

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
THE ADMINISTRATIVE COURT

Royal Courts of Justice
Strand
London WC2
2nd August 2006

Before:

MR JUSTICE JACKSON

**THE QUEEN ON THE APPLICATION OF THE
LONDON BOROUGH OF BARNET COUNCIL (CLAIMANT)**

- v -

THE tPARKING ADJUDICATORt (DEFENDANT)

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(Official Shorthand Writers to the Court)

MR M LEWIS AND MISS X MONTES -MANZANO (instructed by LB Barnet) appeared on behalf of the
CLAIMANT
MR I ROGERS (instructed by Head of tParkingt & Traffic Appeals Service) appeared on behalf of the
DEFENDANT

HTML VERSION OF JUDGMENT

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1. MR JUSTICE JACKSON: This judgment is in six parts, namely:

Part 1. Introduction

Part 2. The Facts

Part 3. The Present Proceedings

Part 4. The Date of the Notice

Part 5. The Effect of the Extra Day

Part 6. Conclusion

Part 1. Introduction

2. This is a case about two **parking** tickets. The claimant in these proceedings is the Council of the London Borough of Barnet, to which I shall refer as "Barnet". The defendant in these proceedings is the **Parking Adjudicator** who issued a written decision dated 6th March 2006. Mr Hugh Moses is the motorist to whom the two **parking** tickets the subject of this action relate. Mr Moses is identified in these proceedings as an interested party.

3. The correct name for what is commonly called a **parking** ticket is "Penalty Charge Notice". This is generally abbreviated to "PCN". I shall adopt that abbreviation.

4. I must now outline the statutory framework within which this litigation arises. For many years, the contravention of **parking** controls was a criminal offence prosecuted in the Magistrates' Courts. The Road Traffic Act 1991 (to which I shall refer as the "1991 Act") introduced a new scheme for the civil enforcement of **parking** controls. Under the new scheme, the enforcement of **parking** controls is carried out by local authorities. A range of financial penalties are payable for the contravention of **parking** controls. Under this scheme, the owner of the vehicle rather than the driver is liable for the penalty, subject to certain exceptions.

5. Section 66 of the 1991 Act is headed "**Parking** penalties in London" and it provides as follows:

"(1) Where, in the case of a stationary vehicle in a designated **parking** place, a **parking** attendant has reason to believe that a penalty charge is payable with respect to the vehicle, he may - -

(a) fix a penalty charge notice to the vehicle; or

(b) give such a notice to the person appearing to him to be in charge of the vehicle.

(2) For the purposes of this part of this Act, a penalty charge is payable with respect to a vehicle by the owner of the vehicle if - -

(a) the vehicle has been left - -

(i) otherwise than as authorised by or under any order relating to the designated **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;

or

(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.

(3) A penalty charge notice must state - -

(a) the grounds on which the ~~parking~~ attendant believes that a penalty charge is payable with respect to the vehicle;

(b) the amount of the penalty charge which is payable;

(c) that the penalty charge must be paid before the end of the period of 28 days beginning with the date of the notice;

(d) that if the penalty charge is paid before the end of the period of 14 days beginning with the date of the notice, the amount of the penalty charge will be reduced by the specified proportion;

(e) that, if the penalty charge is not paid before the end of the 28 day period, a notice to owner may be served by the London authority on the person appearing to them to be the owner of the vehicle;

(f) the address to which payment of the penalty charge must be sent.

(4) In subsection (3)(d) above "specified proportion" means such proportion applicable to all cases, as may be determined by the London authorities acting through the Joint Committee . . .

(7) Schedule 6 to this Act shall have effect with respect to penalty charges, notices to owners and other matters supplementing the provisions of this section."

6. In this judgment I shall use the term "serve" as a compendious term to embrace the two alternative methods of delivering a PCN set out in section 66(1) of the 1991 Act.

7. Schedule 6 to the 1991 Act provides:

"1(1) Where - -

(a) a penalty charge notice has been issued with respect to a vehicle under section 66 of this Act; and

(b) the period of 28 days for payment of the penalty charge has expired without that charge being paid,

the London authority concerned may serve a notice ("a notice to owner") on the person who appears to them to have been the owner of the vehicle when the alleged contravention occurred . . .

2(1) Where it appears to the recipient that one or other of the grounds mentioned in subparagraph (4) below are satisfied, he may make representations to that effect to the London authority who served the notice on him.

(2) Any representations under this paragraph must be made in such form as may be specified by the London authorities, acting through the Joint Committee.

(3) The authority may disregard any such representations which are received by them after the end of the period of 28 days beginning with the date on which the notice was served.

(4) The grounds are - -

(a) that the recipient - -

(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;

(b) that the alleged contravention did not occur;

(c) that the vehicle had been permitted to remain at rest in the **parking** place by a person who was in control of the vehicle without the consent of the owner;

(d) that the relevant designation order is invalid;

(e) that the recipient 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 penalty charge notice fixed to the vehicle during the currency of the hiring agreement;

(f) that the penalty charge exceeded the amount applicable in the circumstances of the case . . .

(7) It shall be the duty of an authority to whom representations are duly made under this paragraph - -

(a) to consider them and any supporting evidence which the person making them provides; and

(b) to serve on that person notice of their decision as to whether they accept that the ground in question has been established."

8. Paragraph 5 of Schedule 6 to the 1991 Act enables the vehicle owner to appeal against an adverse decision to a **Parking Adjudicator**. Any reference in this judgment to "**Adjudicator**" is a reference to a **Parking Adjudicator**.
9. The Road Traffic (**Parking** Adjudicators) (London) Regulations 2003 provide for appeals to be brought against the decisions of **Parking** Adjudicators. An appeal may take the form of a review on paper, or it may be dealt with at a hearing if either party so requests. The person hearing the appeal will be another **Parking Adjudicator** of equal status to the first **Adjudicator**.
10. As can be seen from section 66 of the 1991 Act and from Schedule 6 to that Act, the scheme as originally established related only to London. However, the scheme has subsequently been extended to a number of other areas around the country. By way of example, the Road Traffic (Permitted **Parking** Area and Special **Parking** Area) (Metropolitan Borough of Bury) Order 2002 provides that section 66 of the 1991 Act and Schedule 6 to that Act should apply, subject to certain modifications, to the Metropolitan Borough of Bury.
11. The London Local Authorities Act 2000 (to which I shall refer as "the 2000 Act") contains provisions which amplify the scheme for civil enforcement of **parking** controls. Section 4 of the 2000 Act provides that where a contravention of **parking** control is detected by camera, a PCN may be served by post on the relevant vehicle owner within 28 days of the contravention. Section 5 of the 2000

Act provides that in a situation where a **parking** attendant is prevented from issuing a PCN, then a PCN in relation to that contravention may be served by post on the vehicle owner within 28 days.

12. Having outlined the statutory framework, I must now turn to the facts of the present case.

Part 2. The Facts

13. On the morning of 31st March 2005, Mr Moses parked his Mercedes car in a residents' **parking** space at Woodville Road in Barnet. A **parking** attendant observed the vehicle and issued a PCN which read as follows:

"PENALTY CHARGE NOTICE
Road Traffic Act 1991 (AS AMENDED)

Number: BA25117544 VRM: Y562OLF

Make: Mercedes

Contravention believed committed: 15.

Parked in a Residents' **parking** space without clearly displaying a valid Residents' **parking** permit.

Street: WOODVILLE ROAD (BX).

Date: 31/03/05.

Time: 11.27.

A PENALTY CHARGE OF £80 IS DUE WITHIN 28 DAYS OF ISSUE.

£40 will be accepted in full and final settlement if received within 14 days of the date of this notice.

Parking Attendant No: 201."

There is then a line of perforations, below which there is a slip reading as follows:

"Number: BA25117544

Date of offence: 31/03/05

Total charge fee: 80.00

Discount if paid within 14 days: 40.00

Payment enclosed

A receipt will not be issued unless requested and a stamped addressed envelope is provided."

On the back of the PCN there are various pieces of information provided, including the address to which payment should be sent, and the following piece of information:

"If the discounted payment is not received within 14 days, and full payment is not made within 28 days the registered keeper or the person who the borough believes to be the owner of the vehicle may receive a Notice to Owner asking for payment."

The **parking** attendant either fixed the notice to the vehicle or handed it to Mr Moses. On the

evidence, it is unclear which method of service was employed.

14. A little while later, Mr Moses drove to Golders Green Road and parked his car there. His car attracted the attention of a different **parking** attendant who issued a PCN which read as follows:

"PENALTY CHARGE NOTICE
Road Traffic Act 1991 (AS AMENDED)

Number: BA 30078011 VRM: Y562OLF

Make: Mercedes.

Contravention believed committed: 01

Parked in a restricted street during prescribed hours.

Street: GOLDERS GREEN ROAD (BX)

Date: 31/03/05

Time 12:05

A PENALTY CHARGE OF £80 IS DUE WITHIN 28 DAYS OF ISSUE.

£40.00 will be accepted in full and final settlement if received within 14 days of this notice.

parking Attendant No: 230."

There was then a perforated line. Below that is a tear -off slip reading:

"Number: BA30078011

Date of offence: 31/03/05

Total charge/fee: 80.00

Discount if paid within 14 days: 40.00."

On the back of the PCN there is the same information as was given on the other PCN.

15. The **parking** attendant attempted to serve the PCN, but it is now accepted that Mr Moses successfully drove away before service was achieved.
16. Mr Moses did not pay within 28 days the penalty charge which had been demanded in either of the PCNs. Accordingly, Barnet sent a notice to owner in respect of each PCN to Mr Moses in accordance with paragraph 1 of Schedule 6 to the 1991 Act. Mr Moses made representations to Barnet, pursuant to paragraph 2 of Schedule 6, in respect of each of the two incidents. Unfortunately, those representations have not been put in evidence. So I cannot enumerate the points taken by Mr Moses in those representations. Suffice it to say that the representations did not find favour with Barnet. Barnet decided that the grounds relied upon by Mr Moses had not been established.
17. Mr Moses appealed against Barnet's two adverse decisions to a **Parking Adjudicator**, pursuant to paragraph 5 of Schedule 6 to the 1991 Act. Mr Moses' two notices of appeal have not been put in evidence and so I can only speculate about what they said.
18. Mr Moses' two appeals were heard together by Mr Timothy Thorne, a **Parking Adjudicator**, on a date which is not revealed by the bundle. Mr Moses was represented by Mr Barry Segal at the hearing. Mr Moses gave oral evidence in support of the two appeals, and he also put in written evidence. Barnet submitted written evidence but was not represented at the hearing of the appeals.

19. Mr Thorne, having considered the oral and written evidence, allowed both appeals in two written decisions dated 18th February 2006. Mr Thorne's reasons in respect of the first appeal read as follows:

"After hearing oral evidence from Mr Moses I am satisfied that he is an honest and reliable witness. I accept that when he parked his vehicle in the residents' bay he properly displayed a valid visitor's permit and that such permit was properly displayed at the time the PCN was issued. He supplied me with the original permit and his evidence was corroborated by the written statement of Mrs Anne Kramer. I therefore conclude that the respondent has failed to prove on a balance of probabilities that the alleged contravention occurred and I therefore allow the appeal on the merits of the case.

In addition, it was submitted by Mr Segal that the PCN was invalid in any event as it did not contain the date of issue. He argued therefore that the PCN was not issued in accordance with the provisions of section 66 Road Traffic Act 1991. He relied upon the analysis of this legislation made by a **⚡Parking Adjudicator⚡** in the case of **McArthur v Bury Metropolitan Council** [Case No BC 188]. This decision is not binding on me but is persuasive. I agree with the reasoning of the decision and I am satisfied that the PCN in this case is invalidated by its failure to specify the date of issue (as opposed to the date of alleged contravention). The appeal is therefore allowed for all of the reasons specified above."

20. Mr Thorne's reasons in respect of the second appeal read as follows:

"After hearing oral evidence from Mr Moses I am satisfied that he is a honest and reliable witness. I accept that he has a clear and accurate recollection of the relevant incident and that, upon seeing the Attendant, he drove off before the Attendant had an opportunity of serving the PCN. I therefore conclude that the respondent has failed to prove on a balance of probabilities that the PCN was lawfully issued by being attached to the vehicle or handed to the driver.

I therefore allow the appeal on the merits of the case.

In addition, it was submitted by Mr Segal that the PCN was invalid in any event as it did not contain the date of issue. He argued therefore that the PCN was not issued in accordance with the provisions of section 66 Road Traffic Act 1991. He relied upon the analysis of this legislation made by a National **⚡Parking Adjudicator⚡** in the case of **McArthur v Bury Metropolitan Council** [Case No BC 188]. This decision is not binding on me but is persuasive. I agree with the reasoning of the decision and I am satisfied that the PCN in this case is invalidated by its failure to specify the date of issue (as opposed to the date of alleged contravention). The appeal is therefore allowed for all of the reasons specified above."

21. Barnet accepted the **⚡Adjudicator⚡**'s factual decisions in respect of both alleged contraventions. Accordingly, Barnet no longer pursued Mr Moses for payment in respect of either PCN. Nevertheless, Barnet took the view that the second reason given by the **⚡Adjudicator⚡** in each appeal decision was legally incorrect. The second reason was, in each case, that the PCN did not comply with section 66 of the 1991 Act.
22. Since Barnet has issued many PCNs in similar form, the **⚡Adjudicator⚡**'s decisions had far reaching consequences. Accordingly, on 27th February 2006, Barnet appealed against Mr Thorne's two decisions, pursuant to the 2003 Regulations. Barnet served a single "application to review and vary" in respect of both matters. Barnet challenged only the second of the two reasons given by the **⚡Adjudicator⚡**, namely the invalidity of the PCNs. Barnet did not request an oral hearing and it did not seek to call evidence.
23. Barnet's application dated 27th February was referred to a different **⚡Parking Adjudicator⚡**, Mr Austin Wilkinson. Mr Wilkinson dismissed that application in a written decision dated 6th March 2006. The core passages in Mr Wilkinson's decision read as follows:

"The issues exercising the Adjudicators in both **McArthur** and **Al's Bar** were more extensive and fundamental than is suggested in the Council's submissions. In both cases the Adjudicators had to consider the wording of the relevant PCNs and apply to them the

requirements of section 66. In concluding as they did, both Adjudicators specifically pointed out that the need for substantial compliance was because section 66(3)(c,d and e) required the recipient of the Notice to have communicated to him/her a certainty as to the requirement to pay AND certainty in the period of time given for the payment. There must therefore be a 'date of the notice' and there must be a description of the payment period for both the full penalty and the discounted penalty which refers to that date: 'beginning with the date of the notice'.

In these instant appeals the date half way up the PCN is simply a 'date'. In fact it is the date of the allegation (as a result of section 66(3)(a)).

The base of the PCN has a payment tear -off slip. Strictly this might be regarded as not being part of the PCN at all - - the view of the **Adjudicator** in **McArthur**. But even if it were an integral part, it does not refer to a date of the Notice. It refers to a date of contravention - - exactly the same thing as the date of the allegation further up. (In fact the sample PCN does this. The ACTUAL notices adjudged by the **Adjudicator** referred to a date of 'offence'. De -criminalised contraventions are not offences and have not been so since 1991.)

The PCNs inform the recipient that the penalty ' . . . is due within 28 days of issue'. This wording is fundamentally non -compliant for two reasons:

(1) It does not refer to any date; and none of the date positions relied upon are dates 'of issue'. There should be a date of notice described as such and it should relate to the description of time period.

(2) The time period is plainly wrong for reasons fully aired by the Chief **Adjudicator** in 2002. The time period must 'begin with' the date of the notice to be compliant with Statute. The wording used would appear, upon accepted case law, to add a day onto the payment period ...

'I also consider the nature and extent of **parking** control as an activity. It is a necessary one of considerable importance that affects the daily lives of millions of motorists. PCNs are issued in their thousands every day; over 4 million every year. Only about 1 per cent gets as far as an appeal before a **Parking Adjudicator**. In relation to such a routine, everyday, prolific activity it is highly undesirable for non -compliant PCNs to be served in large numbers. My decision should in my view provide every encouragement to local authorities to ensure that the PCNs they serve are compliant with the statutory requirements as to their content. This is not the first occasion this issue has come before a **Parking Adjudicator**. In the case of **Moulder v Sutton LBC** (PATAS Case No 1940113243, 24 May 1995), an **Adjudicator** found the PCN in that case to be a nullity because it omitted the statement required by section 66(3)(e). Yet it seems that invalid PCNs are still being issued, as both this case and **Sutton v London Borough of Camden** show. The drafting of a compliant PCN is a simple drafting task and it is difficult to understand why these difficulties have arisen and continue to do so. These sentiments apply to every stage of the enforcement process, not just the issue of a valid PCN. The **Parking** Adjudicators have had cause in their annual report on more than one occasion to comment on procedural irregularities that have come to their attention in appeals. The motoring public deserves nothing less than that the public authorities exercising penal powers understand the importance of their complying with the conditions attached to their powers and are scrupulous about having in place administrative processes that do so. It is imperative that the public can have confidence in the fairness and propriety of the enforcement of **parking** controls.'

It is up to local councils to ensure their PCNs are drafted in compliance with the Statute. These appeals show only too clearly that the findings and concerns of the Adjudicators over several years have been disregarded - - a most unattractive basis for asserting good administration.

I conclude that Mr Thorne was correct to find as he did that the PCNs in these appeals were not compliant and could not be enforced."

24. Barnet was aggrieved by Mr Wilkinson's decision. Accordingly, Barnet commenced the present

proceedings.

Part 3. The Present Proceedings

25. By a claim form issued on 19th April 2006, Barnet applied for judicial review of the decision made by the **Parking Adjudicator**, Mr Austin Wilkinson, on 6th March 2006. Barnet contends in its claim form that, in so far as section 66(3) requires a PCN to state the date of the notice, both PCNs complied with that requirement. Barnet further contends that although the periods of time stated in the PCNs for discounted payment and for full payment are one day longer than the periods specified in section 66(3) of the 1991 Act, this does not render either PCN invalid. Barnet contends that no prejudice was caused by any technical defects in the notices. Accordingly, this court should grant a declaration that the two PCNs "did comply wholly or substantially with the requirements of section 66(3)". Certain additional parts of the declaration sought in the claim form were not pursued in oral argument.
26. On or about 10th May 2006, the **Parking Adjudicator** served an acknowledgment of service which included detailed grounds supporting his decision. On 8th June 2006 Dobbs J granted permission to proceed with the claim for judicial review and directed an expedited hearing. Following the grant of permission, the defence evidence was served. This comprises a witness statement by Mr Wood, the Chief **Parking Adjudicator** for London, together with exhibits.
27. Mr Wood's statement sets out much helpful background information and includes the following facts. There are 52 **Parking** Adjudicators in London. Approximately 5 million PCNs are issued each year in London alone in respect of **parking** matters. Approximately 1 per cent of these PCNs are challenged by way of appeal. Over the years, there have been a number of cases in which **Parking** Adjudicators have held PCNs to be invalid on account of non-compliance with statutory requirements. In their annual reports, the London **Parking** Adjudicators have drawn attention to this state of affairs and have encouraged local authorities to comply with the statutory requirements, in order to avoid the risk of prejudice to motorists (see the annual reports for the years 2002 to 2003, and 2003 to 2004).
28. On 31st July, Barnet served evidence in reply comprising a witness statement by Mr Edward O'Bree, a barrister employed in Barnet's legal department. Mr O'Bree states that Barnet has now adopted a new form of PCN, which meets the criticisms made by the **Parking Adjudicator** and which strictly complies with the requirements of section 66 of the 1991 Act. He exhibits a specimen of the new form of PCN which, as can be seen, clearly complies with the statutory requirements. Mr O'Bree also outlines the practice of Barnet in relation to PCNs, but an objection has been taken to that part of his evidence on the ground that it comes too late in the day. The essential objection is that evidence of this nature ought to have been called during the course of the adjudication process so that the evidence could be tested by cross-examination and so that the **Adjudicator** could make appropriate findings of fact.
29. This action came on for hearing yesterday. Mr Meyric Lewis represents Barnet. Mr Ian Rogers represents the **Parking Adjudicator**. I am grateful to both counsel for their assistance and for the excellence of their skeleton arguments and oral submissions. Mr Moses, the interested party, has not taken any part in these proceedings before yesterday. However, yesterday Mr Barry Segal, who represented Mr Moses at the hearing of the first appeal to a **Parking Adjudicator**, attended court. He made brief oral submissions in opposition to Barnet's appeal. I am grateful to Mr Segal for his assistance.
30. I shall now turn to the two principal issues in this case, namely the date of the notice and the effect of the extra day.

Part 4. The Date of the Notice

31. There are 35 different forms of **parking** contravention which may be committed. These include, for example, **parking** in a restricted street during prescribed hours, or **parking** in a residents **parking** space without displaying a permit, or **parking** in a car park which is closed. This last form of contravention may require some ingenuity. Section 66(3)(a) of the 1991 Act requires a PCN to state the grounds upon which it is believed that a penalty charge is payable. I would expect any such statement of grounds to identify the form of contravention and to state where and when the contravention occurred. Indeed, both the PCNs in this case did just that. The core part of the first PCN reads as follows:

"Contravention believed committed: 15

Parked in a Residents' ~~parking~~ space without clearly displaying a valid Residents' ~~parking~~ permit.

Street: WOODVILLE ROAD (BX)

Date: 31/03/05.

Time: 11.27.

The date 31st March, when read in that context, must be the date upon which the contravention occurred. The core part of the second PCN reads as follows:

"Contravention believed committed: 01

Parked in a restricted street during prescribed hours.

Street: GOLDERS GREEN ROAD (BX)

Date: 31/03/05.

Time: 12.05."

The date 31st March, when read in that context, must be the date upon which the contravention occurred.

32. Section 66(3)(b) of the 1991 Act requires the amount of the penalty charge to be stated. There is no dispute that this requirement was complied with in the present case. Section 66(3)(f) of the 1991 Act requires the PCN to state the address to which payment must be sent. There is no dispute that this requirement was complied with in the present case.

33. Section 66(3)(c) requires the PCN to state:

" . . . that the penalty charge must be paid before the end of the period of 28 days beginning with the date of the notice."

Section 66(3)(d) requires the PCN to state:

" . . . that if the penalty charge is paid before the end of the period of 14 days beginning with the date of the notice, the amount of the penalty charge will be reduced by the specified proportion."

Section 66(3)(e) requires the PCN to state:

" . . . that if the penalty charge is not paid before the end of the 28 day period, a notice to owner may be served by the London authority on the person appearing to them to be the owner of the vehicle."

34. In my view, these three subsections, either as a matter of construction or by clear implication, require that the date of the notice should be stated on the notice. If this is not done, the statutory purpose of section 66(3)(c),(d) and (e) will be thwarted.

35. The date of the notice will usually be the same as the date of contravention but this is not always the case. Let me give three examples:

(1) A ~~parking~~ attendant attempts to issue a penalty notice but is prevented from doing so. Accordingly, pursuant to section 5 of the 2000 Act, a PCN is prepared on a later date and posted to the owner.

(2) Many **parking** attendants work at night. Shortly before midnight a vehicle is observed parked on double yellow lines. At midnight the contravention comes to an end. This is perfectly feasible as the prescribed hours in many streets end at midnight. The **parking** attendant prepares a PCN and fixes it to the windscreen shortly after midnight. In this example, the date of the notice is one day after the date of the contravention.

(3) A **parking** contravention is recorded by camera. On a later date a PCN is issued and posted to the vehicle owner pursuant to section 4 of the 2000 Act.

36. It seems to me that section 66 requires two dates to be stated on a PCN. These are the date of the contravention and the date of the notice. The need for both dates to be stated has been stressed by **Parking** Adjudicators on more than one occasion. In **Al's Bar and Restaurant Ltd v London Borough of Wandsworth** (28th October 2002 Case No 2020106430) the **Parking Adjudicator**, Mr Martin Wood, considered a number of criticisms which were levelled at a PCN issued by the London Borough of Wandsworth. Mr Wood held that literal compliance with section 66 was not required. It was sufficient if there was substantial compliance. I agree with that analysis. In relation to the third criticism levelled at the Wandsworth PCN, Mr Wood said this at pages 6 to 7 of his decision:

"In order to calculate the period, it is necessary to know 'the date of the notice'. Implicitly, therefore, paragraph (c) requires the notice to bear its date. The date '20/11/01' appears twice on the PCN. It appears about halfway down where it is stated that the vehicle 'was seen in Lockington Road, SW8 at 9.24 on 20/11/01'. That is in fact part of the 'grounds on which the **parking** attendant believes that a penalty charge is payable with respect to the vehicle' required by paragraph (a). It appears again on the part of the document described as 'Payment Slip'. At the top of the document, the 'notice number' appears. This also appears on the Payment Slip adjacent to 'Date: 20/11/01'. In contrast to the Payment Slip, the date does not appear adjacent to the notice number at the top.

Mr Pitt -Payne conceded that it might have been clearer if the date had appeared at the top with the notice number. He contended, however, that there was no reasonable ground for uncertainty and that no reasonable person looking at the PCN could be in any doubt about its date.

I asked Mr Pitt -Payne what would happen if I, having received a PCN, tore off the Payment Slip and sent it with my remittance for the penalty charge. If I later wanted to know the date of the notice for some reason - - for example, because an issue arose between me and the local authority about whether I had paid the reduced penalty within the time allowed - - where would I then find the date of the notice on what I was left with? Mr Pitt -Payne suggested that I might ask the local authority for a copy of the Payment Slip. If that is so, it follows that the date does not appear on what I am left with - - the PCN after detaching the Payment Slip. That seems to me to be the position. It is not sufficient for a date to appear in the paragraph (a) statement of grounds. The date appears there for the purpose of describing the grounds, not as stating the date of the notice. As to the payment slip, it is in my view not part of the PCN at all; it is a separate document that is, for convenience, attached to the PCN. I note that on the Wandsworth NTO, both the number and date appear at the top of the notice and the attached Payment Slip, in contrast to the PCN.

The PCN as drafted would in my view still not be adequate even if the date of the alleged contravention and the date of the notice were always the same. But in any event this is not the case. A PCN may be served by post where enforcement is carried out remotely by camera and where the **parking** attendant has been prevented by someone from serving a PCN on the street. In such cases, the date of the notice will be different from the date of the alleged contravention.

Again, therefore, the PCN fails the compliance test."

37. Three years later, a similar issue arose in relation to a PCN issued by the Bury Metropolitan Borough Council. In **McArthur v Bury MBC** (4th April 2005, Case No BC 188) a PCN was issued which showed the date of contravention but not the date of the PCN. A **Parking Adjudicator**, Mr Mark Hinchliffe, held that the PCN was invalid on this ground. At pages 5 to 6 of his decision, Mr Hinchliffe said this:

"I am not the first **Parking Adjudicator** to consider these matters, and I am mindful of

the desirability of consistency. I am required to reach my own decisions whilst having regard to the previous decisions of colleagues both in England and Wales, and in London. Accordingly, I have reached a number of conclusions:

- Section 66(3)(c),(d) and (e) requires every PCN to convey certain specified information. The use of the words 'must state *that*' suggests that the exact words of the section are not mandatory, but the PCN must accurately convey the information set out in the subsections . . .

- To comply with section 66(3)(c), a PCN must have a date. The date of the contravention is not the date of the notice even if, in most cases, the PCN will be issued on the same day as the contravention. I accept that, in Bury, there are no notices issued after the event. Nevertheless, the absence of a date of notice is a serious problem because a motorist will not always be sufficiently *au fait* with the Act to appreciate that as a matter of practice (but not as a matter of law) the date of the contravention will usually be the same as the date of the notice. It is perhaps worth remarking, by way of example, that in certain circumstances in London contraventions can be photographed and then subsequently followed up with a PCN issued on a completely different date. In Bury, a motorist will search in vain for a 'Date of Notice' or 'Date of Issue' on the face of the PCN. A date is necessary because the 28 day period begins with "the date of the notice". In my view, if Parliament had intended the date of the contravention to be the starting point for the relevant periods, it would have said so. The specimen PCN in the guidance specifically shows a 'Date of Issue' at the top. The tear -off slip is not part of the PCN and may be detached. The Bury PCN does not comply with section 66(3)(c), nor was it modelled on the guidance. There is a serious possibility that real prejudice could be caused as a consequence of this omission because of potential uncertainty as to when the 28 day period begins. The same reasoning applies to 'the period of 14 days beginning with the date of the notice' referred to in section 66(3)(d)."

38. I find the reasoning in the passages quoted from **McArthur** and **Al's Bar** to be compelling. The statutory requirements are simple and clear. Compliance is not difficult. The Department of Transport has published a specimen form of PCN for the assistance of local authorities. This specimen form has been available for over 10 years. It has "Date of Issue ..." on the top line. There really is no excuse for local authorities who persist in issuing PCNs which do not state the date of the notice.
39. There are good policy reasons why PCNs should comply with the statutory requirements. These documents are issued in large numbers. They often change hands. A PCN may, for example, be issued to a driver on one date and handed over by the driver to the owner on a later date. When a PCN reaches the owner, he or she may wish to pay the discounted charge. There must always be certainty about the date when the notice was issued and the dates when the various periods for payments will expire.
40. Let me now turn to the present case. The two PCNs issued by the **parking** attendant in Barnet on 31st March 2005 both showed the date of the contravention. Neither PCN showed the date of the notice. The date on which the notice was issued ought to have been shown as a separate entry on the notice. On this ground alone, I hold that neither PCN achieved substantial compliance with section 66 of the 1991 Act.
41. Mr Lewis submits that even if there was non-compliance in this respect, nevertheless no prejudice was caused. PCNs should not be regarded as invalid. I do not accept this submission. Prejudice is irrelevant and does not need to be established. The 1991 Act creates a scheme for the civil enforcement of **parking** control. Under this scheme, motorists become liable to pay financial penalties when certain specified statutory conditions are met. If the statutory conditions are not met, then the financial liability does not arise.
42. In the present case, the two PCNs issued by Barnet on 31st March 2005 did not comply with section 66 (3)(c),(d) and (e) of the 1991 Act. Accordingly, the requirements of section 66 were not satisfied and no financial liability was triggered either by the PCN or by any subsequent stage in the process such as the notice to owner.
43. For the above reasons, I conclude that Mr Wilkinson, the second **Parking Adjudicator** in the present case, was correct to hold that the two PCNs were not compliant with the 1991 Act and were therefore invalid. It follows from this conclusion that Barnet is not entitled to the relief which it seeks

and these proceedings must be dismissed.

Part 5. The Effect of the Extra Day

44. Since the defendant has succeeded on the first issue, it follows that Barnet's claim must be dismissed and the second issue does not arise for decision. Nevertheless, having heard argument upon this issue, I shall comment upon it.
45. Both PCNs contain the sentence "a penalty charge of £80 is due within 28 days of issue." As that phraseology has been interpreted by the courts, the computation of the 28 days begins on the day after the date of issue. Both PCNs contain the sentence:

"£40 will be accepted in full and final settlement if received within 14 days of the date of this notice."

As that phraseology has been interpreted by the courts, the computation of the 14 days begins on the day after the date of issue. Both PCNs have on the back a sentence which reads:

"If the discounted payment is not received within 14 days and full payment is not made within 28 days, the registered keeper or the person who the borough believes to be the owner of the vehicle may receive a notice to owner asking for payment."

As that phraseology has been interpreted by the courts, the computation of the 14 day period and the 28 day period referred to in that sentence begins on the day after the date of issue.

46. Thus it can be seen that in each case the PCN adds one day to the time period stipulated by section 66 (3) of the 1991 Act. Mr Rogers, for the **Parking Adjudicator**, contends that this departure invalidates the notice. Mr Lewis, for Barnet, contends that the gifting of an extra day is an indulgence which benefits the motorist and cannot invalidate the notice.
47. This issue arose in **Al's Bar**. The **Adjudicator** heard evidence from a Senior **Parking** Officer of Wandsworth Borough Council, from which it emerged that in practice the Council did not always allow the extra time indicated in the PCN. The **Adjudicator** held that the incorrect statement of the time period in the PCN (in conjunction with other defects) invalidated the PCN.
48. In **McArthur**, a similar point arose. At page 6 of his decision the **Adjudicator** said this:
- "The phrases 'within 28 days' and 'within 14 days' convey different information from that specified in section 66(3). By legal convention, where the 'within' formula is deployed, the day upon which the triggering event occurs is excluded from the period. The 14 and 28 day periods referred to in section 66, however, include the date of the notice. The wording on the Bury PCN, therefore, does not comply with the requirements imposed by section 66(3). The Guidance, however, also uses the 'within' formula and it is hard to see how real prejudice could arise by virtue of allowing an extra day for payment. Modelling a PCN on the specimen at ANNEX 12.1 of the Guidance is urged by the bold italics of paragraph 12.1 of the Guidance. I therefore find that, in this respect, the wording of the Bury PCN does not warrant judicial criticism, and it is therefore without adverse legal consequence."
49. It seems to me that the different decisions which were reached on this point in **Al's Bar** and **McArthur** arise from differences in the evidence. In **McArthur** there appears to have been no evidence that what the Council gave with one hand it took away with the other.
50. In the present case, there has been no investigation of this issue before either **Parking Adjudicator**. The effect of the extra day was not an issue in the appeal to the first **Adjudicator**, Mr Thorne. Likewise, the effect of the extra day was not a matter raised in Barnet's "application to review and vary" dated 27th February 2006. No evidence relevant to this issue was adduced at the hearing before the first **Adjudicator**, Mr Thorne, or in the proceedings before the second **Adjudicator**, Mr Wilkinson.
51. In those circumstances, I do not think that Mr Wilkinson ought to have dealt with the effect of the extra

day in his decision dated 6th March 2002. This was a new point. If Mr Wilkinson was minded to invalidate the two PCNs on this additional ground, he ought to have informed all parties of what he had in mind and given them an opportunity to comment. If either party had wished to adduce evidence on this point (as was done in **Al's Bar**), Mr Wilkinson ought to have admitted such evidence.

52. It follows from the foregoing that Mr Wilkinson's decision on the effect of the extra day cannot stand. If the two PCNs were otherwise valid notices, the proper course might possibly be to remit the matter to the **Parking Adjudicator** so that he could (a) receive any evidence which either party wished to submit and (b) hear argument on the effect of the extra day. In the present case, however, no useful purpose would be served by such a course. I shall not, therefore, invite counsel to make further submissions on what, hypothetically, would be an appropriate remedy. For the reasons set out in Part 4 above, I have already held that the two PCNs are non-compliant and that the claimant is not entitled to the relief sought.

Part 6. Conclusion

53. For the reasons set out in Part 4 of this judgment, both the first and second **Parking** Adjudicators were correct to hold that the two PCNs issued by Barnet on 31st March 2006 failed to comply with section 66 of the 1991 Act. Both **Parking** Adjudicators were correct to hold that the PCNs were invalid on that ground. Accordingly, Barnet is not entitled to the declaratory relief which it seeks and these proceedings must be dismissed.
54. MR ROGERS: My Lord, may I thank you for the speed with which you have managed to deliver judgment and also the care which you have obviously taken. It has been agreed between the parties that there should be no order as to costs, subject to your view.
55. MR JUSTICE JACKSON: I am perfectly content to make no order as to costs. You are both public authorities and that sounds very sensible.
56. MISS MONTES -MANZANO: My Lord, in light of the judgment I have a brief application for permission to appeal.
57. MR JUSTICE JACKSON: Yes, Miss Montes -Manzano.
58. MISS MONTES -MANZANO: My Lord, we say that this matter has a reasonable prospect of success on the issue, which has never been previously judicially decided by the court, that the PCN in the form previously adopted by Barnet is substantially compliant with the requirements of section 66 of the 1991 Act. Also, there are compelling reasons why this should be heard by the Court of Appeal. First of all, the importance attached by both parties to the matter and to the issue, and secondly, the fact that this issue has never been judicially decided before. Those are my submissions, my Lord, unless I can assist you any further.
59. MR JUSTICE JACKSON: Thank you.
60. MR ROGERS: My Lord, it is obviously a matter for you. I can only assist the court in saying that it is true that you are the first judge to consider this issue. However, you have applied the approach set out in **London & Clydeside** and **Jeveanthan**, and the House of Lords has also added that that is the approach to be followed. My Lord, it is a matter for you, but I would feel confident in urging you to refuse permission to appeal.
61. MR JUSTICE JACKSON: This is an application for permission to appeal to the Court of Appeal against the judgment which has just been delivered. There are two grounds upon which permission to appeal might be granted. They are: (a) that the court considers that the appeal would have a reasonable prospect of success, or (b) that there is some other compelling reason why the appeal should be heard (see rule 52.3(6) of the Civil Procedure Rules). Counsel for the claimant relies upon both grounds in the application for permission.
62. So far as the first ground is concerned, on the view which I take of the matter the outcome of this case is clear. This court has come to a decision which is in line with a body of jurisprudence developed by **Parking** Adjudicators. I do not consider that this appeal has a reasonable prospect of success.
63. So far as the second ground is concerned, it should be borne in mind that Barnet has now amended its

form of penalty charge notice so as to comply with the requirements of the Act. Therefore, the judgment which has just been given will have no impact upon the current form of notices being issued by Barnet. The interest in this matter from Barnet's point of view is purely a historical one, in so far as there are outstanding challenges to old penalty charge notices.

64. In that situation, in my view, this is not a case where there is some other compelling reason why the appeal should be heard. Accordingly, for all of the above reasons, this application for permission to appeal is refused.

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