

Introduction

1. Paragraph 14 of the schedule to the Civil Enforcement of Parking Contraventions (England) Representations and Appeals Regulations 2007 permits the consolidation of two or more appeals where some common question of law or fact arises in both or all appeals; or for some other reason it is desirable to make an order under this paragraph, the adjudicator may order that all of the appeals or those specified in the order shall be considered together.
2. These seven otherwise unrelated cases have been consolidated as each case raises an issue pertaining to the transfer of liability for a Penalty Charge Notice (PCN) from the hire company, who owned the vehicle at the time of the contravention, to the hirer. In two of the appeals the Enforcement Authority agreed to transfer liability.

Overview of applicable legislation

3. The owner of a vehicle that commits a contravention is liable for any PCN issued notwithstanding the fact that the owner may not have been in charge of the vehicle at the time of the contravention (see, for example, regulation 5 of the Civil Enforcement of Parking Contraventions (England) General Regulations 2007 in respect of parking contraventions). The concept of owner liability is applicable to both parking and moving traffic contraventions. There is an exception for bus lane contraventions for which, owing to an apparent lacuna in the law, liability cannot be transferred.
4. Liability may be transferred from a hire company to a hirer provided the statutory criteria, detailed below, are satisfied.
5. In broad summary the statutory scheme provides;
 - (i) Where a notice to owner has been served on a vehicle-hire firm and at the time of the contravention the vehicle was on hire under a "hiring agreement" the hire company must, during the period permitted for a response, provide a copy of the hiring agreement and a copy of the statement of liability to the Enforcement Authority in which case references to the "owner" of the vehicle shall be a reference to the hirer. Thus the statutory scheme permits an exception to the principle of owner liability (*See Road Traffic Offenders Act 1988 s.66 (1) - (4)*).
 - (ii) The vehicle must have been hired to the hirer by a "vehicle hire firm", i.e. "any person engaged in hiring vehicles in the course of a business" (*s.66 (8) RTOA 1988*) therefore domestic arrangements are excluded.
 - (iii) A "hiring agreement" refers only to an agreement which contains such particulars *as may be prescribed* and does not include a hire purchase agreement within the meaning of the Consumer Credit Act 1974. (*S.66(8) RTOA 1988*)
 - (iv) The period of hire must be for a fixed period of less than 6 months whether or not that period is capable of extension by agreement between the parties or otherwise

and includes any period during which, with the consent of the vehicle-hire firm, the hirer continues in possession of the vehicle as hirer, after the expiry of the fixed period specified in the agreement, but otherwise on the terms and conditions so specified. (s.66 (7) RTOA 1988)

- (v) The particulars which must be included in a hiring agreement are prescribed by Schedule 2 to the Road Traffic (Owner Liability) Regulations 2000 and must be contained in the hire agreement. The particulars are;
- A. *Particulars of person signing statement of liability**
*Full Name; Date of birth; Permanent Address; Address at time of hiring (if different from 3 above and stay is likely to be more than two months from date of hiring); Details of driving licence: (a)country where issued (if not UK),(b)serial number or driver's number, (c)date of expiry (which should be no later than date specified in B7 below). * Where the statement of liability is in Part II of form H, the full name and address of the person by or on whose behalf the statement of liability was signed should be supplied together with the date on which it was signed. If the person taking possession of the vehicle is not the same as the person by or on whose behalf the statement was signed, the full name of that person should also be supplied (if known).*
- B. *Particulars of hiring agreements*
Registration mark of vehicle hired under the hiring agreement; Make and model of vehicle hired under the hiring agreement; Registration mark of any vehicle substituted for the above during the currency of the hiring agreement; Make and model of any vehicle substituted for the above during the currency of the hiring agreement; Time and date of any change of vehicle; Time and date of commencement of original hiring period; Expected time and date of expiry of original hiring period; Time and date of commencement of authorised extension of hiring period; Expected time and date of expiry of authorised extension of hiring period; Actual time and date of return of vehicle (or when vehicle returned out of hours time and date on which vehicle-hire firm next opened for business). † This requirement applies only to the vehicle hire firm's copy of the hiring agreement.

Legislative intent

6. We find that the purpose of the legislation is clear. An exception to the principle of owner liability is available to hire firms. If the statutory exemption was not in place hirers could drive and park with impunity safe in the knowledge that the hire firm would be liable for any Penalty Charge Notices incurred; this would render vehicle hire businesses untenable. The balance struck by the legislation is that hire firms must comply with the statutory scheme and record the prescribed information in the hire agreement to enable an Enforcement Authority to pursue the hirer for the Penalty Charge Notice. If the hire firm fails to do so they cannot transfer liability to the hirer and remain liable for any PCN as the owner of the vehicle.

Issues to be determined

7. Whether a hire agreement must contain **all** the particulars prescribed by schedule 2 or whether substantial compliance is sufficient.
8. Where a hire firm hires a vehicle to a company an issue arises as to whether all of the particulars detailed in schedule 2 must be provided including details such as a driving licence number and a date of birth which, on their face, cannot apply to a company.
9. Whether the required particulars must be contained within the hire agreement itself (as opposed to being in a separate document) to comply with the statutory regime.
10. Practical considerations as to the approach of adjudicators where hire agreements are produced late and/or amended copies are produced.

Are all the particulars contained in schedule 2 required?

11. On 18th June 1997 Adjudicator Mr Gary Hickinbottom (as he then was) decided a series of appeals in Autolease Ltd and others. Whilst the decision is not binding on us it is persuasive and commands careful consideration. Mr Hickinbottom, as far as relevant, found (emphasis added);

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

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

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

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

Therefore, if such particulars are not present in a particular case, then that is not fatal to a hire firm relying upon the provisions by which they can avoid liability."

12. Although Mr Hickinbottom was dealing with regulations that pre dated the 2000 regulations the regulations, to all intents and purposes, were identical. S.66 (8) RTOA makes plain a "hiring agreement" refers **only** to an agreement which contains such particulars as may be prescribed. Schedule 2 of the 2000 regulations is entitled: "Particulars required in a Hiring Agreement to comply with Section 66 of the Road Traffic Offenders Act 1988." Article 3 prescribes schedule 2 for the purposes of s.66 of the 1988 Act. The explanatory note to the 2000 regulations (whilst not part of the order itself is of assistance) states: "*schedule 2 prescribes the particulars which **must** be contained in vehicle hiring agreements in order to attract the provisions of section 66 of the Act (hired vehicles).*"
13. We respectfully agree with and adopt the reasoning of Mr Hickinbottom. Accordingly strict adherence is required and all applicable requirements detailed in schedule 2 **must** be included in a hire agreement. Plainly a company hirer cannot provide a date of birth or a driving licence number. A failure to include an applicable particular in a hire agreement renders a hire firm unable to transfer liability and the company therefore remains liable.

Must all the applicable particulars be contained within the hire agreement itself?

14. S.66 (8) provides: "*a "hiring agreement" refers only to an agreement which contains such particulars as may be prescribed and does not include a hire-purchase agreement within the meaning of the Consumer Credit Act 1974.*" The key question to determine is whether the hire agreement contains all of the prescribed, applicable particulars in any given case.
15. What documents constitute the hire agreement and whether a hire firm have discharged the burden upon them is a matter of fact in each case.
16. By way of example if a hire agreement, under the driving licence details section, is endorsed "see attached" and a photocopy of the driving licence is provided that would, in our view, satisfy the statutory criteria. The attached photocopy would be part of the hiring agreement. However, if a hire agreement did not contain a section for driving licence details at all and a photocopy of a licence was simply attached this *may* not be sufficient as the photocopy *may*

not be considered to be part of the hire agreement. It may not be clear as to when the photocopy was provided and whether it was part of the hire agreement. It is vital that all of the particulars required are recorded at the time the hire agreement is completed and this must be plain from the agreement itself. The proliferation of online agreements may mean that information is stored and presented in a non-traditional way. The assessment in each case will be whether the required particulars, whether provided online or in a paper document, are part of the hire agreement or not. This is necessarily a question of fact in any given case.

17. A submission was made that substantial compliance with the statutory scheme is sufficient. As stated above the particulars required by the legislation, when applicable, are mandatory and strict compliance is necessary. A failure to provide a required particular is fatal. However, if there are minor errors (for example in the spelling of a name) it may be that the hire firm has recorded sufficient detail to discharge their obligations. We do not find that Parliament intended that a hire firm would be rendered liable for a simple typographical error where the Enforcement Authority are able to readily identify the driver and enforce the PCN against the hirer. Each case will be fact sensitive and adjudicators and Enforcement Authorities alike should be mindful of the purpose of the legislation.

Late production of hire agreements

18. The statutory scheme affords hire firms the opportunity to transfer liability and the legislation envisages that the hiring agreement and statement of liability will be provided to the Enforcement Authority timeously so that the Notice to Owner can be reissued to the hirer. (*see s.66 (1) (c) RTOA 1988*)
19. Adjudicators are able to allow an appeal (except for bus lane contraventions) on the ground that the the vehicle in question was at the material time hired from that firm under a hiring agreement and the person hiring it had signed a statement of liability (See, for example, regulation 4 (4) (b) the Civil Enforcement of Parking Contraventions (England) Representations and Appeals Regulations 2007 in respect of parking contraventions).
20. Hire-vehicle firms ought to have on record a compliant hire agreement together with a signed statement of liability. There ought to be very few cases in which the agreement cannot be produced to the Enforcement Authority in response to the Notice to Owner. Consequently where a vehicle hire firm produces the material for the first time to the Tribunal cogent reasons will be required to explain the delay.
21. The late production of hire-agreements and the production of amended hire agreements will lead to questions being raised as to the provenance and veracity of the agreement being relied upon.

Summary of conclusions

22. Each case will necessarily turn on its own facts but the following principles are clear;

- i) Liability cannot be transferred in domestic cases (i.e. a loan of a vehicle to a friend or relative); the vehicle must have been hired by a vehicle hire firm as defined in the legislation (see paragraph 5 ii above).
- ii) Hire agreements of 6 months or more are excluded (see paragraph 5 iv above).
- iii) Liability cannot be transferred for bus lane contraventions. Section 4(2) of the London Local Authorities Act 1996, as amended by the London Local Authorities Act 2000 and the Transport for London (Bus Lanes) Order 2001, provides that the owner of a vehicle, not the driver or person in charge of the vehicle, is liable for a penalty charge in respect of any contravention of a bus lane restriction. The 1996 Act does not make provision for transfer of liability in the case of a vehicle which is on hire at the time and the Act provides no ground of appeal in such cases.
- iv) All **applicable** particulars detailed in schedule 2 of the 2000 regulations must be contained within the agreement. A company hirer clearly cannot provide a date of birth or driving licence details. An omission of a required particular is fatal and renders the hire vehicle company unable to transfer liability (see paragraphs 11-13 above).
- v) The required particulars (driving licence number etc) need not be contained within the main body of the hire agreement, an annex or schedule containing the applicable particulars may be sufficient provided, as a matter of fact, they are found to be part of the hire agreement. Each case will be fact specific as to whether the required particulars are part of the hire agreement or not (see paragraphs 14-16 above).
- vi) Minor typographical errors, such as a spelling of a name, may not be fatal. Each case will be fact specific (see paragraph 17 above).
- vii) Amended hire agreements or agreements produced late will be rigorously scrutinised and cogent reasons will be required to explain the delay (see paragraphs 18-21 above).

The individual appeals

2170480403

23. This is an application by the Authority for a review of the decision made on 18 December 2017.

24. The basis of the application is the hire agreement did not contain all the prescribed requirements in a single document titled 'hire agreement'.
25. The Appeal Adjudicator decided that the prescribed particulars were part of the hire agreement and complied with the regulations that permitted liability to be transferred to the hirer.
26. The panel decided the Adjudicator was entitled to find the prescribed requirements, as set out in Schedule 2 of the 2000 Regulations, were met and this was a valid hire agreement.
27. We find there is no requirement for all the prescribed information to be set out in one document provided all the information is provided at the same time, and can properly be interpreted as being part of the agreement.

2170585977

28. This is an appeal by the Appellant against the Notice of Rejection issued by the Authority on 4 December 2017 when they refused to accept the hire agreement on the basis the driving licence details were not included in the hire agreement.
29. The basis of the appeal was that the hire agreement was compliant with the 2000 Regulations. The Authority conceded that all the prescribed information was provided but not contained in a single document.
30. The Panel decided that there is no requirement for all the prescribed information to be set out in one document titled 'hire agreement' provided all the information is obtained at the time of the agreement, and can properly be interpreted as being part of the agreement.
31. We are so satisfied and allow the appeal.

2180009815

32. We have considered the evidence and we find that the contravention is proved.
33. The basis of the appeal is the hire agreement is compliant with the 2000 Regulations in that all prescribed and applicable information was provided in the hire agreement.
34. The Authority contended the driving licence details and a date of birth were not provided. For the reasons given in paragraph 11 to 13 of this decision we find these particulars are not required in this case because the hirer was a limited company.
35. However, the hire agreement provided fails to identify the model of the vehicle hired in this case. We find that this omission is fatal to the hire agreement and accordingly liability remains with the Appellant Company.
36. The appeal is refused.

2170524848

37. This is an application by the Authority for a review of the decision made on 7 December 2017.
38. The Authority contends the driving licence details and a date of birth were not provided. For the reasons given in paragraph 11 to 13 of this decision we find that these particulars are not required in this case because the hirer was a company.
39. The application for a review is refused and the original decision stands.

2180013109

40. We have considered the evidence in this appeal and we find the contravention is proved.
41. This is an appeal by the Appellant against the Notice of Rejection issued by the Authority on 28 December 2017 when they refused to accept the hire agreement on the basis the contravention occurred before the commencement of the hire agreement.
42. The Appellant argued the hire date was recorded on the insurance check list and the dates on the hire agreement, which was from the 25 November to the 26 November 2017, was the 'planned rental dates'. It is incumbent on the hire company to provide clear and cogent evidence of the dates of the hire agreement. In this case they have failed to do so.
43. We note the discrepancies in the hire agreement provided; it is dated 15 November, signed by the driver on the 16 November, and the pre-agreed rental start date is the 25 November and ends on the 26 November 2017.
44. We also note the Authority requested in the Notice of Rejection dated 28 December 2017 the opportunity to 'provide a hire agreement that fully meets the required criteria'.
45. We reiterate our observations at paragraph 18 to 21 above.
46. Accordingly, liability remains with the Appellants and the appeal is refused.

