**Issue: RUCA Review decision – Transfer of liability under a hire agreement**

**Case Details**

**Case reference** 918028522A

**Appellant** Blumens London Ltd

**Authority** Transport for London

**VRM** BP66HWE

**PCN Details**

**PCN** TZ18096885

**Contravention date** 30 Oct 2017

**Contravention time** 11:45:00

**Contravention location** King William Street

**Penalty amount** £130.00

**Contravention** Failure to pay Congestion charge

**Decision Date** 19 Dec 2018

**Adjudicator** Gordon Cropper

**Previous decision** Appeal allowed

**Appeal decision**  Appeal refused

On 3rd October 2018 an adjudicator allowed two appeals by the appellant company, Blumens London Ltd, against penalty charge notices issued in respect of alleged contraventions of the congestion charging scheme. The two cases were separate, but involved the same parties, were based on similar facts and raised the same issue. Transport for London has requested a review of the decisions to allow the appeals, and it is convenient to deal with both cases together.

The application to review the decisions rests upon the ground that it is in the interests of justice to do so. The issue in each case is the interpretation of the regulations governing transfer of liability for a penalty charge, and the point is one that commonly arises in dealing with vehicle hire firms seeking to transfer liability. I agree that the interests of justice require a review.

The Facts

The facts of these cases are not in dispute. In each case the registered keeper of the vehicle in question was UK Express Delivery Limited. In October 2017 each vehicle was used in the congestion charging area without the required charge having been paid. No exemption was shown to apply, and penalty charge notices were issued to the registered keeper. The registered keeper made representations to Transport for London, supplying a hire agreement, and the authority then cancelled the penalty charge notice against UK Express Delivery Limited and reissued the notices to another vehicle hire firm, One Stop Van Hire Limited.

That firm then made representations to Transport for London, supplying a hire agreement. The authority cancelled the penalty charge notices against One Stop Van Hire Ltd and reissued them to the appellant company, Blumens London Ltd.

In allowing each appeal the adjudicator ruled that only the registered keeper was able to take advantage of the provision allowing a vehicle hire firm to transfer liability. It followed that the transfer of liability from One Stop Van Hire Ltd to Blumens London Ltd was not effective, and liability for the penalty charge remained with One Stop Van Hire Ltd.

Transport for London’s case

The argument put forward by Transport for London is that, as the recipient of a penalty charge notice, One Stop Van Hire Ltd was entitled to make representations under regulation 13 of the Road User Charging (Enforcement and Adjudication) (London) Regulations 2001, as amended. The regulations provide that all six of the grounds for representation are available to the company. Nothing in any of the regulations limits the grounds available, even to a party which was not the registered keeper. Regulation 13 makes the right of representation available to the recipient, not the registered keeper.

That point is supplemented by the argument that the regulations cannot have been intended to limit the ability to transfer liability to one transaction only. The intention must have been to allow enforcement of the penalty charge against the party liable – that presumably means the party immediately responsible – for the contravention. Commercial considerations require that a company that has hired in a vehicle should be able to hire that vehicle out and if necessary transfer liability for a penalty charge. It imposes an unfair burden upon such a company if the ability to transfer liability is denied.

Legislative provisions

The Road User Charging (Enforcement and Adjudication) (London) Regulations 2001, as amended are referred to as the ‘Enforcement regulations’.

The Road User Charging (Charges and Penalty Charges) (London) Regulations 2001, as amended are referred to as the ‘Charges regulations’.

Regulation 12 (2) of the Enforcement regulations provides as follows:

“A penalty charge notice shall be served on the registered keeper of the vehicle unless in accordance with the Charges and Penalty Charges Regulations, the penalty charge to which it relates is payable by another person, in which case the penalty charge notice shall be served on that other person.”

Regulation 13 (1) of the Enforcement regulations provides:

“Where it appears to the recipient that one or other of the grounds mentioned in paragraph (3) are satisfied, he may make representations to that effect to the charging authority who served the penalty charge notice on him.”

Regulation 13 (3) specifies the grounds upon which representations may be made; sub-paragraph (f) provides the ground relevant to a vehicle-hire firm:

“ 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 hiring agreement; and

(ii) the person hiring it had signed a statement of liability acknowledging his liability in respect of any penalty charge notice imposed in relation to the vehicle during the currency of the hiring agreement.”

Regulation 14 of the Enforcement regulations provides:

Where representations are made under regulation 13 and the charging authority concerned accept that the ground in question has been established they shall –

Cancel the penalty charge notice; and

State in the notice served under regulation 13(6) that the penalty charge notice has been cancelled.

The cancellation of a penalty charge notice under this regulation shall not be taken to prevent the charging authority concerned from serving a fresh penalty charge notice on the same or another person.

Regulation 6 of the Charges regulations provides:

“(2) The circumstances in which, and the persons by whom, charges and penalty charges imposed in respect of a relevant vehicle by a charging scheme are to be payable otherwise than by the registered keeper are those specified in paragraphs (3) to (6)”

“(6) Where at the relevant time—

(a) the registered keeper of the relevant vehicle was a vehicle-hire firm;

(b) the relevant vehicle was hired from that firm under a hiring agreement;

(c) the person hiring it signed a statement of liability acknowledging his liability for any charges or penalty charges incurred under a charging scheme during the currency of the hiring agreement,

charges and penalty charges shall be payable by the hirer of the vehicle.”

Cancellation of penalty charge notices

The penalty charge notice must in the first place be addressed to the registered keeper, who may make representations against it. If Transport for London is satisfied that one of the grounds in regulation 13(3) of the Enforcement regulations is established it is under a duty to cancel the penalty charge notice – regulation 14(1) of the Enforcement regulations. Regulation 14(2) permits the authority to re-serve the notice, either on the same person, or another. If it is re-served upon another person, that person becomes the recipient of the notice, and is entitled to make representations in respect of it – regulation 13(1) of the Enforcement regulations. The duty to cancel the penalty charge notice then applies in the same way as when the notice was sent to the registered keeper.

Transfer of liability

Regulation 6 of the Charges regulations governs where liability for a penalty charge is to lie. Regulation 6(2) provides that paragraphs (3) to (6) specify those cases in which a person other than the registered keeper may be liable. These are the only provisions authorising the imposition of liability upon a person other than the registered keeper. Paragraph (6) deals with hiring cases. Sub-paragraph (a) requires the registered keeper to be a vehicle hire firm.

There is an ambiguity in sub-paragraph (b). One interpretation would be that the hiring agreement that Transport for London is at that point considering is with “that firm”, meaning the registered keeper of the vehicle. The term “that firm” can only refer to the registered keeper as in sub-paragraph (a). That would mean that a vehicle hire firm that is not the registered keeper, but to which liability has been transferred after representations by the registered keeper, would not be able to bring itself within sub-paragraph (b).

An alternative interpretation would be that the vehicle must be hired from “that firm”, (the registered keeper), under any hiring agreement then in force, but that the hiring agreement being considered by Transport for London need not be one to which the registered keeper is a party. In other words, the authority would be entitled to reissue the penalty charge notice after cancellation of a notice addressed to a firm to which liability had already been transferred.

The first of those interpretations seems the more natural, but would produce the anomalous result that Transport for London, whilst under a duty to cancel the penalty charge notice if one of the grounds had been made out, would have no power to reissue the penalty charge notice to anyone else. That would undermine the effectiveness of the congestion charging scheme by making many contraventions of the scheme wholly unenforceable. That cannot have been the intended outcome.

The second interpretation does not have that effect. Support for this interpretation may be found in the use of the indefinite article (“a hiring agreement”) in sub-paragraph (b), whereas in sub-paragraph (c) the definite article is used when referring to the hiring agreement under consideration, drawing a distinction between the overarching hiring agreement to which the registered keeper is a party and the immediate agreement relied upon by the recipient of the penalty charge notice.

Given that the provision is capable of more than one meaning, the better view is to adopt that which is more consistent with the overall aims of the congestion charging scheme. I proceed on the basis of the second interpretation, namely that the hiring agreement in question need not be one to which the registered keeper is a party provided that there is in force a hiring agreement from the registered keeper.

Conclusion

Although the arguments of Transport for London do not fully address the issues in the case, I allow the review. The cancellation of the penalty charge notices addressed to UK Express Delivery Limited, and to One Stop Van Hire Ltd was in each case lawful. In the light of the reasoning above I find that the re-service of the notice firstly to One Stop Van Hire Ltd, then to Blumens London Ltd, was also lawful. For these reasons I find that the appeals by Blumens Limited should not have been allowed, and I dismiss those appeals.