleged contravention occurred; or
(iii) became its owner after that date; ...

(e) That the recipient [of the NTO] is a vehicle-hire firm and

(i) the vehicle in question was at the material time hired from that firm under vehicle hiring agreement; and
(ii) the person hiring it had signed a statement of liability acknowledging his liability in respect of any [PCN] fixed to the vehicle during the currency of the hiring agreement..."

Most of the Appellants in the cases before me rely upon the ground in (e): but some also rely upon the "ownership" grounds in (a)(i) and/or (ii). The term "owner" usually connotes a bundle of rights, which are well known to lawyers and many of which are appreciated by the public at large. However, in the 1991 Act, "owner" is specifically defined in Section 82(2), as follows:

> "... [T]he owner of a vehicle shall be taken to be the person by whom the vehicle is kept."

The person ordinarily liable for parking infringements is therefore the *keeper* of the vehicle, who may or may not be the person with the usual bundle of ownership rights. Because of Appellants' reliance on the grounds in (a), issues as to who "keeps" a vehicle in the circumstances of a vehicle hire or loan arrangement also arise in these appeals.

The Hearing

There are 16 appellants before me, some of whom have appeals in respect of a number of NTOs. In one case (Global Transport -v- The London Borough of Harrow (PAS Case No 1970098466)), technically I am reviewing my own earlier decision under Regulation 11 of The Road Traffic (Parking Adjudicators) (London) Regulations 1993. A full list of cases can be found in a Schedule to this Decision.

An oral hearing took place on 10 June 1991. Duncan MacLeod of Counsel appeared, instructed by the British Vehicle Rental & Leasing Association ("the BVRLA"). A number of the Appellants are members of the BVRLA: but Mr MacLeod said that he appeared on behalf of the Association generally rather than any specific appellant. In addition to making oral submissions, he helpfully lodged a skeleton argument. Mrs Gladman of Global Transport and Mr Guilloud of Mitre Coachworks and Exposel, all appellants, attended and made their own representations: as did Mr Quigley of Ambassador Transport who, I understand, whilst not being an appellant in the cases before me, has similar cases pending. Mr Justin of the Royal Borough of Kingston-upon-Thames, Miss Howell of the City of Westminster, Mr Clark of the London Borough of Wandsworth, and Mr Spurling of the London Borough of Hammersmith & Fulham also attended. Additionally, written submissions were lodged by Clement Jones (Solicitors for Hamilton Compass), and the London Boroughs of Bexley, Bromley, Kensington & Chelsea and Wandsworth. I have listened to (and read) all of the submissions with care and interest, and I would like to thank all those who have made them.

The Issues

As I see it, to enable me to deal with the individual cases before me, I must consider the following issues:

Question 1: Have any regulations been made - specifically or by virtue of the Interpretation Act or otherwise - prescribing particulars required of a vehicle-hiring agreement under the 1991 Act?

Question 2: If not, what are the consequences of there being no particulars prescribed?

Question 3: If regulations have been made, is the requirement for the prescribed particulars mandatory? In the absence of one or more of the prescribed particulars, can the agreement still be a "vehicle hiring agreement" attracting the right to avoid parking penalties?

Question 4: For there to be a vehicle hiring agreement attracting the right to avoid parking penalties, does a specific cash consideration need to pass?

Question 5: If, for whatever reason, a hiring or lending arrangement falls outside the statutory definition of "vehicle hiring agreement", who owns or keeps a vehicle the subject of such an arrangement (as it is only the keeper who is liable for parking penalties)?

Question 6: Again outside a "vehicle hiring agreement", can a purported contractual indemnity provision between the vehicle hire company/lender and the hirer/borrower affect the incidence of statutory liability for a parking penalty?

I will deal with these issues in turn.

Question 1: Have any regulations been made - specifically or by virtue of the Interpretation Act or otherwise - prescribing particulars required of a vehicle-hiring agreement under the 1991 Act?

The question as to who is liable for parking penalties where a vehicle is the subject of hiring arrangements was considered in London Borough of Harrow -v- Global Transport (PAS Case No 1960216180). The Appellant firm set out its case succinctly in its Notice of Appeal, as follows:

> "We are a vehicle hire company. We hire cars to mini-cab drivers. Some drivers then work at our offices, some work elsewhere. It is not relevant to our Car Hire Division where the drivers work. All drivers pay weekly car and insurance charges. They are all self-employed, whether they work at one of our offices or elsewhere. All drivers sign a hire contract detailing their liability."

The Parking Adjudicator Susan Turquet allowed the appeals on the basis that the vehicle hiring ground (Paragraph 2(4)(e)) was made out. The matter came before me on review. I held that the arrangement between the firm and the alleged hirer was not a vehicle hiring agreement,

because, even if The Road Traffic (Owner Liability) Regulations 1975 (the only potentially relevant regulations) were properly made under the 1991 Act, the agreement in this case failed to include all of the particulars required of such an agreement in those regulations. I held that that was fatal, because the requirement for each of the particulars was mandatory: if an agreement did not contain all of the particulars listed in those regulations, then it was not a "hiring agreement" and the hiring firm could not rely upon the hiring ground to avoid liability. That was sufficient to dispose of that appeal, which I refused.

However, in that case I commented upon the apparent lack of prescribed particulars of "hiring agreement" under the 1991 Act, as it seemed to me that the particulars prescribed in the 1975 Regulations had not been prescribed under the 1991 Act, nor had any other particulars, either specifically or by reference. This view was supported by the authors of Halsbury Statutes of England and Wales ((Fourth Edition), Volume 38 1995 Re-issue, page 1114), in their commentary on Section 66 of The Road Traffic Offenders Act 1988 Act. I indicated that, in the absence of any defining particulars, it seemed to me that the provisions relating to "hiring agreements" under the 1991 Act were of no effect, and that a hiring firm could not rely upon the hiring ground to avoid its statutory liability. Because of my finding in that case that the agreement would not comply with the 1975 Regulations in any event (and because I had not heard full argument), I expressly made no specific decision on the wider point. But that issue is raised directly in these cases, and it is one which I must now consider.

The submissions from the parties which I have received on the point uniformly accepted that there are no relevant regulations, and, specifically, that the 1975 Regulations are not made under the 1991 Act. The Department of Transport have also offered their opinion to the effect that they too consider that the 1975 Regulations are not made under the 1991 Act.

Nevertheless, despite this, I should say at the outset that, having carefully reviewed the relevant statutory provisions, I have come to the view that the 1975 Regulations do apply, and specifically the particulars prescribed for a vehicle hiring agreement in those regulations do apply, to the 1991 Act. I gain some comfort from the fact that I understand that the Metropolitan Police Central Ticket Office ("the CTO") (who administer another part of the

overall scheme for the enforcement of parking regulations) share this view, and I am grateful to them for bringing the route by which the 1975 Regulations may be saved to my attention. For the avoidance of doubt, I should make it clear that, the CTO having brought this to my attention, I raised it at the 11 June hearing at which it was fully aired and developed. Indeed, at the hearing, the point was adopted by Mr MacLeod an behalf of the BVRLA.

Properly to consider this issue, it is necessary for me to return to the scheme of the 1991 Act and, indeed, briefly, the scheme's predecessors.

As indicated above, by virtue of Paragraph 2(4)(e) of Schedule 6 to the 1991 Act, it is a ground of representation to a local authority (and a ground of appeal to a parking adjudicator, in the event that the local authority do not accept the representations) that:

> "The recipient [of the NTO] is a vehicle-hire firm and
>
> (i) the vehicle in question was at the material time hired from that firm under a vehicle hiring agreement; and
> (ii) the person hiring it had signed a statement of liability acknowledging his liability in respect of any [PCN] fixed to the vehicle during the currency of the hiring agreement..."

By Paragraph 3(3) of that same Schedule 6:

> "Where the ground that is accepted is that mentioned in Paragraph 2(4)(e) above, the person hiring the vehicle shall be deemed to be its owner for the purposes of this Schedule".

This means that, where this deeming provision is effective, the person hiring the vehicle is liable for any parking penalty.

By virtue of Section 82(1) of the 1991 Act:

> ""Vehicle hiring agreement" and "vehicle-hire firm" have the same meanings as in Section 66 of the Road Traffic Offenders Act 1988 (hired vehicles)".

Section 66 of the 1988 Act provides:

> "(7) This section applies to a hiring agreement under the terms of which the vehicle concerned is let to the hirer for a fixed period of less than six months (whether or not that period is capable of extension by agreement between the parties or otherwise); and any reference in this section to the currency of the hiring agreement includes a reference to any period during which, with the consent of the vehicle-hire firm, the hirer continues in possession of the vehicle as hirer, after the expiry of the fixed period specified in the agreement, but otherwise on the terms and conditions so specified.
>
> (8) In this section:
>
> "hiring agreement" refers only to an agreement which contains such particulars as may be prescribed and does not include a hire-purchase agreement within the meaning of the Consumer Credit Act 1974, and
>
> "vehicle-hire firm" means any person engaged in hiring vehicles in the course of a business".

Sub-section (8) refers to "hiring agreement": Section 82 of the 1991 Act refers to "vehicle hiring agreement". However, the reference in the 1991 Act is plainly a reference back to Section 66(8). Whilst considering Section 66(8), I note particularly that ""hiring agreement" refers *only* to an agreement which contains such particulars as may be prescribed...".

No particulars have ever been specifically prescribed under this section. However, on 5 March 1975, The Road Traffic (Owner Liability) Regulations 1975 (SI 1975 No 324) were made under The Road Traffic Act 1974. Sections 1 and 2 of the 1974 Act made various provisions for the liability of vehicle owners in respect of certain fixed penalty offences and excess parking charges respectively. The statute was a criminal one: it made the non-payment of a fixed penalty or excess charge a criminal offence. Section 3 made specific provision for liability where a "vehicle-hire firm" entered into a "hiring agreement", i.e. it provided that, in certain well-defined circumstances where the hirer had signed a statement accepting liability in statutory form (Schedule 1 to the 1975 Regulations, Form H), the firm could avoid liability for fixed penalties and excess charges, and any criminal sanctions for non-payment of either, and pass on such liability to the hirer. Specifically, Section 3(6) and (7) were in materially the same form as Section 66(7) and (8) of the 1988 Act set out above. I emphasise that Section 3 had

dual application: it applied to both the fixed penalty provisions (in Section 1) and excess charge provisions (in Section 2).

The particulars of hiring agreements referred to in Section 3(7) of the 1974 Act are set out in the 1975 Regulations, Regulation 4 of which provides:

> "The particulars contained in Schedule 2 to these Regulations are hereby prescribed for the purpose of Section 3(7) of the [1974] Act (particulars to be contained in hiring agreements)".

Schedule 2 to those Regulations reads:

> "Particulars required in a hiring agreement to comply with Section 3 of the Road Traffic Act 1974
>
> A. Particulars of person signing statement of liability
>
> 1. Full name.
> 2. Date of birth.
> 3. Permanent address.
> 4. Address at the time of hiring (if different from 3 above).
> 5. Details of driving licence:
> (a) serial number or driver's number
> (b) issuing authority
> (c) date of expiry.
>
> B. Particulars of hiring arrangements
>
> 1. Registration mark of vehicle hired under the hiring agreement.
> 2. Make of vehicle hired under the hiring agreement.
> 3. Registration mark of any other vehicle substituted for the above during the currency of the hiring agreement.
> 4. Make of any other vehicle substituted for the above during the currency of the hiring agreement.
> 5. Time and date of any change of vehicle.
> 6. Time and date of commencement of original hiring period.
> 7. Time and date of expiry of original hiring period.
> 8. Time and date of commencement of authorised extension of hiring period.
> 9. Time and date of expiry of authorised extension of hiring period."

The explanatory note with the original regulations (which, of course, does not form part of the

regulations themselves) says:

> "Schedule 2 prescribes the particulars which *must* be contained in vehicle hiring agreements in order to attract provisions of Section 3 of the [1974] Act (provisions relating to hired vehicles)" (emphasis added).

I note also that, in the heading to the schedule, all of the listed particulars are said to be "required" in a vehicle hiring agreement.

The 1975 Regulations were originally made under the 1974 Act which, despite the title of the Regulations, was not based on "owner liability" but "driver liability". Although fixed penalty and excess charge notices could be directed at the owner, he could pass on liability to the driver upon giving details: the Act merely raised a (rebuttable) presumption that the owner was in fact the driver. The 1975 Regulations reflect the ultimate liability of the driver, by requiring a vehicle hiring agreement to include details of the hirer such as his date of birth and drivers' licence. These details may perhaps be regarded as less appropriate where there is "owner liability". Further, the particulars were prescribed at a time when local authorities issued drivers' licences - domestically, the only issuing authority is the DVLA on behalf of the Department of Transport - and at a time when the licence number did not inevitably include the date of birth (as does a DVLA number). Although I appreciate that many hirings are now to foreign hirers, the particulars appear somewhat dated following the adoption of the more recent domestic licensing regime.

As I have already said, I have been unable to find any potentially relevant particulars, other than those prescribed in the 1975 Regulations. No particulars appear to have been specifically prescribed under any later legislation. No one who made submissions to me - including the BVRLA - has been able to point to any other potentially relevant regulations.

However, the 1974 Act (under which the 1975 Regulations were passed) was in part repealed by The Transport Act 1982. The 1982 Act repealed Section 1 (and references in Section 3 to Section 1) of the 1974 Act, i.e. it repealed all of the provisions in that Act which related to fixed penalty notices, which were substantively re-enacted in Part III of the 1982 Act. So far as fixed

penalty notices were concerned, the provisions earlier found in Section 3(6) and (7) of the 1974 Act, were re-enacted as Section 45(7) and (8) of the 1982 Act, in materially identical terms.

So far as this repeal and re-enactment are concerned, Section 17(2)(b) of the Interpretation Act 1978 provides:

> "Where an Act repeals and re-enacts, with or without modification, a previous enactment then, unless the contrary intention appears:...
>
> > (b) in so far as any subordinate legislation made or other thing done under the enactment so repealed, or having effect as if so made or done, could have been made or done under the provision re-enacted, it shall have effect as if made or done under that provision."

In short, this provides for a presumption that subsidiary legislation is retained in circumstances where the founding statutory provision is repealed and effectively re-enacted, as (in my view) was the case with the hiring provisions of the 1974 and 1982 Acts. As a consequence, the 1975 Regulations applied under the 1982 Act as if they had been made under the 1982 Act. Therefore, the particulars prescribed in Schedule 2 to the 1975 Regulations applied to "hiring agreements" under the 1982 Act.

It is here that I part company with the Department of Transport's opinion. The Department does not agree that the 1982 Act comprised a repeal and re-enactment of the 1974 Act provisions such as to enable the 1975 Regulations to be deemed made or done under the later Act, by virtue of the Interpretation Act. The Department says:

> "The Transport Act 1982 repealed Section 1 of the 1974 Act and the references to Section 1 in Section 3. It contained new provisions with regard to fixed penalty offence, including Section 45 which dealt with hired vehicles. Section 45(8) corresponded to Section 3(7) of the 1974 Act but no regulations were made under it to prescribe the particulars to be contained in a hiring agreement. It is the Department's view that, in these circumstances, the 1975 Regulations did not have effect as if made under Section 45(8). This was not a case where Section 17 of the Interpretation Act 1978 applied, for the 1982 did not repeal and re-enact Section 3 of the 1974 Act but merely restricted its scope and made parallel provision in similar terms. The 1975 Regulations, however, continued to have effect under the amended Section 3 of the 1974 Act....

> [T]here are accordingly no regulations which have effect as if made under Section 66(8) [of the 1988 Act]".

As the Department say, they cannot give a determinative interpretation of the law but, having reviewed the matter, this is their reasoned conclusion. Of course, I am not bound by their opinion, but I would only wish to differ from it after careful consideration. Unfortunately, having considered the matter, I am unable to agree with the Department's conclusion.

In my view, the Department's opinion fails fully to appreciate that the hired vehicles provisions of Section 3 of the 1974 Act had dual application. First, they applied to the fixed penalty provision found in Section 1. Second, they applied to the excess charge provisions in Section 2. The two applications were dealt with separately and differently in the 1982 Act. In that Act, Section 1 was repealed, and specific words in Section 3 were repealed so that, for all intents and purposes, the hired vehicle provisions of Section 3 were repealed so far as fixed penalty notices were concerned. Those provisions were re-enacted in Section 45 of the 1982 Act. So far as the second application of Section 3 was concerned, the excess charge provisions of Section 2 (including the hired vehicles provisions in relation thereto) were left entirely untouched by the 1982 Act.

Therefore, I do not agree with the Department that the 1982 Act "merely restricted [the scope of Section 3 of the 1974 Act] and made parallel provision in similar terms." In my view, the 1982 Act entirely repealed and re-enacted Section 3 so far as fixed penalty notices were concerned, so that (by virtue of the Interpretation Act) the 1975 Regulations were deemed made under Sections 45 of 1982 Act. To put it at its simplest, if Section 2 had not appeared at all in the 1974 Act, then the 1982 Act would have entirely repealed Sections 1 and 3 of the 1974 Act, and re-enacted them. As a result, the 1975 Regulations would have applied under Section 45. I do not consider the presence of the (unaffected) Section 2 to be relevant, or to affect the substantive repeal and re-enactment of the relevant provisions.

I now return to the chronology of the statutory provisions. Part III of the 1982 Act was itself repealed by The Road Traffic (Consequential Provisions) Act 1988. By Section 2 of that Act,

the repeal was deemed to have been made under The Road Traffic Offenders Act 1988, Section 66(7) and (8) of which (set out above) effectively re-enacted Section 45(7) and (8) of the 1982 Act so far as hiring arrangements were concerned. Again, by virtue of this repeal and re-enactment (and the Interpretation Act), the 1975 Regulations applied under The Road Traffic Offenders Act 1988, as if they had been made under that Act. Therefore, the particulars prescribed in Schedule 2 to the 1975 Regulations applied to "hiring agreements" under the 1988 Act.

The 1991 Act (which is the Act with which I am primarily concerned), "plugs in" directly to the 1988 Act by virtue of the definition provisions in Section 82(1):

> ""Vehicle hiring agreement" and "vehicle-hire firm" have the same meanings as in Section 66 of the Road Traffic Offenders Act 1988 (hired vehicles)".

Therefore, I find that, by virtue of the repeal and re-enactment provisions of the 1982 and 1988 Acts, the 1975 Regulations are made under the 1988 Act (and hence the 1991 Act).

Question 2: If no regulations have been made - specifically or by virtue of the Interpretation Act or otherwise - prescribing particulars required of a vehicle-hiring agreement under the 1991 Act, what are the consequences of there being no particulars prescribed?

Because of my finding that the 1975 Regulations apply under the 1991 Act, it is strictly unnecessary for me to consider the consequences of no particulars having been prescribed. However, most of the submissions I have received (including those of the BVRLA) argued that the absence of relevant regulations was not fatal, and it is only right that I deal with this point.

A number of parties submit that the definition of "vehicle hiring agreement" does not depend upon any particulars being prescribed. They say that the requirement of Section 66(8) of the 1988 Act was merely that the agreement must contain any particulars that happen to be

prescribed but, in the words of Mr MacLeod, this was an anticipatory (and not an exclusionary) provision. Unless and until particulars were prescribed, then "vehicle hiring agreement" was merely any contract for the hire of a vehicle which:

(i) was made by a "vehicle hire firm", i.e. "any person engaged in hiring vehicles in the course of a business" (Section 66(8) of the 1988 Act): and

(ii) complied with Section 66(7) of the 1988 Act, i.e. it was "for a fixed period of less than 6 months whether or not that period is capable of extension by agreement between the parties or otherwise": and

(iii) satisfied the usual requirements necessary for any agreement to create a legally enforceable contract (e.g. certainty).

Mr MacLeod said that this would not "open the flood gates", because, to obtain the benefit of the liability avoiding provisions, the person hiring out the vehicle would have to be a business which involved the hiring out of vehicles This would restrict the provisions to commercial agreements, and exclude domestic loans (e.g. by father to son, or friend to friend). He submitted that, to construe the statute otherwise, would be contrary to public policy in that it would defeat the purpose of the primary legislation (which was to give short-term commercial hire agreements a special status, and allow hire companies to avoid liability for parking penalties), and consequently fall foul of the "mischief rule": and it would be manifestly unjust to the vehicle hire firm appellants who would be penalised without committing any wrongdoing. Submissions in similar vein were made by Clement Jones, Solicitors, on behalf of Hamilton Compass, and The London Borough of Bexley. A number of the individual appellants also submitted that this construction would be unfair to them.

Although these submissions were made extensively and with vigour, I do not find them compelling. I consider that the terms of Section 66(8) of the 1988 Act ("... "hiring agreement" refers only to an agreement which contains such particulars as may be prescribed...") is definitional and, in the absence of particulars prescribed by the Secretary of State, then a vehicle

hire firm cannot take advantage of the provisions of the 1988 Act (and, now, the 1991 Act) to avoid liability for contraventions of the relevant regulations and pass liability on to the hirer. If Mr MacLeod's contention were correct, it would mean that almost any commercial hire agreement for a fixed period of less than 6 months - even, presumably, an oral one - would enable the hire firm to benefit from the liability avoiding provisions and the ground in Paragraph 2(4)(e) of Schedule 6 to the 1991 Act. And it is not simply that the hire firm would avoid liability: the consequence of that avoidance would be to impose liability on someone else, i.e. the hirer. Mr MacLeod's construction would lead to considerable uncertainty and evidential difficulties, which the detailed provisions of the 1975 Regulations avoid. I do not consider such uncertainty could have been the intention of the statute.

To deal with some of Mr MacLeod's specific submissions, the primary statute is anticipatory in the sense that, without regulations, the avoidance provisions for vehicle hire firms do not come into play. In my view, the absence of the necessary secondary legislation cannot be said to defeat the purpose of the primary legislation in this case, any more than in the case of any other statute in which there are provisions which do not come into force without the passing of secondary, triggering legislation.

Further, it cannot be argued that it is "unjust" for a person to be penalised in respect of parking merely because he is not at fault (as Mr MacLeod suggests), because the possibility of such penalisation is inherent in the scheme. As explained above, it is a basic principle of the scheme that the owner (rather than the driver) is liable for parking penalties: if an owner lends his car to his wife, who receives a PCN for parking on a yellow line, he is liable for that penalty without any wrongdoing on his part. Even if this is not made clear by the general scheme of the Act (which I believe it is), Mr MacLeod's argument on the point was rendered untenable by the Court of Appeal in the Wandsworth garages case (referred to below on the question of keepership), in which the Court found that the true owner of a vehicle was liable for parking penalties incurred when the vehicle was in the charge of a garage being repaired, at a time when not only would the true owner not have had any practical control over the vehicle but may have been forbidden from moving the vehicle at all by virtue of a workman's lien in favour of the garage. Similarly, it cannot be argued that a construction of one of the provisions of the scheme should be rejected simply because it does not further the main purpose of the primary legislation, which is to benefit traffic management and the free flow of traffic: again, in the Wandsworth garages case, the Court adopted a construction which did not assist - and, indeed, could be said to impede - these purposes. I will return to these points when I consider further the issues relating to keepership.

Finally, two points raised by some of the Appellants who appeared in person. First, some appellants made the point that the NTO and Parking Appeals Service form had on it, as a ground of appeal, "We are a hire firm and have supplied the name of the hirer". It was submitted that this, in some way, was evidence that there was a statutory ground or a representation to this effect. However, the wording on these forms can neither detract from nor add to the statutory grounds referred to above. In any event, on the basis that the 1975 Regulations do apply to the 1991 Act (as I have found), there is now clearly an issue in the individual cases as to whether a particular appellant has that ground available to him. That is a question dealt with below.

Secondly, some appellant hire firms made the point that their representations against parking penalties in the past have generally been accepted by Councils. I understand that, as a matter of

fact, this is the case. However, it seems to me that, prior to the Wandsworth garages case, authorities took a pragmatic view of "keepership" where there was a vehicle hiring arrangement, and believed the hirer to be keeping the vehicle and consequently liable for penalties. In the light of the Wandsworth garages case, it may well be that authorities have had to reconsider. The "keepership" issue is considered further below. In any event, the past practice of authorities can be no positive indicator as to what the legal position might be. Again, their practice can neither detract from nor add to the statutory provisions.

Question 3: If regulations have been made prescribing particulars required of a vehicle-hiring agreement under the 1991 Act, is the requirement for the prescribed particulars mandatory? In the absence of one or more of the prescribed particulars, can the agreement still be a "vehicle hiring agreement" attracting the right to avoid parking penalties?

The ratio of my decision in Global Transport was that, even if the 1975 Regulations applied to the 1991 Act, the agreements in the consolidated Global Transport cases failed to comply with the particulars set out in Schedule 2 to the regulations in a number of regards. I found that this failure was fatal, in any event.

In his submissions, Mr MacLeod on behalf of the BVRLA conceded that a failure to include any particular set out in Schedule 2 was fatal, with the result that any agreement lacking any one particulars or more was not a "vehicle hiring agreement" under the 1991 Act, and the vehicle hiring firm could not rely upon the avoidance provisions in the 1991 Act.

I agree with Mr MacLeod, and consider his concession properly made. I have looked again at the relevant statutory provisions, and I am confirmed in my earlier view, with one caveat to which I refer below. I note above that, in Section 66 of the 1988 Act, ""hiring agreement" refers *only* to an agreement which contains such particulars as may be prescribed...": and the schedule of particulars (Schedule 2 to the 1975 Regulations) is headed, "Particulars *required* in a hiring agreement to comply with Section 3 of the Road Traffic Act 1974". The explanatory note to the

Regulations says that the list in Schedule 2 is of particulars "which *must* be contained in a vehicle hiring agreement in order to attract provisions of Section 3 of the [1974] Act, i.e. attract the right to avoid liability for parking penalties.

None of these alone is conclusive, but I consider that together, in context, they point towards the wording of these provisions being mandatory, with the effect that, if one or more of the prescribed particulars is absent from an agreement, the agreement cannot be a "vehicle hiring agreement" attracting the right to avoid parking penalties. In my view, they are mandatory in that sense.

I have one caveat to the mandatory nature of the particulars. Not all of the prescribed particulars will be applicable in every case. The particulars of a substitute vehicle will only be applicable if there is indeed a substitution of vehicle during the currency of a hiring period. The particulars of the hirer's current address will only be applicable if that is different from his permanent address. Some particulars are applicable to an individual hirer, but not a company hirer: where the statement of liability is signed on behalf of a company, then details of date of birth and driver's licence details will be inapplicable. My examples are not meant to be comprehensive, but the circumstances in which particulars will be inapplicable - and consequently, impossible to provide - will be limited. However, where particulars are entirely inapplicable (and, consequently, impossible to provide), it cannot of course be intended that they are mandated. Therefore, if such particulars are not present in a particular case, then that is not fatal to a hirer firm relying upon the provisions by which they can avoid liability.

In addition to the prescribed particulars being mandatory, to attract the liability avoiding provisions in the 1991 Act for a hirer, the hiring arrangement must also satisfy the requirements of Section 66(7) of the 1988 Act (because Section 82(1) of the 1991 Act defines "vehicle hiring agreement" in terms of the whole of Section 66 of the earlier Act, and not just Section 66(8) which requires the particulars prescribed by the 1975 Regulations), and Paragraph 2(4)(e) of Schedule 6 to the 1991 Act. Therefore:

(i) the hire must be for a fixed period of less than 6 months (Section 66(7) of the

1988 Act): and

(ii) the hirer must sign a statement of liability acknowledging his liability in respect of PCNs fixed to the vehicle during the period of hire (Paragraph 2(4)(e) of Schedule 6 to the 1991 Act).

Question 4: For there to be a vehicle hiring agreement attracting the right to avoid parking penalties, does a specific cash consideration need to pass?

The 1988 Act and 1975 Regulations set out the requirements for a vehicle hiring agreement which, I have found, are definitional and mandatory.

A number of Respondent authorities have suggested that, for there to be a hiring agreement attracting the privileges of the Act for a vehicle hiring company, there must be a specific cash payment for the hire. This is a live issue in those cases before me in which garages lend a "courtesy car" to a customer whilst that customer's car is being repaired. No direct cash consideration is paid by the customer, although no doubt contractually sufficient consideration for the loan flows from the customer as part of the overall transaction involving the repair of his car.

Mr MacLeod submitted that no cash consideration was necessary for there to be a vehicle hiring agreement, and I agree. The requirements for a hiring agreement are very specifically defined in the statute and regulations, and I do not consider there is any need or scope for implying a requirement for a specific cash payment.

Question 5: If, for whatever reason, a hiring or lending arrangement falls outside the statutory definition of "vehicle hiring agreement", who owns or keeps a vehicle the subject of such an arrangement (as it is only the keeper who is liable for parking penalties)?

If an agreement is a "vehicle hiring agreement", then the person hiring out the vehicle is able to avoid liability for parking penalties. He can rely upon the ground in Paragraph 2(4)(e) of Schedule 6 to the 1991 Act.

However, if the agreement is not a vehicle hiring agreement, although that ground is not available to him, it is not the end of the matter, because there is still the question of who was keeping the vehicle at the relevant time. It is a further ground of representation against an NTO (Paragraph 2(4)(a) of Schedule 6) that:

> "... the recipient [of the NTO]
>
> (i) never was the owner of the vehicle in question;
> (ii) had ceased to be its owner before the date on which the alleged contravention occurred..."

As indicated above, by virtue of Section 82(2) of the 1991 Act, "the owner" of a vehicle is the person by whom the vehicle is kept, and it is that person who is responsible for parking penalties. Further, there is a rebuttable statutory presumption that the owner (or keeper) is the person in whose name the vehicle is registered with the the DVLA under the Vehicle Excise and Registration Act 1994 (Section 82(3) of the 1991 Act).

The question of who keeps a vehicle was considered in Jane Francis -v- The London Borough of Wandsworth and other cases (PAS Case No. 1950068397), which was judicially reviewed by the Divisional Court (Schiemann LJ and Brian Smedley J) as R -v- The Parking Adjudicator ex parte The London Borough of Wandsworth (CO/199/96) and then considered by the Court of Appeal (QBCOF 96/1153/D) ("the Wandsworth garages case"). I should perhaps say at the outset that I was the original adjudicator in the case. Miss Francis left her car with a garage for repair for a period of a month and she thought that, during this time, her car was being garaged off-road. In fact, it received 7 PCNs, about which she knew nothing until she received follow-up NTOs. The Divisional Court held that the question as to who keeps a vehicle was simply a question of fact and degree to be determined by the adjudicator. No attack on the decision was made on the ground that it was perverse or unreasonable - in the Wednesbury sense - and the

Court consequently upheld the original decision that the garage (and not Miss Francis) was keeping the vehicle for the period the car was in their charge for repair. Miss Francis was therefore not liable for the parking penalties incurred during that time because she fell within the ground in Paragraph 2(4)(a)(ii) of Schedule 6 to the 1991 Act, i.e. she had ceased to be the keeper of the vehicle prior to the alleged contravention, albeit the cessation was temporary because Miss Francis would presumably have resumed her keepership when she paid for the repair works and collected her car from the garage.

However, the Court of Appeal held that this approach was wrong. They held that the word "keep" as used in the 1991 Act is not to be construed as an ordinary English word. The definition of who keeps a vehicle is not simply a question of fact and degree for the adjudicator, but rather it is a specific legal term of art.

Stuart-Smith LJ (with whom Morritt LJ and Sir John May agreed) said that the meaning of the term was intrinsically bound up with the public record, i.e. with the so-called "registered keeper" as recorded on the Driver and Vehicle Licensing Agency ("the DVLA") computer in Swansea. He said (Transcript, page 11A-B):

> "The whole concept of ownership for the purpose of this part of the 1991 Act is related to what is or what should be the position in the public record. One starts with what is the position because of the presumption in Section 82(3). One then considers what ought to be the position at the time of the offence if there were instantaneous registration of the material disposition or acquisition".

He further held that the disposal and acquisition of the "keepership" of a vehicle necessarily involved "both a degree of permanence and the right to use the vehicle on the road". He said (Transcript, page 10C-F):

> "The disposal and acquisition of the vehicle...must involve the right to keep the vehicle. Clearly a sale or gift to another would satisfy the requirement but the keeper does not necessarily have to be the owner. The concept does, however, involve both *a degree of permanence* and the right to use the vehicle for the purpose for which it was manufactured, namely use on the road. Thus, a friend who borrows a car *even for a comparatively long period* would not as a rule become the keeper, nor would a garage proprietor who takes a vehicle for repair,

> since he has no right to use it for his own purposes and the duration of his possession of the car is insufficient. It is possible to envisage circumstances where a vehicle repairer might become the keeper, if, for example, the cost of repair was uneconomic and the owner asked the garage to dispose of the vehicle. Special provisions relate to hired vehicles; see Paragraph 2(4)(e)" (emphasis added).

The Court were, of course, specifically considering a situation in which the Appellant clearly had, at one stage, kept the vehicle, the issue being whether she had disposed of keepership temporarily whilst the vehicle was in the care of the garage, i.e. the Court were considering the ground in Paragraph 2(4)(a)(ii) of Schedule 6 to the 1991 Act (set out above). Stuart-Smith LJ's judgment was specifically aimed at this ground, and it is not necessarily extrapolable to a case where the person whose name is on the register never had the vehicle in its possession.

Therefore, for a keeper to rely upon the ground that he disposed of keepership prior to the alleged contravention, he must show that the person to whom he gave the car had "the right to use the vehicle... on the road" (which is not an issue in the cases before me: the hirers and lenders do have that right) and the disposal must have "a degree of permanence" (which is highly relevant, and an issue in most of the individual cases). It is to be noted that the criteria referred to is not *length of time*, but *degree of permanence*. Stuart-Smith LJ suggests that length of time may also be a relevant criteria - he refers to the duration of possession of a garage being insufficient to cause a change of keepership - but he makes it clear that, even where the disposal is for a lengthy period, for keepership to pass the disposal must be sufficiently permanent.

Before me, Mr MacLeod submitted that, where a vehicle was hired or loaned, the hirer became the keeper of the vehicle and, as such, he would be liable for parking penalties during the hire period. His submissions covered primarily circumstances limited to those in which:

(i) The vehicle hiring firm was the registered keeper of the vehicle. There was, consequently, a presumption that the firm was liable for parking penalties (Section 82(3) of the 1991 Act). It was for the firm to rebut that presumption.

(ii) The firm at some stage kept the vehicle, before entering into an agreement with the

hirer. Consequently, the only "keepership" ground of representation and appeal against an NTO was under Paragraph 2(4)(a)(ii) (and not (i)) of Schedule 6 to the 1991 Act.

Although other cases now before me cover different circumstances (e.g. where a vehicle finance company is on the DVLA register, but it never has had possession of the vehicle itself), in both these respects, the cases with which Mr MacLeod was dealing were similar to the Wandsworth garages case. However, he submitted that the vehicle hiring cases were distinguishable from that case, and he dealt with the legal restrictions on the definition referred to by the Court of Appeal as follows.

First, he said that (unlike the garage in the Wandsworth garages case), the hirer of the vehicle had the right to use the vehicle on the road. A vehicle hire firm did not. This is clearly a distinguishing factor between the two cases, and a material one on the basis of Stuart-Smith LJ's judgment.

Secondly, he said that, during the period of the hire agreement, "the keepership of the vehicle is actually contracted out for a fixed period". He said that the difference and distinguishing feature between Miss Francis and a vehicle hire company is that Miss Francis could have gone to the garage and taken her vehicle away on payment of her fee or on payment for works done up to that stage: a vehicle hire company is not in that position, having no right to take back the hired vehicle during the period of hire. He said that the "degree of permanence" involved in a transfer of keepership, as referred to by Stuart-Smith LJ in the Wandsworth garages case, was satisfied "by a binding contractual arrangement, whereby a vehicle is permanently in the possession of a hirer for a fixed period of time."

Of course there are factual differences between Miss Francis' case and these hiring cases. Miss Francis could recover her vehicle by making a payment to the garage: a vehicle hire firm can only usually recover a vehicle if there has been some form of default by the hirer. The cases are not on all fours.

Nevertheless, the similarities between a true owner whose vehicle is at a garage for repair and a

vehicle hire company are, in my view, more notable than the differences. I have already mentioned the fact that, in each case, they (the true owner and the vehicle hire company) are the person registered on the DVLA computer. Just as Miss Francis was the keeper of her vehicle prior to leaving it with the garage, a vehicle hire firm is the keeper prior to entering into an agreement with a hirer: and, therefore, Stuart-Smith LJ's judgment, which is specifically aimed at cases where there is an alleged disposal of ownership, is equally applicable. And, in each case, in my view, the disposal is not permanent but inherently temporary. If the conclusive factor in transferring keepership was the contractual arrangement whereby the hirer obtained the (exclusive) right to use the vehicle on the road (as Mr MacLeod suggests), then the period of the hire would not be relevant: such a contract could be for 10 years or a day or an hour and, on the basis of Mr MacLeod's submissions, the hirer would in every case become the keeper. Further, on the basis of his submissions, every hire agreement (for no matter how short a period) would require to be notified to the DVLA - and would require the log book to be given to the hirer. Neither occurs in practice. Both would be as impracticable as it would be to require notification to the DVLA and transfer of the log book to a garage. Although a hirer has the right to use the vehicle on the road, which a garage might not, Stuart-Smith LJ's requirement for "a degree of permanence" in the disposal is an independent requirement from the disposee having that right of use. In my view, Mr MacLeod's argument (which, as Mr MacLeod himself accepted, in many ways replicated those arguments which failed in the Wandsworth garages) founders on the judgment in the Court of Appeal.

Further, if his argument were correct, Mr MacLeod accepted that, in every vehicle hiring agreement arrangement, the hirer would be the keeper of the vehicle (and consequently would be liable for parking penalties) by dint of being hirer alone. The specific ground in Paragraph 2(4)(e) of Schedule 6 to the 1991 Act concerning vehicle hiring agreements would be otiose. As a matter of construction, it must be presumed to have some effect.

Section 101 of The Road Traffic Regulation Act 1984 also suggests that Mr MacLeod's proposition is wrong. The section concerns the ability of an authority to dispose of an abandoned vehicle. By Sub-section (4A) (added by Section 67(4) of the 1991 Act):

> "If, before a vehicle...is disposed of..., the vehicle is claimed by a person who satisfies the authority that he is its owner and pays:
>
> > (a) any penalty charge payable in respect of the parking of the vehicle in the place from which it was removed; and
> >
> > (b) such sums in respect of the removal and storage of the vehicle...as the authority may require...
>
> the authority shall permit him to remove the vehicle from their custody..."

By virtue of Section 111(3) of the 1984 Act, "owner" is defined in materially the same terms as the 1991 Act, i.e. in terms of keepership. However, Section 101(8) of the 1984 Act also says:

> " "owner", in relation to a vehicle which is the subject of a vehicle hiring agreement..., includes the person entitled to possession of the vehicle under the agreement.."

That provision enables a hirer under a vehicle hiring agreement (as defined in the Act) to go to a pound and obtain the release of the hired vehicle, if the vehicle is towed away. Such a specific provision would be unnecessary if the hirer under any hiring agreement was in any event, as hirer, the keeper (or "owner", as defined in the Act) of the vehicle, as Mr MacLeod suggests: because the hirer could obtain the release of a vehicle as "keeper" in any event.

In any event, it seems to me, from Stuart-Smith LJ's reference to Paragraph 2(4)(e) (Transcript, page 10F: quoted above), that, in his view, but for the specific provision for the avoidance of liability by vehicle hire firms, such firms would indeed be liable for parking penalties.

Third, with regard to the proper approach of seeing who is (or ought to be) on the DVLA computer record in Swansea, Mr MacLeod tried to distinguish the position of true owners in garage cases and vehicle hire firms: he said that the special position of vehicle hire agreements under the 1991 Act meant that there was no change of keepership requiring notification to the DVLA.

With respect to Mr MacLeod, I consider this argument misconceived. There are "special arrangements" for vehicle hire firms enabling them to avoid liability for parking penalties, in certain circumstances. But there is no special position for them in the statutory scheme outside those avoidance provisions. Indeed, as I have already indicated, in my view, the Court of Appeal's reference to such firms made clear that, without those avoidance provisions, those vehicle hire firms would be liable as "keepers" of vehicles, at least in respect of hires of up to 6 months.

Adopting the "step-by-step" approach favoured by the Court of Appeal in the Wandsworth garages case, although the facts of each case will need to be considered (because, even following that case, keepership is still primarily a question of fact), it seems to me that, in vehicle hire arrangements which fall outside the avoidance provisions enabling them to rely upon Paragraph 2(4)(e) of Schedule 6 to the 1991 Act, it is almost inevitable that the vehicle hire firm will be liable for parking penalties, at least where the period of hire is not lengthy. The hire firm is recorded as the registered keeper on the DVLA computer, and therefore presumed to be the keeper and liable as such for parking penalties. For the purposes of Paragraph 2(4)(a)(ii) of Schedule 6 of the 1991 Act, the firm must show that there has been a disposal of keepership, with a sufficient degree of permanence, such as to require a notification to the DVLA. In most cases with which Mr MacLeod was concerned, the hire company will simply be unable to do that, and consequently will be unable to rebut the statutory presumption.

The position may be different in cases where the person on the register has never had possession of the vehicle, e.g. where the registered keeper is a finance company which (although the registered keeper) lets out vehicles on long leases. Indeed, in one of the cases now before me (Future Electronics Limited -v- The London Borough of Richmond), the Respondent Council specifically submit that, in long-lease cases, the lessee/hirer "keeps" the vehicle, even following the Wandsworth garages case. In these cases, as I have said, the Wandsworth garages case is not directly applicable (although the DVLA record still raises a presumption), and the company can rely upon the ground that it never was the keeper (Paragraph 2(4)(a)(i)). It is difficult to conceive how a company which has never had possession of a vehicle - and, probably, never will - could be said to be "keeping" that vehicle.

Question 6: Again outside a "vehicle hiring agreement", can a purported contractual indemnity provision between the vehicle hire company/lender and the hirer/borrower affect the incidence of statutory liability for a parking penalty?

In some of the cases now before me, where there is clearly not a "vehicle hiring agreement" in place between the hiring firm and the hirer, the hirer has nevertheless signed a purported indemnity or acceptance of liability in respect of parking penalties. Some hiring firms rely upon this indemnity to avoid statutory liability.

Mr MacLeod submits that a mere contractual provision cannot affect the incidence of statutory liability. I agree. Where a statute imposes liability for a penalty on a person, that person cannot avoid his liability by a purely private agreement. It may be that he can recover in contract any penalty he incurs (because it may be that there is no compelling public argument policy against an indemnity of a civil penalty), but this can have no effect on the incidence of the statutory liability.

Summary

Therefore, in summary, to answer the questions I earlier posed myself:

1. The Road Traffic (Owner Liability) Regulations 1975 are "made" under the Road Traffic Act 1991. Schedule 2 to the 1975 Regulation prescribes a list of particulars which are required to be included in a vehicle-hiring agreement.

2. Had no particulars been prescribed, then the vehicle hiring agreement provisions in the 1991 Act would be of no effect. However, this is hypothetical, as I have found that the 1975 Regulations do apply to the 1991 Act.

3. If one or more of the prescribed particulars is omitted from an agreement, then that agreement is not a "vehicle hiring agreement" attracting the right in a hire firm to avoid parking penalties under the 1991 Act. However, an agreement does not fail to come within the statutory definition merely because it fails to include patently inapplicable particulars, e.g. particulars of a substitute vehicle where there is no substitution of vehicle during the currency of a hiring period, or particulars of an individual where it is a company hire.

4. The absence of a specific cash payment alone does not take a contract outside the definition of "vehicle hiring agreement".

5. If a hire falls outside the statutory definition of "vehicle hiring agreement", who owns or keeps a vehicle the subject of such an arrangement is primarily a question of fact but as circumscribed by the Court of Appeal in the Wandsworth garages case. For keepership to pass to the hirer, there must be a degree of permanence in the disposal. Where the registered keeper is effectively financing the purchase of a vehicle by way of a long lease, keepership may well pass to the lessee by virtue of the lease. It is unlikely to pass to a hirer as a result of a short term hire.

6. A mere private contractual indemnity provision cannot affect the incidence of statutory liability for a parking penalty.

The Individual Cases

Having dealt with the general propositions of law that are raised in these appeals, I now turn to the individual cases.

1. Autolease Limited -v- The London Borough of Barnet (PAS Case No. 1970121546)

On 9 April 1997, a PCN was issued to vehicle registration mark M149PDA for being parked in a restricted street during prescribed hours. The Appellant is the registered keeper of the vehicle.

The Appellant, as its name suggests, is a vehicle leasing company. On 27 August 1993, it entered into a Master Contract Hire Agreement with Helix Limited, for the lease of "an indefinite number of vehicles...from time to time". It provided that, on the lease of a specific vehicle, a schedule to the Agreement would be completed in respect of that vehicle, in an agreed form. By Paragraph 2(t) of the Agreement, Helix agreed to indemnify the Appellant as follows:

> "...against all liability costs and expenses arising directly or indirectly from the use of the Vehicle including especially fixed penalty fines and charges for parking and traffic violations and supply of information under the Road Traffic (Owner Liability) Regulations 1975 or any other statutory requirements levied on the registered owner of the Vehicle. In the event that [Helix] does not discharge its liability direct within 14 days of being levied, [Helix] hereby authorises [the Appellant] to pay on its behalf fixed penalty fines and charges arising from or connected with such parking and traffic violations and such supply of information. In the event of [the Appellant] receiving a notice of any parking fine or any other traffic violation, [the Appellant] will invoice [Helix] for the sum of £25.00 for each such notice received. In the event of [the Appellant] paying any fixed penalty fines or charges on behalf of [Helix], [Helix] will repay such sums together with a further administration fee of £25.00 for each fine or charge paid by [the Appellant]."

This is a purely contractual provision which cannot affect the incidence of statutory liability for parking penalties.

On 23 March 1995, under the Master Contract, a black BMW registration mark M149PDA, was leased by the Appellant to Helix, for 4 years. On 9 April 1997, a PCN was issued to the vehicle on behalf of the Respondent authority as the vehicle was parked in a restricted street during prescribed hours. It is that PCN which has founded the NTO which is the subject of this appeal.

The agreement for this car cannot be a "vehicle hiring agreement" as defined in the 1988 Act. Irrespective of the 1975 Regulations, it is for a period of over 6 months and therefore fails to satisfy the prerequisites of Section 66(7) of the 1988 Act.

Turning to the issue of keepership, the Appellant was registered at the DVLA as the registered keeper, and at all material times has been so registered. There is no evidence as to whether the car ever came into the possession of the Appellant but, if it did, it would have done so for only a very short period, during which presumably the Appellant would not have used it on the road for its own purposes. However, even if the Appellant had "kept" the vehicle prior to the arrangement with Helix, in my view a hiring for 4 years would in any event have a sufficient "degree of permanence" in the terms of the Wandsworth garages judgment to be a disposal of keepership requiring the DVLA to be notified (so that Helix would be recorded as the registered keeper). The customer, of course, would have the exclusive right to use the vehicle on the road for the 4 year period, unless in default.

In the circumstances, I am satisfied that the Appellant has never kept the vehicle, and can consequently rely upon the ground in Paragraph 2(4)(a)(i) of Schedule 6 of the 1991 Act. Even if the Appellant did at one stage keep the vehicle, I am satisfied that there was a disposal of keepership at the time of the leasing of the vehicle to Helix to enable the Appellant to rely upon Paragraph 2(4)(a)(ii).

I allow the appeal, and direct the Respondent Council to cancel the NTO served on the Appellant.

2. BRS Car Lease -v- Winchester City Council (PAS Case No. Win0028)

On 12 February 1997, a PCN was issued to a Vauxhall Omega registration mark M593LN on behalf of the Respondent authority for being parked in a residents' only bay without displaying a valid resident's permit. An NTO was served upon the Appellant, as registered keeper.

The background facts of this case are similar to those in the Autolease case above. The Appellant, again as its name suggests, is a vehicle leasing company. At a date prior to 26 January 1995, the Appellant entered into a Master Contract Hire Agreement with Pyramid Technology. The Appellant has not lodged a copy of that Agreement, but it is likely to be in at

least similar terms to the master agreement in the earlier case. On 26 January 1995, under the Master Contract, the Vauxhall Omega the subject of this case was leased by the Appellant to Pyramid, for 3 years from 3 February 1995.

The Appellant purports to rely upon the statutory provisions for "vehicle hiring agreements": but the agreement for this car was not such an agreement, as defined for the purposes of the 1991 Act. Irrespective of the 1975 Regulations, it is for a period of over 6 months and therefore fails to satisfy the prerequisites of Section 66(7) of the 1988 Act.

Turning to the issue of keepership, the facts are identical to the Autolease case, but the period of hire is 3 years rather than 4 years. I do not regard that difference as material. In the circumstances of this case too, I am satisfied that the Appellant has never kept the vehicle, and can consequently rely upon the ground in Paragraph 2(4)(a)(i) of Schedule 6 of the 1991 Act. Even if the Appellant did keep the vehicle before its arrangement with Pyramid, I am satisfied that there was a disposal of keepership at the time of the leasing of the vehicle to Pyramid, with a sufficient degree of permanence, to enable the Appellant to rely upon Paragraph 2(4)(a)(ii).

I allow the appeal, and direct the Respondent Council to cancel the NTO served on the Appellant.

3. Heard Brothers -v- The London Borough of Greenwich (PAS Case No. 1970015946)

On 29 July 1996, a PCN was issued to vehicle registration mark J947VOF, for being parked in a restricted street during prescribed hours. An NTO was later served upon the Appellant, as registered keeper.

The Appellant has submitted representations on the ground that it is a hire firm and has supplied the name of the hirer, namely Dartington Crystal Limited. The period of hire is 4 years: and they say that they believe that, if the hire agreement is for over 6 months, they are under no

obligation under the 1988 Act to produce a copy of the hire agreement. That seems to me to be technically correct, because the disclosure requirements are only in respect of hiring agreements as defined in that Act, i.e. agreements for a fixed period of less than 6 months. However, this betrays the fact that the contract is not a "vehicle hiring agreement. Any agreement with Dartington Crystal cannot be a hiring agreement such as to enable the Appellant to take advantage of the liability avoiding provisions of Paragraph 2(4)(e) of Schedule 6 to the 1991 Act, because it is for a period of over 6 months.

However, the Appellant has now lodged a copy of a Master Leasing Agreement between it and Dartington Crystal, together with a schedule in respect of vehicle registration mark J947VOF. That shows a typical long lease arrangement for 4 years: there is no express starting date, but the schedule was signed by both parties in March 1993. The car was then not new. It was first registered in 1992 and had done 7000 miles. However, even assuming that the Appellant was the keeper of the vehicle in 1993, I am satisfied for the reasons given above that keepership was transferred by virtue of the leasing agreement, which had a sufficient degree of permanence in terms of the disposal of the vehicle to require registration at the DVLA. That enables the Appellant to rely upon the ground in Paragraph 2(4)(a)(ii) of Schedule 6 to the 1991 Act to deny liability for penalties during the period of the agreement.

In the circumstances, I allow this appeal, and direct the Council to cancel the NTO it has served upon the Appellant.

4. Future Electronics Ltd -v- The London Borough of Richmond (PAS Case No. 197006107A)

On 5 July 1996, a PCN was issued to vehicle registration mark N118GLF, for being parked in a restricted street during prescribed hours.

The registered keeper of the vehicle is First Mutual Contracts Limited, but, on 15 September 1995, they entered into a leasing agreement with the Appellant Future Electronics Limited,

whereby the Appellant leased the vehicle for 30 months commencing October 1995. I have seen a copy of that contract. It does not amount to a hiring agreement as defined in the 1991 Act (as it is for a fixed period of in excess of 6 months): and, consequently, as against the Appellant, the Respondent Council cannot rely upon either Section 82(3) (that would raise a rebuttable presumption that the Appellant was liable for the penalty charge) or Paragraph 3(3) of Schedule 6 to the 1991 Act (that would deem the Appellant, as hirer, liable for the penalty).

However, the Council say that, on the basis of the Wandsworth garages case, if First Mutual were ever the keepers of the vehicle, that keepership was transferred to the Appellant, the leasing contract ensuring that the disposal of keepership had the necessary degree of permanence. For the reasons set out above, I agree. I suspect that First Mutual never kept the vehicle, and they could have relied upon the ground in Paragraph 2(4)(a)(i) of Schedule 6: but, if they did ever keep it, I agree with the submission of the Council that keepership was transferred to the Appellant by virtue of the long-term leasing contract, that would enable First Mutual to rely upon the ground in Paragraph 2(4)(a)(ii).

Nevertheless, the Appellant says that, at the time of the alleged contravention, the driver at the relevant time was one of their employees, a Mr Steven Purdie, who is no longer employed by them. They have not sent me a copy of the relevant contract of employment nor any details of the circumstances under which Mr Purdie had possession of the car: clearly the arrangement would not amount to a hiring agreement as defined in the 1991 Act. The Appellant's case that Mr Purdie is responsible for the penalty appears to be based on the fact that he was merely in charge of the vehicle at the time of the alleged contravention, rather than that he was "keeping" it. On the evidence, I am satisfied that the Appellant was the keeper of the vehicle at the relevant time.

In the circumstances, there is no ground of appeal upon which the Appellant can properly rely. I refuse the appeal.

5. <u>Hamilton Compass Limited -v- The London Borough of Wandsworth (PAS Case No. 1970132167)</u>

On 5 February 1997, a PCN was issued to vehicle registration mark P968NCA, for being parked at a meter with penalty time showing. An NTO was later sent to the Appellant company, as registered keeper.

The Appellant is engaged in the business of hiring out vehicles. On 3 February 1991, it hired the vehicle P968NCA to a Mr Richard Arnold. (The hire agreement is in fact not in the name of the Appellant, but rather "Executive Vehicle Rentals Limited", an associated company, but I do not consider anything turns upon this point.) The standard hiring agreement form used is clearly intended to comply with the 1975 Regulations, in that it has a field for each of the prescribed particulars, even to the extent of having a field for "Licensing Authority if not DVLA" and fields for a replacement vehicle if applicable.

However, I do not consider the agreement in this specific case was a vehicle hiring agreement as defined by the 1991 Act (so as to provide the Appellant with a ground of appeal under Paragraph 2(4)(e) of Schedule 6) because, although there are fields for date and time of expiry of the hiring period, these have been left blank. The agreement therefore fails to provide the required particulars under Paragraph B7 of Schedule 2 to the 1975 Particulars. Indeed, on its face, the agreement is not for "a fixed period of less than six months", as required by Section 66(7) of the 1988 Act.

Nor do I consider that the Appellant can rely upon the ground in Paragraph 2(4)(a)(ii). From the papers in the case, it is unclear how long Mr Arnold in fact had possession of the car: as I have said, the agreement does not contain an end date, and the papers do not reveal when he in fact returned the car. However, the arrangement between the Appellant and Mr Arnold appears to me to have been inherently temporary, lacking any degree of permanence as required by the Wandsworth garages case for keepership to pass to the hirer. I consider that the Appellant remained the keeper of the vehicle whilst it was in the possession of Mr Arnold.

The "statement of liability" signed by Mr Arnold reads:

> "I hereby acknowledge that during the currency of the hiring period I will be liable as the owner of the vehicle in respect of any fixed penalty or excess charge which may be incurred with respect to the vehicle in pursuance of an order under Sections 45& 46 of [the 1984 Act] or Sections 51 & 63 of [the 1988 Act] or any other relevant road traffic legislation whether the vehicle is being used in or outside England & Wales."

However, even if this indemnity covers parking penalties under the 1991 Act, a mere contractual indemnity cannot affect the incidence of statutory liability.

Clement Jones, Solicitors, have lodged submissions on behalf of the Appellant to the effect that the 1975 Regulations do not apply under the 1991 Act and the definition of "hiring agreement" in the 1988 Act (and, hence, in the 1991 Act) should be looked at in isolation, and construed without reference to the absence of prescribed particulars. However, for the reasons given above, I consider that the 1975 Regulations do apply to the 1991 Act and, for an agreement to attract the liability avoiding provisions of the 1991 Act so far as a hire firm is concerned, it must incorporate all of the particulars required by those Regulations.

In the circumstances, I refuse the appeal.

6. Avis Rent-a-Car Limited -v- The London Borough of Barnet (PAS Case No. 1970128647)

The Appellant is a large company involved in the commercial hire of vehicles. It entered into an agreement in its own standard form with Kevin O'Leary, for the hire of a Peugeot 406 car registration mark P299SNP, for the period 1 to 30 April 1997. On 8 April, a Parking Attendant on behalf of the Respondent authority attached a PCN to that vehicle for parking in a restricted street during prescribed hours. An NTO was later served on the Appellant, who is the registered keeper.

The Appellant relies upon the vehicle hiring agreement ground in Paragraph 2(4)(e) of Schedule 6. Its standard form rental agreement, if completed fully and properly, may cover all of the

particulars prescribed in the 1975 Regulations (although Paragraph 16 is a single field headed "Driver's Licence Details", and there are no fields in respect of a substitute vehicle). However, its arrangement with Mr O'Leary failed to comply with the requirements that would enable it to rely upon the ground in Paragraph 2(4)(e), because:

(i) It does not include the necessary details of Mr O'Lear's driver's licence, as required by Paragraph A5 of Schedule 2 to the 1975 Regulations. In the field for "Driver's Licence Details", there is simply "GBXXOwninsurance".

(ii) Similarly, Mr O'Leary's date of birth is not included, as required by Paragraph A2 of of Schedule 2 to the 1975 Regulations. In the relevant field, there is "01Jan01", which is presumably a mere computer default.

The agreement is therefore not a "vehicle hiring agreement" as defined in the statutory scheme, and it does not enable the Appellant to avoid liability under the ground in Paragraph 2(4)(e).

Further, the Appellant's arrangement with Mr O'Leary was inherently temporary. The contract was for a fixed period of 28 days. It consequently lacked the necessary "degree of permanence" as required by the Wandsworth garages case for keepership to have passed to Mr O'Leary. On this basis, the Appellant remained the keeper of the vehicle during the period of the hire, and cannot rely on the ground in Paragraph 2(4)(a)(ii) either.

The copy agreement says:

> "I have read and agreed to the terms on both sides of this rental agreement and confirm that if payment hereunder is to be made by credit card or charge card my signature below shall constitute authority to debit my nominated credit card or charge card company with the total amount due. I acknowledge my liability as owner, during the currency of this agreement, in respect of those offences and contraventions detailed in Paragraph A12 overleaf. Further, I hereby agree to the terms of the agency contract detailed in Section C overleaf. I agree to pay all charges for parking and traffic violations."

On the copy agreement lodged by the Appellant, there is no "Paragraph A12" (or "Section C") in

the Rental Agreement on the back of the form. There is however this (Paragraph 14):

> "Renter acknowledges and it is agreed...[t]hat Renter shall be liable as owner of the Vehicle in respect of:
>
> > (a) any fixed penalty offence or contravention committed in respect of the the Vehicle under the Traffic Acts..."

However, even if this indemnity covers parking penalties under the 1991 Act, a mere contractual indemnity cannot affect the incidence of statutory liability.

For these reasons, I refuse this appeal.

7. Avis Rent-a-Car Limited -v- The London Borough of Wandsworth (PAS Case No. 1970128691)

In this case, the Appellant is the same company as in the immediately preceding appeal.

It entered into an agreement in its standard form with Elaine Lui, for the hire of a Peugeot 106 car registration mark P641SNP, for the period 25 January to 21 February 1997. On 11 February, a Parking Attendant on behalf of the Respondent authority attached a PCN to that vehicle for parking in a pay and display bay without displaying a valid pay and display voucher. An NTO was later served on the Appellant, who is again the registered keeper.

The Appellant relies upon the vehicle hiring agreement ground in Paragraph 2(4)(e) of Schedule 6. However, their arrangement with Ms Lui failed to comply with the requirements for that liability avoiding provision in that it failed to include full details of the hirer's driving licence, i.e. the date of expiry of her driver's licence as required by Paragraph A5(c) of Schedule 2 to the 1975 Regulations. This appears to be the only prescribed particular missing: but, as I have indicated above, I consider all of the particulars are required to be present in an agreement, before a hire firm can have the benefit of the liability avoiding provisions of the 1991 Act. For these reasons, again I do not consider the arrangement between the Appellant and Ms Lui to

have been a "vehicle hiring agreement".

For the reasons set out above in the immediately preceding case, I am also satisfied in this case that the Appellant was at the relevant time "keeper" of the vehicle within the context of the 1991 Act, and that the contractual indemnity (which I understand was in identical terms to that in the preceding case) did not affect the incidence of statutory liability. The Appellant is consequently liable for the parking penalty in this case, despite its agreement with Ms Lui.

I refuse this appeal.

8. Hertz (UK) Ltd -v- The London Borough of Wandsworth (PAS Case No. 1970122265)

This appeals involves two PCNs, issued to the same vehicle, registration mark P196 PMR. The first was issued on 30 October 1996 for being parked without clearly displaying a valid pay & display voucher. The second was issued on 6 November for being parked after the expiry of paid for time at a pay and display bay. NTOs were served on the Appellant, as the registered keeper.

Again, the Appellant is a large company involved in the commercial hire of vehicles. It entered into an agreement in its own standard, computer-generated form, with Innes Food Co Ltd, for the hire of the vehicle P196 PMR, for the period 18 October to 22 November 1996.

The standard form has fields for each of the particulars prescribed in the 1975 Regulations. In this particular contract, being in mind the hirer was a company, each field was properly completed. The fields for "date of birth" and for the driver's licence details are not completed, but these fields are clearly inapplicable to a company hire.

As well as providing all of the required particulars under the 1975 Regulations, the agreement also complies with the other statutory requirements for a "vehicle hiring agreement". It is for a

fixed period for less than 6 months, and consequently complies with Section 66(7) of the 1988 Act. The agreement (which is signed on behalf of the hirer company) includes the following, under the heading "Statement of Liability":

> "Renter acknowledges that during the currency of the agreement and any extension thereof he/she shall be liable as the owner of the vehicle in respect of:
>
> (a) any fixed penalty offence or contravention committed in respect of the vehicle under the Traffic Act..."

I consider this to be "a statement of liability acknowledging [the hirer's] liability in respect of any [PCN] fixed to the vehicle during the currency of the hiring agreement", in accordance with Paragraph 2(4)(e)(ii) of Schedule 6 to the 1991 Act. The reference to "the Traffic Acts" does, in my view, include the 1991 Act. Penalties due under the 1991 Act are "fixed": and the reference to "fixed penalty offence *or contravention*", in my view, covers the civil penalties imposed by that Act.

Therefore, the agreement between the Appellant and its customer was a "vehicle hiring agreement" as defined in the 1991 Act, and the Appellant is entitled to take advantage of the liability avoiding provisions of the Act and the ground of appeal in Paragraph 2(4)(e) of Schedule 6.

In the circumstances, I allow this appeal, and direct the Respondent Council to cancel the two NTOs it has served upon the Appellant.

9. Hertz (UK) Ltd -v- The London Borough of Wandsworth (PAS Case No. 1970122651)

This appeal involves the same period of hire to the same hirer and involves identical issues as the immediately preceding case, the PCN being issued on 13 November 1996 for being parked in a permit only space without displaying a valid permit.

For the reasons set out in the immediately preceding appeal, I allow this appeal and direct the

Respondent Council to cancel the NTO served upon the Appellant.

10. The Warwick Group -v- The London Borough of Wandsworth (PAS Case No. 1970120849)

On 13 February 1997, a PCN was issued to vehicle registration mark L551UCR, for being parked in a restricted street during prescribed hours.

The registered owner of the vehicle is The Warwick Group, who own 100 vehicles which they hire out. At the relevant time, this vehicle was the subject of a hire agreement between them and a Michael Clohassi. The agreement does not contain all of the prescribed particulars under the 1975 Regulations, such as the make of car hired, the hirer's address and date of birth, and driver's licence particulars. The make of car appears nowhere in the documents. A copy of the hirer's licence has been lodged with the papers, and it may be that that was taken by the Appellant at the time of the hire: but, even if it was, the particulars of date of birth and licence were not "contained in the agreement" as required by Section 66(8) of the 1988 Act. As a result, the arrangement cannot be a hiring agreement as defined for the purposes of the 1991 Act, and the Appellant cannot rely on the ground in Paragraph 2(4)(e) of Schedule 6 to avoid liability.

The agreement was in respect of a hire period from 17 January to 14 February 1997. Again, this was an inherently temporary hire, and lacked any degree of permanence as required by the Wandsworth garages case for keepership to pass. The Appellant remained the keeper of the vehicle whilst it was in the possession of Mr Clohassi: and cannot rely upon the ground in Paragraph 2(4)(a)(ii).

The agreement is headed "Road Traffic Act 1974" - a statute long since repealed so far as its parking provisions are concerned - and, although it refers to the 1974 Act "as amended by the Road Traffic Regulation Act 1984 and the Road Traffic Act 1991", it only purports to make the hirer liable for defined "offences", "and any other offences created by legislation". However, even if this is adequate to make the hirer liable for parking penalties under the 1991 Act, as I

have already indicated in relation to the previous cases, a mere contractual indemnity could not affect the incidence of statutory liability.

I refuse the appeal.

11. Global Transport -v- The London Borough of Harrow (PAS Case No. 1960216180)

On 19 March 1997, I gave a decision in a number of consolidated appeals, in all of which Global Transport were the Appellant and the London Borough of Harrow was the Respondent. That decision is referred to above. In the light of the further argument I have heard, Global Transport now ask me to review that decision.

In the original Notices of Appeal, the Appellant set out more or less identical grounds, which adequately set out the facts of the case, namely:

> "We are a vehicle hire company. We hire cars to mini-cab drivers. Some of these drivers then work at our offices, some elsewhere. It is not relevant to our Car Hire Division where the drivers work. All drivers pay weekly car and insurance charges. they are all self-employed, whether they work at one of our offices or elsewhere. All our drivers sign a hire contract detailing their liability."

The basis of my 19 March decision was:

1. Even if the 1975 Regulations applied to the 1991 Act, for a hire company to obtain the benefit of the liability avoiding provisions of Paragraph 2(4)(e) of Schedule 6 to the 1991 Act, the relevant hire agreement must contain all of the particulars prescribed in Schedule 2 to the Regulations.

2. The hire agreement in each case before me was in standard form. That form omitted a number of the prescribed particulars, namely the hirer's date of birth, details of the hirer's driving licence (although the hirer's driving licence number was used in a number of cases as "proof of ID"), the time of commencement of

the hiring period, and the date and time of expiry of the hiring period.

3. The absence of those particulars was fatal to the Appellant's reliance upon the Paragraph 2(4)(e) ground of avoiding liability.

4. Following the Wandsworth garages case, in none of the cases before me could the Appellant show that it had disposed of keepership to the hirer. Consequently, the ground in Paragraph 2(4)(a)(ii) was not open to the Appellant either.

On this basis, I refused all of the appeals.

Following the further argument I have heard, I have found that the 1975 Regulations do apply to the 1991 Act. I consider my earlier decision was correct for the reasons given. Having reviewed these cases, I intend making no variation to my earlier direction, refusing the appeals.

12. <u>Global Transport -v- The London Borough of Harrow (PAS Case No. 1970098466)</u>

In addition to the cases I have reviewed, there are two further cases involving Global Transport as the Appellant and the London Borough of Harrow as Respondent.

The issues in these cases are identical to those in the cases I have reviewed. For the reasons given above, I also refuse Global Transport's appeal in this case.

13. <u>Global Transport -v- The London Borough of Harrow (PAS Case No. 1970098477)</u>

For the reasons given above, I refuse this appeal.

14. Stephen Hodges -v- The City of Westminster (PAS Case No. 197004007A)

On 13 November 1996, a PCN was issued to vehicle registration mark D195HUU for being at a meter with penalty time showing. The Parking Attendant's notes indicate that the vehicle is a black taxi cab. The registered keeper is the Appellant (who trades as Eastern General Cab Co), but he has produced a hiring agreement dated 10 October 1996 headed, "London Motor Cab Proprietors' Association Official Form". The hirer was a Paul Thomas Gayford. The substantive terms are very short:

> "The owner will let and the hirer will take on hire such licensed Hackney hire taxicab as is provided from time to time by the owner...upon the terms and conditions set out on the reverse side hereof."

The reverse side of the form has not been copied to me. However, it is clear that this is not a hiring agreement in accordance with the 1988 and 1991 Acts, as it is not for a fixed period of less than 6 months, and few of the particulars prescribed by the 1975 Regulations are included. Indeed, the Appellant does not suggest that it is such a hiring agreement. In his representations he says:

> "I am not a rental or leasing company. I do not lease vehicles. I hire out black London taxis to drivers and London taxis do not have rental agreements. The licensed taxi drivers that rent London taxis are totally responsible for any traffic offence that they incur, and they must pay for them. It is not the onus of the hirer to pay the driver's debts. No black London taxi firm have rental agreements. It is just not done.... This has happened numerous times before and the **drivers** have always been contacted by the authority for collecting fines... I cannot be responsible for drivers' parking fines. I would be out of business within a week if I was. Could you imagine if I was responsible? Drivers would be parking illegally willy nilly with me picking up the fines - completely inconceivable!"

He says he has the backing of the London Taxi Drivers' Association on this issue.

I can merely look at the statutory grounds upon which an appeal can be made. As the Appellant concedes, his agreement with Mr Gayford is certainly not a vehicle hiring agreement, and the Appellant cannot take advantage of the ground in Paragraph 2(4)(e). He is the registered

keeper, and the presumption that he is the keeper and responsible for parking penalties applies. Can the Appellant rebut that presumption? In my view, following the Wandsworth garages case, he cannot. The hiring agreement with Mr Gayford was of course not notified to the DVLA, and it seems to me to have been of just as temporary nature as the disposal in the garages case itself: in my view, although of course Mr Gayford had the right to use the car on the road, the arrangement lacked the degree of permanence which the Court of Appeal said was a prerequisite for a disposal of keepership. The facts of this case are in substance no different from those in the Global Transport cases above. In the statutory scheme, licensed Hackney cabs appear to have no different position in this regard from any other vehicle.

I appreciate Mr Hodges' concern about the incidence of liability for parking penalties, in these circumstances. But, as I have indicated above, it is a characteristic of the scheme of the 1991 Act that someone other than the person in charge of the vehicle at the time of the contravention, without any fault or wrong-doing on his part, may be liable for parking penalties.

Consequently, I refuse this appeal.

15. Portland Motors (London) Ltd -v- The London Borough of Hammersmith & Fulham (PAS Case No. 1970031283)

On 12 October 1996, a PCN was issued to vehicle registration mark H985HLM, for being parked in a parking place for more than the maximum allowed period. An NTO was later served on the Appellant, as registered keeper.

The Appellant both hires out vehicles for reward, and loans vehicles without specific charge (presumably as "courtesy cars").

On 12 October 1996, the Appellant loaned car registration mark H985HLM to a Miss Deborah Kidby. The Appellant does not make it clear whether the hire in this case was for reward, but no specific consideration is referred to in the agreement, and I suspect that the car was loaned to

her whilst her own car was being repaired at the garage: in my view, nothing turns upon whether there was a specific cash payment or not. The alleged contravention was on that day, 12 October, for parking in a place longer than the maximum time. Miss Kidby accepts she was in possession of the vehicle at the relevant time and says that it was broken down with a flat tyre. I make no findings with regard to this.

Miss Kidby signed a "loan car indemnity" form, apparently in a standard form, which, whilst including some particulars required by Schedule 2 to the 1975 Regulations, did not include them all. It omitted the details of Miss Kidby's driving licence and time and date of the expiry of the period of hire (although there were fields for most of these details). In the absence of details of the agreed expiry time, the agreement does not appear to be for a fixed period at all, as required by Section 66(7) of the 1988 Act. It is clearly not a hiring agreement under the 1991 Act. The Appellant therefore cannot take advantage of the special hiring agreement arrangements in the Act or rely upon the ground in Paragraph 2(4)(e) of Schedule 6.

The Appellant purports to rely upon a statement of liability in the agreement, under the heading "User's Declaration", which reads:

> "I will indemnify the dealer against any fixed penalty or other fines or costs incurred with respect to the vehicle during the loan period."

However, even if this indemnity covered parking penalties under the 1991 Act, a mere contractual provision cannot affect the incidence of statutory liability.

From the papers in the case, it is unclear how long Miss Kidby in fact had possession of the car: the agreement has written on it in the field "Length of Loan", "Weekend - 4 days". In any event, the arrangement between the Appellant and her appears to me to have been inherently temporary, and lacked any degree of permanence as required by the Wandsworth garages case for keepership to pass. The Appellant remained the keeper of the vehicle whilst it was in the possession of Miss Kidby: and the Appellant cannot rely upon the ground in Paragraph 2(4)(a)(ii).

I refuse the appeal.

16. Dowell Brothers Coachworks -v- The London Borough of Hammersmith & Fulham (PAS Case No. 1970018569)

On 23 October 1996, a PCN was issued to vehicle registration mark E309KLX, for being parked in a bay without either a valid permit or a pay and display voucher being properly displayed. An NTO has been served on the Appellant as registered keeper.

In its representations to me, the Appellant firm says:

> "...[W]e are a crash repair garage, approved by Churchill Insurance Company Limited. Our contract requires us to loan courtesy cars to their policy holders, whilst their vehicles are being repaired on our premises. As this service is a courtesy service, we do not have any hire agreement signed by Mrs Stormonth-Darling [i.e. their customer]. The evidence we have is the transfer of insurance from her vehicle to our courtesy vehicle."

Apparently, they have 18 "courtesy cars".

Between 18 and 25 October 1996, they loaned one of these cars to a Mrs Stormonth-Darling, whilst her car was being repaired. There was no written hire agreement, but only a document to ensure there was adequate temporary insurance cover whilst Mrs Stormonth-Darling was driving the vehicle. That document, as the Appellant accepts, does not amount to a "vehicle hiring agreement" in terms of the 1991 Act. Although the Appellant purports to rely upon the "vehicle hiring agreement" ground, that is clearly not open to them.

But for the Wandsworth garages case, I would have considered the insurance of the courtesy vehicle by Mrs Stormonth-Darling one factor - although not necessarily a decisive one - tending to show that she (rather than the garage) was "keeping" the vehicle at the relevant time. However, she had the car for only a week, and it was never intended that her possession of it should be more than temporary. The arrangement lacked the degree of permanence which,

following the Wandsworth garages case, would be a prerequisite to keepership passing to Mrs Stormonth-Darling. As I indicate above, any contractual indemnity given by Mrs Stormonth-Darling to the Appellant - and the existence of an express indemnity is not clear from the papers I have seen - cannot affect the incidence of the statutory liability.

In these circumstances, I find that the Appellant was, at the relevant time, the keeper of the vehicle, and it has failed to rebut the presumption in Section 82(3) of the 1991 Act.

However, Mrs Stormonth-Darling made her own representations to the Council, and I should also deal with these. She says that she had a resident's permit in respect of her own car (which was in the garage being repaired), and, at the relevant time, she had written to the Council for a temporary permit in respect of the courtesy car. However, she accepts that the courtesy car was parked in a residents' only bay without a valid permit. In accepting that, she accepts the contravention occurred, and the fact that she had applied for a temporary permit is a matter of mitigation only, which I cannot take into account. The matters raised by Mrs Stormonth-Darling consequently provide no ground of appeal before me, but only mitigation for the Council to take into account when considering whether or not to enforce the penalty. They will no doubt consider that mitigation carefully. However, in my view, if, having considered the matter, they do pursue the penalty, they are entitled to do so against the Appellant.

In these circumstances, I refuse this appeal.

17. Dowell Brothers Coachworks -v- The London Borough of Wandsworth (PAS Case No. 1970028154)

The Appellant is the same appellant as in the immediately preceding case, and it has submitted identical representations.

It loaned a Nissan Micra car registration mark N328XRB to a customer, Mr McKie, for the period 24 July to 6 August 1996. The papers do not say when the car was given over to the

customer on 24 July. On 24 July, at 4.16 pm, a PCN was issued to the vehicle for being parked in a meter bay with penalty time showing. The Appellant says (and I accept) that this was at a time after the customer had taken possession of the vehicle.

Save for one point, the facts of this case appear to me to be materially the same as in the previous case. However, in this case the car is not registered in the name of the Appellant, but in the name of Pendragon Contracts Limited. No particulars of the arrangement between Pendragon and the Appellant have been given, but it would seem that the former is a company involved in the long-term leasing or financing of vehicles. On this basis, for the reasons set out above in connection with the long-term lease cases of Autolease and BRS Car Lease, I find that, although the Council cannot rely upon the presumption in Section 82(3) of the 1991, prior to the loan of the car to Mr McKie, keepership of the car was with the Appellant: and, for the reasons set out in the immediately preceding case, that keepership was not transferred to Mr McKie by reason of the courtesy car arrangement between the Appellant and him.

In the circumstances, I also refuse this appeal.

18. Robert McDowell -v- The London Borough of Newham (PAS Case No. 1970026046)

On 6 November 1996, a PCN was issued to vehicle registration mark M895UMK, for being parked on a pedestrian crossing.

The Appellant, Mr McDowell, is the registered keeper of the vehicle. He is a director of Roding Coachworks Limited which runs a repair garage business and Mr McDowell says (and I accept) that the car is used solely as a courtesy car for the customers of the garage whilst cars are in the garage for repair. The Appellant says that it is a term of his doing work for policy holders with Royal Insurance that such a courtesy car is made available, and made available on terms which the insurance company dictate. He has lodged a copy of the form signed by Mr Browne, whom I understand had possession of the car on 6 November when his car was in the garage. The

form is short. It contains few of the particulars required by Schedule 2 to the 1975 Regulations, and it is clearly not a hiring agreement under the 1991 Act. Mr McDowell therefore cannot take advantage of the special hiring agreement arrangements in the Act or rely upon the ground in Paragraph 2(4)(e) of Schedule 6.

As I understand it, the car was in the possession of Mr Browne for only that day (6 November), or part of it. The Appellant's arrangement with Mr Browne was inherently temporary, and lacked any degree of permanence as required by the Wandsworth garages case for keepership to pass. On the basis of that case, Mr McDowell remained the keeper of the vehicle whilst it was in the possession of Mr Browne: the ground in Paragraph 2(4)(a)(ii) is consequently not open him.

The Appellant also relies upon a statement of liability in the agreement with Mr Browne, which reads:

> "During the time that the courtesy car is in my possession, I will be liable as if the owner of the car in respect of:
>
> (a) any fixed penalty offence that may be committed
>
> (b) any excess charge incurred under Sections 45 and 46 of [the 1984 Act]
>
> (c) any financial penalty or charge which may be demanded by any corporation, authority or person as a result of the courtesy car having been parked or left upon land which is not a public road
>
> (d) the cost of fuel or other consummables used, such as oil, etc"

It may be that none of these provisions covers parking penalties under the 1991 Act. However, even if such penalties were covered, a mere contractual indemnity could not affect the incidence of statutory liability.

I find that Mr McDowell cannot rely upon any of the statutory grounds to avoid liability, and I refuse appeal.

19. Mitre Coachworks Ltd -v- The London Borough of Hammersmith & Fulham (PAS Case No. 1970027504)

On 4 October 1996, a PCN was issued to vehicle registration mark N725GCA, for being parked in a bay displaying neither an appropriate permit nor a pay and display voucher.

The background circumstances are similar to those of the preceding courtesy car cases. The Appellant company is the registered keeper of the vehicle. It too operates a repair garage business, and has 70 cars which it makes available to its customers whilst damaged vehicles are being repaired. They say that that is a requirement of insurance companies.

On 3 October 1996, it loaned the car to a Miss Lucy Goodman, whilst her car was being repaired at the garage. She signed a "loan car indemnity" form which, whilst including some particulars required by Schedule 2 to the 1975 Regulations, did not include them all. It omitted the details of Miss Goodman's driving licence (although there was a field for these details) and it is unclear whether the end time and date are part of the agreement, or whether they were filled in at the time of the return of the car. The time by the end date ("10.55") suggests this was not part of the original document. If this was so, the agreement (for it was signed by both Miss Goodman and on behalf of the Appellant) does not appear to have been for a fixed period at all. In any event, for want of the prescribed particulars, it is not a hiring agreement as defined for the purposes of the 1991 Act. The Appellant therefore cannot take advantage of the special hiring agreement arrangements in the Act or rely upon the ground in Paragraph 2(4)(e) of Schedule 6.

The car appears to have been in the possession of Miss Goodman for only just under 2 weeks (3-15 October). Again, the arrangement between the Appellant and its customer was inherently temporary, and lacked any degree of permanence as required by the Wandsworth garages case for keepership to pass. On the basis of that case, the Appellant remained the keeper of the vehicle whilst it was in the possession of Miss Goodman: the ground in Paragraph 2(4)(a)(ii) is consequently not open to them.

This Appellant too purports to rely upon a statement of liability in the agreement, under the heading "User's Declaration", which reads:

> "I indemnify Mitre Coachworks against any fixed penalties, parking fines, other fines and related costs incurred with respect to the vehicle during the hire/loan period."

Even if this provision covered penalties under the 1991 Act, as I have already indicated, a mere contractual indemnity cannot affect the incidence of statutory liability.

I refuse the appeal.

20. Exposel Limited -v- The London Borough of Hammersmith & Fulham (PAS Case No. 1970066914)

The Appellant in this case is Exposel Limited which is, as I understand it, an associated company of Mitre Coachworks, the Appellant in the immediately preceding case.

The facts are not materially different from that case. Vehicle registration mark P213SEU is another courtesy car used by Mitre Coachworks. On 5 November 1996, it was given to Miss T Cohen, whilst her car was repaired. It was returned by her on 13 December 1996. This appeal concerns two PCNs that were issued to the vehicle during the period of loan: PCN No HF32067372 which was issued on 18 November for parking without either a valid permit or a pay and display voucher on display, and PCN No HF3108228A for the same alleged contravention. The agreement between Mitre Coachworks and Miss Cohen was in the same form as that between the company and Miss Goodman. No licence details were completed: and no expiry time or date for the period of hire was inserted. The indemnity was in identical terms to the other case.

The only difference in the facts appears to be that the registered keeper of the vehicle was not Mitre Coachworks, but a company called Hartwell Motor Contracts Limited. I have seen only a

maintenance contract between Hartwell and Exposel Limited (which I understand is an associated company of Mitre Coachworks): but that refers to a leasing agreement between a finance company and Exposel. On the evidence, it seems that the registered keeper is merely a long-term lessor of the car, as part of a finance arrangement in respect of it, and consequently it never kept the vehicle (alternatively, disposed of keepership, with the necessary degree of permanence, by virtue of the long-lease with the Appellant) so that it could rely on the ground in Paragraph 2(4)(a)(i) or (ii) of Schedule 6 for the reasons set out in the Autolease and BRS Car Lease cases above. In any event, I find that Exposel was keeping the vehicle immediately prior to the loan arrangement with Miss Cohen.

For the reasons given, I do not consider the Appellant can rely upon any ground to relieve itself of liability for either of these parking penalties. I refuse Exposel's appeal.

21. Perry Group plc -v- The London Borough of Hammersmith & Fulham (PAS Case No. 1970057888)

On 31 October 1996, a PCN was issued to vehicle registration mark N183XNH, for being parked in a pay and display bay after the expiry of paid for time.

This is another "courtesy car" case, and the background circumstances are similar to those of the other such cases before me. The Appellant company is the registered keeper of the vehicle. It operates a repair garage business and has 2000 cars which it makes available to its customers whilst damaged vehicles are being repaired. They say that their arrangements with customers are hiring agreements within the meaning of the 1991 Act. They also say that such an agreement does not require a specific cash consideration (with which I agree).

On 22 October 1996, it loaned the car to a Mrs J Wilson, whilst her car was being repaired at the garage. She signed a "courtesy car agreement" form, apparently in a standard form required by Nationwide Insurance, which, whilst including most particulars required by Schedule 2 to the 1975 Regulations, did not include them all. It omitted the details of Mrs Wilson's driving

licence and time and date of the expiry of the period of hire (although there were fields for these details) and there was no field for the hirer's date of birth. In the absence of details of the agreed expiry time, the agreement does not appear to be for a fixed period at all and consequently does not comply with Section 66(7) of the 1988 Act. It is clearly not a hiring agreement under the 1991 Act, in that it fails to include all of the particulars prescribed by Schedule 2 to the 1975 Regulations. The Appellant therefore cannot take advantage of the special hiring agreement arrangements in the Act or rely upon the ground in Paragraph 2(4)(e) of Schedule 6.

From the papers in the case, it is unclear how long Mrs Wilson in fact had possession of the car: but, as in previous courtesy cases, the arrangement between the Appellant and her was inherently temporary, and lacked any degree of permanence as required by the Wandsworth garages case for keepership to pass. The Appellant remained the keeper of the vehicle whilst it was in the possession of Mrs Wilson: and cannot rely upon the ground in Paragraph 2(4)(a)(ii).

As in earlier cases, the Appellant purports to rely upon a statement of liability in the agreement, under the heading "Conditions of Loan", which reads:

> "I will indemnify Nationwide against any fixed penalty, other fines or costs incurred with respect to the vehicle during the loan period and will allow Nationwide to disclose to any relevant authority my name and address in connection with my use of the vehicle."

Again, however, even if this provision covered parking penalties under the 1991 Act, a mere contractual indemnity cannot affect the incidence of statutory liability.

I refuse the appeal.

Footnote

At the hearing, it was clear that, whatever my decision in this case, some parties would wish at least to consider taking these issues further. I indicated at the hearing that a considerable number of cases in which authorities are considering representations, and Adjudicators are

considering appeals, concern vehicles the subject of vehicle hiring or loan arrangements. One Council has indicated that it has several hundred such cases a week. The parties who attended the hearing were helpful enough to confirm that 7 days should be sufficient for them to consider whether to seek a judicial review of any part of this decision. In the circumstances, I have asked the Clerk to ensure that no appeals concerning the points raised before me in these cases is listed before Monday 30 June. No doubt, if any party is considering taking any of the issues further, it will let the Clerk know prior to that date so that sensible steps can be taken in respect of pending appeals.

G R Hickinbottom

18 June 1997