

PARKING APPEALS SERVICE

JONATHAN DOUGLAS BAKER -and- THE LONDON BOROUGH OF WANDSWORTH

PAS CASE No. 1960175673

DAVID CARR -and- THE CORPORATION OF LONDON

PAS CASE No. 1960207612

**CHRISTINA MARY JABRI -and- THE ROYAL BOROUGH OF
KENSINGTON & CHELSEA**

PAS CASE No. 1960229637

DECISION

Introduction

These three cases concern paid parking, i.e. parking in a meter or pay and display bay. In each of the cases, the Appellant says that he or she made the required payment: but in each case the Respondent authority submits that, even if the required payment was made, the Appellants were nevertheless in contravention of the parking regulations.

It is said that Mr Baker and Mr Carr contravened the regulations, because their respective cars were parked in a pay and display bay without a valid voucher being displayed at the relevant time. Mr Baker accepts that, when the penalty charge notice or parking ticket ("PCN") was issued to his vehicle (which was an open-topped car), it was so parked: but he says that he purchased a voucher and affixed it to the windscreen, and the voucher was taken from the car after he had left the vehicle. Mr Carr too accepts that, when the PCN was issued to his vehicle, it was parked in a pay and display bay without displaying a valid pay and display voucher: but he says that, although he purchased a voucher and affixed it to the windscreen, the voucher dropped off - face down - on to the dashboard, after he had left the vehicle. Each Respondent authority says that, even if payment was made, Mr Baker and Mr Carr each committed a contravention of the parking regulations simply by being parked in a pay and display bay without displaying a valid voucher. They say that the reason why the voucher was not displayed at the time the PCN was issued is irrelevant: liability for the contravention is strict. Mr Baker and Mr Carr each say that they both paid and displayed at the time of parking, and cannot be liable in circumstances in which the voucher dropped off or was taken, which (they say) were events entirely beyond their control.

Mrs Jabri parked at a meter, and says she inserted £2. She says that that registered, and the meter showed paid-for time. She came back within that time, but the meter was by then showing out of order, and a PCN had been issued for being parked at an out of order meter. The Respondent authority are pursuing that penalty. They say that liability for this contravention is also strict: it does not matter if the meter went spontaneously out of order after Mrs Jabri had left the vehicle, and it does not matter that Mrs Jabri did not know that the meter was showing out of order at the time the PCN was issued. Mrs Jabri says that she paid for her time, and she cannot be liable for a penalty which arises out of a meter going spontaneously out of order whilst she was away.

In these cases, there are a number of factual issues that I will have to determine. But the issue of principle that I have to consider is, to what extent can vehicle owners be liable for penalties which, after they have properly paid for parking time, arise from matters entirely outside their control?

The Hearing

There was a hearing before me in respect of all of these cases on 30 June 1997, attended by Mr Stannard of the London Borough of Wandsworth ("Wandsworth"), Mrs Vincent-Merritt from the Corporation of London ("the City of London") and Mr Blake from the Royal Borough of Kensington & Chelsea ("Kensington & Chelsea") - I will call the three Respondents, collectively, "the Councils". None of the Appellants attended, although all put in written submissions, and Mr Baker attended an earlier hearing (on 31 January 1997) at which factual matters in his specific case were determined. I would like to thank the three Appellants and the Councils for their various submissions and comments.

The Powers of the Authorities

A. Introduction

Each of the Councils is a corporation, and is consequently subject to the doctrine of ultra vires. A local authority can only do those things in respect of which it has an express or implied authority, or which are incidental to the doing of those things. The Councils purport to derive their powers in these cases from Traffic Management Orders ("TMOs") made under various provisions of The Road Traffic Regulation Act 1984 ("the 1984 Act"). As a general principle, there is a presumption in most fields of activity that individuals will only be liable for their actions or omissions if they are at fault: and an authority can only make regulations under a primary statute making individuals liable in circumstances in which they are not at fault, where that primary Act unambiguously empowers the authority to do so. Bearing this in mind, does the 1984 Act give the Councils power to penalise an individual for a contravention of the regulations, where that individual was not at fault?

The relevant TMO in Mr Baker's case is The Wandsworth (Battersea Park) (Off Street Parking Places) (No 1) Order 1995 ("the Wandsworth Order"). That Order was made under Section 35 of the 1984 Act as amended, which makes provision for the use of off-street parking places. The relevant TMO in Mr Carr's case is The City of London (Parking Places) (No 5) Order 1994 ("the City of London Order"), and in Mrs Jabri's case it is The Kensington & Chelsea (Parking Places) (Medium Tariff) Order 1994, as amended by the Kensington & Chelsea (Parking Places) (Medium Tariff) (Amendment No.2) Order 1994 ("the Kensington & Chelsea Order"). These Orders were made under a number of sections of the 1984 Act. The relevant designating provisions are found in Section 45: and the relevant empowering

provision so far as the regulation of parking places is concerned is Section 46, which makes provision for the use of on-street parking places.

Part VI of Schedule 9 to the 1984 Act restricts the ability of Courts and tribunals to question some Orders made under the Act, but those provisions do not apply to Orders made pursuant to Section 35. I am therefore able to consider the vires or power of Wandsworth in purportedly passing the relevant provisions in the Wandsworth Order. However, Part VI of Schedule 9 does restrict the ability of any Court or tribunal to question the validity of provisions in an Order on the grounds that they do not fall within the powers of Section 46: such provisions can only be questioned within six weeks from the date on which the Order is made, and then only by application to the High Court (Paragraph 35 of Part VI of Schedule 9). Therefore, I am unable to question the vires or power of the City of London and Kensington & Chelsea to pass the relevant provisions in their respective Orders: but, nevertheless, I do consider below the provisions of Section 46, as these are of assistance in construing the City of London and Kensington & Chelsea Orders themselves.

B. Off-Street Parking

Section 35 gives a local authority the power to regulate off-street parking places in the following terms:

- "(1) As respects any parking place... provided by a local authority..., the local authority... may by Order make provision as to:
- (i) the use of the parking place, and in particular the vehicles or class of vehicles which may be entitled to use it,
 - (ii) the conditions on which it may be used,
 - (iii) the charges to be paid in connection with its use (where it is an off street one)...

and the power under paragraph (iii) to make provision as to the payment of charges shall include power to make provision requiring those charges, or any part of them, to be paid by means of the hire or purchase in advance, or the use, of parking devices in accordance with the Order...

- (2) ...

(3) An Order under subsection (1) above may provide for a specified apparatus or device to be used:

(a) as a means to indicate:

(i) the time at which a vehicle arrived at, and the time at which it ought to leave, a parking place, or one or other of those times, or

(ii) the charges paid or payable in respect of a vehicle in an off-street parking place; or

(b) as a means to collect any such charges,

and may make provision regulating the use of any such apparatus or device...

(3A) An Order under subsection (1) above may also provide:

(a) for regulating the issue, use and surrender of parking devices;

(b) for requiring vehicles to display parking devices when left in any parking place in respect of which the parking devices may be used;

(c) without prejudice to the generality of paragraph (b) above, for regulating the manner in which parking devices are to be displayed or operated;

(d) ...

(e) for treating:

(i) the indications given by a parking device, or

(ii) the display or the failure to display a parking device on or in any vehicle left in any parking place,

as evidence ... as such facts as may be provided by the Order ...

(3B) In this section and in Section 35A below, "parking device" means either a card, disc, token, meter, permit, stamp or other similar device ... which ... indicates, or causes to be indicated, the payment of a charge... [There are then detailed provisions for such "parking devices", which make clear that a pay and display voucher falls within the statutory definition.]

Section 35A of the 1984 Act makes contraventions of these provisions a criminal offence, in the following terms:

- "(1) In the event of any contravention of, or non-compliance with, a provision of an Order under Section 35(1) above, the person responsible shall be guilty of an offence.
- (2) A person who, with the intent to defraud:
- (a) interferes with any such apparatus or device ...
 - (b) ...
 - (c) displays a parking device otherwise than in the manner prescribed,
- shall be guilty of an offence.
- (3) An order under Section 35(1) above may include provision:
- (a) for determining the person responsible for any contravention of or non-compliance with the order;
 - (b) for treating:
 - (i) the indications given by any such apparatus or device as is mentioned in Section 35(3) above used in pursuance of the Order; or
 - (ii) the indications given by any such apparatus as is mentioned in Section 35(3A)(d) above used in pursuance of the Order, or any tickets issued by it, or the absence of any such ticket from a vehicle left in a parking place,
- as evidence ... of such facts and for such purposes as may be provided by the Order ...

Therefore, under the 1984 Act, a local authority may, by way of Order, require charges to be paid in connection with the use of an off-street parking place, and may also require vehicles to display a device such as a pay and display voucher and, indeed, may regulate "the manner in which [pay and display voucher] are to be displayed or operated. Section 35A - which, so far as London is concerned, has now been overtaken by the decriminalised scheme of The Road Traffic Act 1991 ("the 1991 Act") - made a contravention of these provisions a criminal offence.

Sections 35 and 35A of the 1984 Act are of particular importance with regard to the issues with which I am dealing. Section 35(3A)(b) envisages that authorities may make regulations which provide "for requiring vehicles to display [pay and display vouchers] *when left in any parking*

place in respect of which the [pay and display vouchers] may be used" (italics added). In Strong -v- Dawtry [1961] 1 All ER 926, the Divisional Court held that money "payable on the leaving of the vehicle in the parking place" meant that the payment had to be made as soon as the vehicle was placed in the parking space, because "the leaving of the vehicle" connoted the single act of putting the vehicle in the parking place. But the italicised words used in Section 35(3A)(b) are different from the wording used in Strong -v- Dawtry: the word "left" is used (which seems to me more naturally to have the connotation of something continuous), rather than "on the leaving of" (which more naturally has the connotation of a single act). In any event, in my view, Subsection 3A(b) cannot intend to empower authorities to regulate the display of a valid voucher only at the moment the vehicle is left in the parking space. This would mean that no contravention would occur if, for example, a voucher was put in a vehicle when it was left in a space but deliberately taken down by the driver a few minutes later. This cannot have been the intention of the legislature.

In my view the words in Subsection 3A(b) unambiguously enable an authority, by way of regulation, to make provision for the displaying of pay and display vouchers during the entire time a vehicle is left in a parking place, and Subsection (3A)(c) unambiguously enables the authority to provide for the manner in which the pay and display voucher is to be displayed during that entire time. And, if such provisions have been made by an authority, prior to the 1991 Act, Section 35A made a contravention of them a criminal offence.

B. On-Street Parking

I now turn to the cases of Mr Carr and Mrs Jabri, which both concern on-street parking. The City of London Order and the Kensington & Chelsea Order were both made under a number of sections of the 1984 Act, the relevant empowering provision so far as the regulation of parking places being Section 46(2), which provides:

"The authority by whom a designation order is made may ... by Order make such provision as may appear to that authority to be necessary or expedient for regulating or restricting the use of any parking place designated by the order, or otherwise for or in connection with the operation of such a parking place, and in particular (but without prejudice to the generality of the foregoing words) provision for... "

There then follows a list of eleven specific areas in respect of which regulations can be made,

including the manner in which payment can be made. Paragraph (b) covers:

"...treating the indications given by a parking meter or any ticket issued by it, or the absence of any such ticket from a vehicle let in a parking place, as evidence... of such facts as may be provided by the Order."

That means that the authority can provide by way of regulation (e.g.) that the information printed on a pay and display voucher can be treated as evidence of the payment required to be made. None of the other specific provisions of Section 46 appears to be relevant to these cases.

Does Section 46 give an authority the power to provide by regulation for the display of a pay and display voucher (and for the manner of display), and for the forbidding of parking at any time at a meter when that meter is showing out of order, so that, irrespective of fault, the person concerned may be liable for a criminal penalty?

As none of the specific provisions appears to be relevant, the Councils are forced to rely upon the general words of Section 46. Section 46 is not, of course, as specific in its enabling provisions as Section 35. However, certainly with regard to the display of a pay and display voucher, there can be no reason of public policy as to why such regulations ought not to be made in respect of on-street parking: because, as I have indicated above, such regulations can clearly be made in respect of off-street parking pursuant to Section 35, and there is no difference in principle between off- and on-street parking in this regard. Further, all of the Councils who appeared in these cases said that strict liability was essential for the proper regulation of the use of pay and display parking places, because of the ease with which the regulations can potentially be abused: it is very easy for a person who receives a PCN for failing to pay and display a voucher to say, after the event, that payment was made and then to produce a voucher which may or may not have been purchased at that time for that vehicle. Each of the Councils said that, in many cases, it would be impossible for them to determine whether the owner was telling the truth: and that is why, the Councils said, it was important to have strict liability for this contravention. Without such strict liability the proper regulation of the use of such places would be impossible, in practice. I consider these submissions are compelling.

In my view, regulations concerning the display of pay and display vouchers throughout the

period of parking do fall within the general enabling provisions of Section 46, i.e. because they do properly "appear to [the] authority to be necessary or expedient for regulating or restricting the use of any parking place designated by the order".

I consider the position with regard to parking at out of order meters far more difficult. Because of my view on the construction of the relevant provisions in the Kensington & Chelsea Order (i.e. they do not make liability for parking at an out of order meter strict: see below), it is unnecessary for me to decide whether Section 46 empowers an authority to make regulations which make it a contravention to be parked in a meter bay when the meter shows out of order, even if the meter goes spontaneously out of order after proper payment has been made and after the driver has gone away from the vehicle. Whether an authority has powers under the primary legislation to make such regulations was not a point argued before me by Kensington & Chelsea and the other Councils in this case, and, in the absence of full argument, it would be wrong for me to give any firm view: particularly as the power of Kensington & Chelsea to make the relevant provisions cannot be questioned before me (because of Part VI of Schedule 9 to the 1984 Act: see above). However, I think it is only right that I express some doubt as to authorities' powers in this regard. That doubt derives from the following.

First, the Councils did not say with one voice - as they did on the issue of displaying pay and display vouchers throughout the period of parking - that the proper regulation of the use of meter bays would be impossible in practice, if it were not a contravention to park at a bay where the meter shows out of order irrespective of the circumstances in which the meter shows that message. Indeed, Mr Stannard said that one is able to park at an out of order meter in Wandsworth, and certainly the Wandsworth Order does not forbid parking at an out of order meter. In the circumstances, it seems to me to be impossible for a Council to say that such a regulation is *necessary* for the proper regulation of parking at a meter bay: at most they can only say that it is *expedient*.

Second, Kensington & Chelsea submitted that, if owners could say that a meter went out of order spontaneously after they had paid and gone away from the vehicle, this would be an easy excuse for people to use when parked at an out of order meter. The Council may consequently lose revenue. However, it must be remembered that the 1984 Act - as its title suggests - concerns traffic management. The purpose of Section 46 is the proper governance of parking, and not revenue collection for local authorities (although the collection

of revenue may be a *consequence* of the Act) R-v- The London Borough of Camden ex parte Cran [1995] RTR 346. The mere fact that a Council may lose some revenue - and the amount of revenue to be lost by an inability to pursue owners of vehicles parked at an out of order meter, who can show that the meter went out of order after they had paid and left the vehicle, must be very small indeed - is not a compelling matter when construing the relevant statutory provisions. It is not entirely obvious that a provision penalising the owner of a car which is parked lawfully at a meter - which then goes spontaneously out of order whilst he is away - is "necessary or expedient for regulating or restricting the use of [a] parking place."

Third, for the reasons set out below, I consider that the relevant provisions in the Kensington & Chelsea Order clearly do not make an owner strictly liable for parking at a meter showing out of order. I note that the wording of the City of London Order (although not directly relevant in these cases) is identical. I am aware of the potential for circularity of argument when looking at subsidiary legislation, when construing the primary statute: but it is at least noteworthy that the wording of the relevant provisions in the regulations, in my view, does not attempt to make liability absolute.

These are no more than reasons for doubt as to authorities' powers to make such regulations, expressed without hearing argument, in proceedings in which Kensington & Chelsea's ability to make the relevant provisions in the Order cannot properly be questioned. But I express them here so that it is not thought, merely because I have decided Mrs Jabri's case on the basis of the construction of the Kensington & Chelsea Order, that I necessarily accept that the 1984 Act does empower an authority to make regulations making parking at an out of order meter an absolute contravention.

In any event, so far as sanctions under the 1984 Act are concerned, Section 47 made it a criminal offence to contravene any provision of an Order relating to a parking place, including Orders made under Section 46.

D. The Road Traffic Act 1991

The 1991 Act does not affect the powers of a local authority to regulate parking places - those are still governed by Sections 35 and 46 of the 1984 Act - but it does affect the sanction in the event of a contravention. A contravention is no longer criminal, but subject to a penalty charge, which is enforceable by a purely civil procedure. Section 66(2) of the 1991 Act provides:

"For the purposes of this part of this Act, a penalty charge is payable with respect to a vehicle, by the owner of a vehicle, if:

- (a) the vehicle has been left:
 - (i) otherwise than as authorised by or under any Order relating to the designating parking place; or
 - (ii) beyond the period of parking which has been paid for;
- (b) no parking charge payable with respect to the vehicle has been paid;
- (c) there has, with respect to the vehicle, been a contravention of, or failure to comply with, any provision made by or under any order relating to the designated parking place."

This is a relatively short provision. In my view, it does not affect at all the scope of the powers of authorities to make regulations under Sections 35 and 46 of the 1984 Act. I consider it does no more and no less than change the sanction for a contravention of those regulations. Therefore, where a contravention of regulations as to the manner of displaying a pay and display voucher made under Section 35 or Section 46 was a criminal offence, it is now merely subject to a civil penalty, enforceable ultimately through the County Court.

E. Conclusion

For the reasons set out above, I consider it is open to a local authority to make regulations which require a pay and display voucher to be displayed throughout the period a vehicle is parked in a pay and display bay, a contravention of which (where the 1991 Act applies, which it does throughout all of the 33 London boroughs) makes the owner liable for a penalty, irrespective of fault. As I said at the outset of this Decision, that is a construction of the relevant statutory provisions which could only properly be made if the provisions were clear. In

my view, they are.

Liability without fault is, in any event, to a certain extent inherent in the scheme of the 1991 Act. A general principle of the Act is "owner liability", i.e. the owner of a vehicle is liable for contravention of parking regulations irrespective of who was in charge of the vehicle at the relevant time. Therefore, the owner of a vehicle may well be liable in circumstances in which he is not at fault, and even where he does not know about a contravention at all. The principle of owner liability was emphasised in by the Court of Appeal in R -v- The London Borough of Wandsworth ex parte The Parking Adjudicator QBCOF 96/1153/D, in which the Court held that the registered keeper of a vehicle remains liable for parking penalties when his vehicle is in charge of a garage being repaired and the garage park the vehicle in contravention of the regulations, even if the registered keeper is unable to move the vehicle because (e.g.) of a workman's lien in favour of the garage. In that case the Court - and the Divisional Court below (CO/199/96) - recognised that the scheme involved a balance between administrative practicality on the one hand, and fairness on the other, and, in some cases, the former overrides the latter. In my view, those cases will be rare, and the conclusion that fairness is overridden will only be reached with care and hesitation: but, on my view of the relevant statutory provisions, the pay and display voucher cases now before me fall within that category.

The Individual Cases

I now turn to the individual cases before me. In each of them, I need to make findings of fact, and also whether what did happen contravened the relevant TMO. That will require consideration of the proper construction of the TMOs.

A. Jonathan Douglas Baker -v- The London Borough of Wandsworth (PAS Case No 1960175673)

Mr Baker owns a cabriolet registration mark FCP801S. On 7 June 1996, he parked it in Battersea Park Car Park, with the top of the car down. He says that he purchased a pay and display voucher and, as the note indicated on the back of the voucher, he stuck it to the front windscreen of his open car. He returned, within the time purchased, to find the voucher had

gone, but a PCN was attached to the outside of his windscreen, timed at 4.48 pm, with the alleged contravention being, "Parked in a pay and display or voucher car park without paying the relevant charge and clearly displaying the pay and display ticket or voucher." On the evidence, I am satisfied that Mr Baker did indeed pay the relevant charge, and that he did display the voucher properly on his windscreen prior to going away from the car. But I also find - and Mr Baker himself does not contest the point - that, by 4.48 pm, the voucher had gone - perhaps taken by someone else to avoid payment, or by children - and that, when the Parking Attendant issued the PCN at that time, no valid voucher was being displayed. The London Borough of Wandsworth say that, without such a valid voucher, the car was parked in contravention of the regulations at 4.48 pm, and they have indicated that they wish to pursue Mr Baker, despite my findings of fact with regard to his initial payment and initial display of the voucher.

The Wandsworth (Battersea Park) (Off-Street Parking Places) (No.1) Order 1994, so far as relevant, provide, under the heading "Payment of parking charge":

- "19. The driver of a vehicle using a parking place during the charging hours shall, on entering the parking place, pay the appropriate charges ...
20. The charge referred to in Article 19 shall be payable by the insertion in a ticket parking machine relating to that parking place of a coin or coins of the appropriate denomination ...
21. Upon payment of the parking charge the driver shall display, at all times during which the vehicle is left, the ticket issued by the ticket parking machine upon payment of the parking charge, indicating that a charge has been paid, the date of issue and the time the parking period will expire.
22. The driver of the vehicle shall attach the ticket to the vehicle in respect of which it was issued in a conspicuous position so that all the particulars on the ticket are clearly visible from the outside of the vehicle.
23. Any ticket purchased in accordance with the foregoing provisions is not transferable between one vehicle and another and may only be used in the parking place in which it was issued.
24. ...
27. If a vehicle is left in the parking place during the charging hours ... without displaying a valid ticket in accordance with Article 21 ... a penalty charge shall be payable in respect of that vehicle in each

occurrence."

29. The amount of the penalty charge referred to in Article 27 .. shall be £40 (reduced to £20 is paid within 14 days)."

It seems to me that the provisions of this Order - in requiring payment for the use of the parking place, by regulating the use of pay and display vouchers and requiring vehicles to display pay and display vouchers when left in any parking place in respect of which the voucher may be used - clearly fall within the scope of Section 35 of the 1984 Act, and it was within the powers of the Council to make them.

Particularly, Article 21 of the Regulations imposes an obligation upon a driver to ensure that a valid pay and display voucher is displayed in a vehicle, throughout the period that the vehicle remains in a relevant bay. Because of the use of the phrase "at all times", Article 21 clearly regulates the entire period a vehicle remains in a relevant bay.

Therefore, although not at fault in any way, Mr Baker was in contravention of the relevant regulations. Of course, the authority could, in its discretion, not pursue the penalty against him. However, if they wish to do so, I do not consider there is anything to prevent them.

Mr Baker says - rightly - that not only is he blameless in this matter, but in fact he did everything he was told to do. He says (and I accept) that he paid for his parking time by purchasing a pay and display voucher, and that he displayed the voucher on his windscreen as required by the regulation. Indeed, the back of the voucher indicated that he should take off the back and use it to stick the substantive voucher to his windscreen, which he did. It is true that there was no explicit sign that, to be parked at any time without a voucher displayed is a contravention of the regulations for which a penalty would be due: but it is not every requirement of the regulations that needs to be brought to the specific attention of a motorist by way of a sign or notice. There is certainly no express provision in any regulations of which I am aware that specifically requires a sign in relation to this requirement. I do not consider any of the signs or instructions that were given to be misleading, and none amounts to good reason to prevent Wandsworth from pursuing the penalty.

Therefore, again not without some hesitation (bearing in mind Mr Baker is entirely faultless, on my findings of fact), I do not consider there is any factor that can properly deprive Wandsworth

of their right to pursue Mr Baker for the full penalty. Whether they in fact do so, is of course a matter for them.

For the reasons set out above, I refuse Mr Baker's appeal.

B. David Carr -v- The Corporation of London (PAS Case No 1960207612)

On 27 August 1996, Mr Carr parked his vehicle registration mark N8860CN at a pay and display bay in Finsbury Circus. He says that he purchased a pay and display voucher, which he affixed to the front windscreen, as required by the instructions of the back of the voucher. However, on his return (within the time purchased), he saw that the voucher had come off the windscreen and was lying on the dashboard upside down, so that the details of the voucher could not be seen. He also found a PCN under his windscreen wiper, which had been issued at 11.32am for the alleged contravention of being parked without clearly displaying a valid pay and display voucher.

Having considered all of the evidence, I accept Mr Carr's version of events.

Nevertheless, although I accept that Mr Carr was issued with a PCN during the period of parking time purchased by Mr Carr, the City of London say that Mr Carr was still contravening the regulations, for failing to display a valid pay and display voucher at the time of the issue of the PCN.

The place in Finsbury Circus where Mr Carr was parked is covered by Schedule 3 to the City of London Order. The Order provides:

- "8. ... [T]he parking charge shall be payable on the leaving of the vehicle:
- (1) ...
 - (2) In the case of a parking place referred to in Schedule 3, by the insertion in the coin slot in a ticket parking meter relating to that parking place of coins...
 - (3) ...

- (4) Upon payment of the parking charge for a vehicle left in a parking place referred to in Schedule 3..., the driver thereof shall display or cause to be displayed on the vehicle, in accordance with the provisions of the next following paragraph, the ticket issued by the ticket parking meter on payment of the parking charge in accordance with the provisions of Paragraph (2) ... of this Article.
 - (5) The ticket referred to in the last preceding paragraph shall be displayed on the vehicle in respect of which it is was issued at all times during which the vehicle is left during the permitted hours in the parking place in windscreen of the vehicle so that all of the particulars on that side of the ticket which bears the indication that a parking charge has been paid are readily visible from the front or nearside of the vehicle...
9.
 - (1) If a vehicle is left in the parking place during the permitted hours for longer than the period for which payment was made by the parking charge, or if a vehicle is left in a parking place during the permitted hours otherwise than in accordance with the provisions of this order, a penalty charge shall be payable;
 - (2) A [PCN] showing the information required by [The 1991 Act] may then be issued by a parking attendant in accordance with the requirements of that act...
16.
 - (1) ...
 - (2) Payment of the parking charge for a vehicle left in a parking place referred to in Schedule 3 shall be indicated by a ticket parking meter relating to that parking place of a ticket indicating that a parking charge ... has been paid, and the day and time by which the period for which payment was made by the parking charge will expire, and by the display of that ticket in the manner specified in Article 8(5)...
17.
 - (4) If at any time while a vehicle is left in a parking place referred to in Schedule 3 ... during the permitted hours and no ticket issued by ticket parking meter relating to that parking place is displayed on the vehicle in accordance with the provisions of Article 8(5) it shall be presumed unless the contrary is proved that the parking charge has not been duly paid.
 - (5) If at any time while the vehicle is left in a parking place referred to in Schedule 3 ... during the permitted hours, the ticket issued by the ticket parking meter relating to that parking place and displayed on the vehicle in accordance with the provisions of Article 8(5) ...:
 - (a) It shall be presumed unless the contrary be proved that the parking charge has been duly paid in respect of that

vehicle, and that the period for which payment was made by the parking charge has already expired, and a penalty charge has been incurred;

- (b) That indication shall in any proceedings for an offence under Section 66 of The Road Traffic Act 1991 of leaving a vehicle in the parking place for a period longer than that for which payment was made by the parking charge, the evidence that a penalty charge was incurred."

Article 8(5), in words reminiscent of Section 35 of the 1984 Act, requires the display of a valid pay and display voucher throughout the period a vehicle is in a pay and display bay. In my view, Mr Carr was in contravention of that provision.

Article 17(4) is an evidential provision, under which, if no pay and display voucher is being displayed, there is a presumption that the relevant payment for time has not been made. However, that presumption only relates to the provisions requiring payment, and not the (entirely separate) provisions requiring display of a voucher. For example, if a motorist found a pay and display voucher on the floor of a car park, with unexpired time showing, and he put that voucher into his windscreen, before the expiry of the time shown on the voucher, he would not be in breach of the requirements to display a valid ticket. However, he would be in breach of the requirement of Article 8(2) to make the initial payment. By displaying the valid voucher, there is a presumption that he has paid: but it would be open to the Council under Article 17(4) to disprove that presumption, for example by adducing evidence that he picked up from the floor and used someone else's voucher. Therefore, Article 17(4) does have some substance even if liability under Article (4) and (5) is strict: and it does not therefore compel one to the view that the display provisions in Article 8(4) and (5) relate only to the time when the person in charge of the vehicle went away from the vehicle. The provisions of Article 17 do not, in my view, relate to the display requirements at all.

Therefore, as with Mr Baker, although not at fault in any way, Mr Carr was in contravention of the relevant regulations, and if the City of London wished to pursue the penalty against him, there is nothing to prevent them. Whether they in fact do so, is a matter for their discretion.

For the reasons set out above, I refuse Mr Carr's appeal.

C. Christina Mary Jabri -v- The Royal Borough of Kensington & Chelsea (PAS Case No. 1960229637)

On 14 February 1996, Mrs Jabri parked at a meter bay in Priory Walk. She says that the meter already registered about 1 hour of time, and she added money to the meter so that it registered 2 hours time. She says she returned about 1 hour 40 minutes later, when the meter showed "out of order". In the meantime, a PCN had been issued to her vehicle, on the ground that the vehicle was parked at an out of order meter during controlled hours.

I accept Mrs Jabri's version of events. In particular, I find as a matter of fact, that, at the time the PCN was issued to her vehicle, Mrs Jabri did not know that the meter showed "out of order" nor could she reasonably have been expected to know. But I do accept that, at the time the parking attendant issued the PCN, the meter was in fact showing out of order.

The parking space was governed by the Kensington & Chelsea Order. By Article 7 of the Order, a charge is payable on the leaving of a vehicle in a meter bay. Article 13(3) provides:

"No person shall cause or permit a vehicle to wait in a parking bay in a parking place ... during the permitted hours if on arriving at a parking bay or if on leaving the vehicle or at any time thereafter the words "out of order" appear on the display on the parking meter relating to that parking bay or if there is over the parking meter a notice placed by a Parking Attendant or a Police Constable in uniform indicating that the meter is out of order..."

The words "cause" and "permit" are capable of more than one meaning. Sometimes, where a statute makes it an offence to "cause or permit" the contravention, an offence of absolute liability without proof of mens rea has been held to be created: in other cases, such words have been held to require proof of mens rea in knowledge of the facts rendering the action unlawful. Therefore, when a company was summoned for "causing" one of its vehicles to be used on a road with excess rear axle weight, those responsible for the direction of the companies' affairs were held not to be liable because, although they knew of the use of the vehicle on the road, they did not know of the facts rendering the user unlawful, i.e. they did not know of the overloading of the vehicle (Ross Hillman Limited -v- Bond [1974] RTR 279. Cases in which proof of mens rea has been required - and those in which it has not - are set out in Wilkinson's Road Traffic Offences, 17th Edition, Paragraphs 1.210-1.218, which text was

considered at the hearing.

It is not necessary for me to go through those cases in any detail, because the true construction of Article 13(3) is made clear by the provisions of Article 14(3), which provides:

"If at any time during the permitted hours a vehicle is left in a parking place ... while the parking meter relating to the parking bay in which the vehicle is left gives the indication mentioned in Article 13(3) [i.e. "out of order"], that indication shall in any proceedings under Section 66 of The Road Traffic Act 1991 of contravening the provisions of that Article shall (sic) be evidence that those provisions were so contravened."

This provision would be otiose if it were an absolute offence to park at a meter showing "out of order", and as a tenet of construction it is to be assumed that the legislation intended a provision to have some effect. This provision only has substance if a contravention of Article 13(3) requires some mental element on the part of the relevant person, Article 14(3) in effect putting the burden of proof upon the relevant person to show that he or she did not know that the meter was showing out of order at the relevant time.

Therefore, in my view, on the proper construction of Article 13(3), some knowledge of the unlawfulness of the parking must be shown, i.e. there must be some knowledge by a relevant person at the relevant time (i.e. at the time of issue of the PCN) that the meter was stating out of order. That can consist not only of actual knowledge, but of course also of constructive knowledge in the sense that the person concerned wilfully shuts his or her eyes to the obvious or deliberately refrained from making proper enquiry.

In this case, Mrs Jabri was clearly the relevant person, and I have found that she had no knowledge -actual or constructive - that the meter was showing out of order at the time the PCN was issued, and indeed, she had every reason to believe that, at that time, the meter was showing time in hand. Therefore, she did not "cause or permit" her vehicle to wait in a parking bay whilst the words "out of order" were on the meter display: and, consequently, she did not contravene the provisions of Article 13(3).

In the circumstances, I allow this appeal and direct the Council to cancel the PCN and NTO.

Footnote

Parking a vehicle is something which many people do, many times a day. It is part of everyday life. Simplicity is the intended hallmark of the scheme for parking regulation, in the 1984 and 1991 Acts. However, as illustrated by these cases, the wording of the relevant TMOs is, in places, difficult to construe: and the TMOs for the various authorities are substantially different in both substance and form. It is my task only to construe the TMOs that come before me, as a Parking Adjudicator. However, I think it would be remiss of me not to comment upon the problems that will inevitably arise from TMOs that are less than abundantly clear, and disparate across local authority boundaries. Whilst there are disparate and convoluted TMOs, arguments concerning the proper construction of individual provisions can only proliferate. Whilst I well appreciate that each Council will have its own parking regulation problems - which may well need to be addressed in different ways - it may be that they will wish to consider the wisdom of having significantly diverse provisions.

G R Hickinbottom
4 July 1997