PARKING APPEALS SERVICE

WESTMINSTER CITY COUNCIL

TERENCE CHASE

CASE No 1960113778 (PCN No WE44925758)

APPLICATION FOR REVIEW OF THE DECISION OF THE PARKING ADJUDICATOR

DECISION

Introduction

This is an application for the review of a decision of the Chief Parking Adjudicator, Caroline Sheppard. On 15 October 1996, she allowed the appeal of Terence Chase: there is no application for review of that decision. However, after requesting receiving representations on the question of costs, the Chief Adjudicator ordered the respondent, Westminster City Council ("the Council"), to pay Mr Chase £100 costs. That decision is dated 14 January 1997, and the Council seek to review the decision with regard to their liability for costs: they do not seek a review of the quantum of the costs awarded.

Jurisdiction

By Regulation 12 of The Road Traffic (Parking Adjudicators) (London) Regulations 1993 ("the Regulations"):

> "1. The Adjudicator shall not normally make an order awarding costs and expenses, but may, subject to paragraph (2) make such an order:
>
> (a) against a party ... if he is of the opinion that that party has acted frivolously or vexatiously or that his conduct in making, pursuing or resisting an appeal was wholly unreasonably; or

(b) against the local authority, where it considers that the disputed decision was wholly unreasonable."

In this case, the Chief Adjudicator found that the Council "were wholly unreasonable in contesting the appeal", and she awarded costs against them under Regulation 12(1)(a).

The power of an adjudicator to review an earlier decision is in Regulation 11:

> "The Adjudicator shall have power on the application of a party to review and revoke or vary any decision to dismiss or allow an appeal or any decision as to costs on the grounds (in each case) that:
>
> (a) the decision was wrongly made as the result of an error on the part of his administrative staff;
>
> (b) a party who had failed to appear or be represented at a hearing had good and sufficient reason for his failure to appear;
>
> (c) where the decision was made after a hearing, new evidence has become available since the conclusion of the hearing, the existence of which could not have been reasonably known of or foreseen;
>
> (d) where the decision was made without a hearing, new evidence has become available since the decision was made, the existence of which could not reasonably have been foreseen; or
>
> (e) the interests of justice require such a review."

This jurisdiction - and the proper approach to the review of an adjudicator's decision - was considered in Cheryl Ross v The London Borough of Enfield (Case No 1950094429) (23 February 1996). As that decision indicated, an inherent part of the statutory scheme is to ensure that the Adjudicator's decision is final and conclusive, save in very exceptional cases. The grounds set out in Regulation 11 are narrow, and

they merely give an adjudicator a discretion whether or not to review a decision: even if a ground is proved, the adjudicator is not bound to exercise that discretion to review the decision. Inevitably, cases in which reviews are allowed will be rare. Certainly, reviews with regard to orders for costs are likely to be very rare indeed. In this case, the Council seek a review of the Chief Adjudicator's decision on the ground that "the interests of justice require such a review" (Regulation 11(1)(e)).

In reviewing this decision, I must take account of the fact that it concerns an order for costs. Such orders are intrinsically discretionary. Particularly as this would be a review (rather than an appeal - there is no appeal from an adjudicator's decision), I consider that I ought not to interfere with the Chief Adjudicator's costs order unless I take the view that she has misdirected herself or otherwise acted improperly (in the legal sense of that term), or that, on the evidence before her, no adjudicator could have come to the decision that a costs order was appropriate. I believe that similar considerations must apply to any finding of fact by the Chief Adjudicator: I do not consider that I can properly interfere with any findings of fact unless no adjudicator properly directing himself or herself could have come to that finding on the available evidence.

Facts

In the substantive appeal, the Council said that Mr Chase's vehicle, a grey Renault 5 Auto registration mark B936 MNJ, was parked on a meter showing 62 minutes penalty time, in Melbourne Place, at 5.21 pm on 18 March 1996. If this was true, the car would have been in contravention of the parking regulations. But Mr Chase said in his representations to the Council that the car was not there at the relevant time and that no Penalty Charge Notice ("PCN") was issued or, at least, no PCN was served. Of course, if the car was not there at the relevant time, there would have been no contravention for which Mr Chase could have been penalised. Similarly, if a PCN is not properly issued and served, then the Council could not pursue any penalty (by virtue of Section 66(1) and Paragraph 1(1)(a) of Schedule 6 to The Road Traffic Act 1991). The Council disputes none of this law.

At the hearing on 15 October 1996 before the Chief Adjudicator, Mr Chase appeared. The Council relied upon written submissions, in the usual way. As indicated above, the Chief Adjudicator allowed the appeal. Her reasons were as follows:

"Mr and Mrs Chase say that the car was in the vicinity of Melbourne Place but strongly deny that it was on a meter or given a PCN. The Council rely on evidence of the tax disc but their evidence show that these details were added to the PCN record on 26 April; it seems probable that this information was transferred from details of a different (admitted) PCN. The Council have provided no evidence that the attendant recorded these details contemporaneously on-street. I reject the Council case."

The Chief Adjudicator ordered the Council to cancel the PCN and NTO. That substantive decision is not being challenged.

In their evidence, the Council submitted a copy of the PCN, as it is bound to do (Regulation 4(2)(b) of the Regulations). They also submitted, amongst other things, an apparently computer-generated document headed "History & Audit Log". In respect of this case, this showed the following entries:

Date	Time	User	Serno	Action
18/03/96	17:21	TC	WE44925758	PCN Issued - Clamped/Removed
20/03/96	13:07	TC	WE44925758	Memo transferred from handheld
20/03/96	13:07	TC	WE44925758	Case serial number WE44925758 uploaded
05/04/96	06:34	INPUT	WE44925758	Send a VQ4 to DVLA
26/04/96	11:07	INPUT	WE44925758	Licence Expiry added - 30/06/96
26/04/96	11:07	INPUT	WE44925758	Licence Number added - 52024642445
26/04/96	11:07	INPUT	WE44925758	Keeper Details added - TERENCE CHASE
26/04/96	11:07	INPUT	WE44925758	VQ5 Details transferred from Tape
10/05/96	04:44	INPUT	WE44925758	Notice to Owner
24/05/96	11:49	WA	WE44925758	NTO Representation Received"

There are further, later, entries. In the covering letter to the Parking Appeals Service (a copy of which was, of course, served on Mr Chase), the Council said:

"This [PCN] was issued by a hand-held machine and at the time it was issued details of the vehicle are recorded and input into the machine. Item 5 in the evidence attached shows that the

vehicle observed by the Attendant was a grey Renault Auto, vehicle registration B936 NMJ, and that it was affixed to the vehicle's windscreen. *Item 6 shows that a vehicle excise licence number 52024642445 with an expiry date of 30 June 1996 was also seen.* Item 7 gives details of 3 other PCN's issued to this vehicle under the make, model and colour match as those seen by the Attendant when the subject of the Appeal Hearing was issued" (emphasis added).

In their rejection of Mr Chase's representations (dated 21 June 1996), having noted Mr Chase's comments (that he was not there and no PCN was issued), the Council asked him to:

> "... provide the following information as soon as possible so that [we] may investigate the matter further.
>
> - The make, model and colour of the vehicle.
> - The tax disc number and the tax disc expiry date.
> - Was the tax disc 6 or 12 months?"

Mr Chase did not respond to that request. The request appeared in a letter rejecting his representations, and he chose to appeal to the Parking Appeal Service, which was his right.

Evidence in Appeals before the Parking Adjudicator

The Council, whilst accepting the burden of proof lies upon them in this case, criticise the Appellant for not responding. An appellant may be ill-advised not to correspond, and not to send a local authority information requested of him: but he does not have to say anything if he does not wish to do so. It is open to the Council when considering representations - and the Adjudicator when considering an appeal -to make such inferences as are properly appropriate from such a lack of response: but, ultimately, in any appeal to the Adjudicator, it is for the Council to satisfy the burden of proof by the submission of evidence. Following the Council's careful submissions to me concerning the evidence in this case, the following general comments concerning evidence in appeals to the Parking Adjudicator may be of assistance.

1. Appeals to the Parking Appeals Service are a judicial exercise. Evidence is received from both the appellant (the owner) and the respondent (a local authority). In approximately 40% of the cases, the appellant seeks an oral hearing: in the balance of cases the appellant asks for the appeal to be dealt with on paper. In virtually all cases, the authority relies upon written submissions, and does not appear. There can be no criticism of authorities for this. Indeed, it is an inherent part of the statutory scheme that appeals are dealt with in an informal and robust way, insofar as informality and robustness are consistent with the interests of justice.

2. By Regulation 4(2) of the Regulations, upon receipt of a notice of appeal, an authority must lodge with the Parking Appeal Service a copy of:

"(a) the original representation [i.e. the representations from the appellant to the Council];

(b) a copy of the relevant charge notice (if any) [i.e. the PCN]; and

(c) a copy of the notice served under Section 71(6) of, or (as the case may be) paragraph 2(7) of Schedule 6 to, the [Road Traffic] Act [1991] [i.e. the Council's letter rejecting the appellant's original representation]".

The Regulations do not require the authority to submit any other evidence. However, as the Council readily accepted in this case, the burden of proof in proving the contravention (and proper issue and service of the PCN) lies upon the authority, and they are consequently bound to submit at least sufficient evidence to satisfy that burden. It is consequently usual for an authority to send documents such as:

(i) A note of the case, setting out the Council's case and (usually) a response to any points raised by the appellant. Such a document is, of course, extremely useful for any adjudicator considering the case.

(ii) Information from the DVLA as to the registered keeper of the vehicle. Section 82(3) of the Road Traffic Act 1991 creates a statutory presumption that the person in whose name the vehicle was at the relevant time registered on the DVLA computer shall be presumed

to be the owner or keeper of the vehicle, and consequently liable for parking penalties. Indeed, it has been held that the DVLA registration is a necessary starting point for ascertainment of the person liable for penalties (R -v- the Parking Adjudicator ex parte The London Borough of Wandsworth (CA), QBCOF 96/1153/D, Unreported 1 November 1996). Therefore, evidence of the registration with the DVLA at the time of the alleged contravention is likely to be necessary in most cases.

The evidence of the registration must be cogent. Obviously, a sheet of paper with merely a name and address on it alone will be insufficient. The evidence must be sufficient to identify the appellant as the registered keeper of the vehicle at the relevant time.

Where the authority does not rely on the statutory presumption (that the registered keeper was in fact keeping the vehicle at the relevant time, and consequently was liable for parking penalties), but rather upon the fact that the appellant appears to them to have been the keeper of the vehicle when the alleged contravention occurred (under Paragraph 1 of Schedule 6 to the 1991 Act), evidence supporting this should be lodged. Often this evidence will take the form of correspondence from the registered keeper or others to the effect that the appellant (and not the registered keeper) was in fact keeping the vehicle at the relevant time.

(iii) A copy of an contemporaneous notes taken by the parking attendant. These may be in the form of handwritten notes in a pad, or notes punched into a hand-held computer.

Of course, in an individual case, it may be appropriate for the authority to lodge other documents.

3. Because the authority does not appear in person, the documentary evidence they submit is vital. Of course, errors are sometimes made. A parking attendant may take down the wrong registration mark, by mistake. There can be computer inputting errors. All authorities will strive to minimise such errors and, where an appellant suggests an error has been made, an authority will wish to make proper investigations to assure themselves that no error has been made or, if it has, to correct it. It is essential that the Adjudicator can have confidence in the integrity of the authority's evidence.

4. As indicated above, it is incumbent upon authorities to lodge a copy of a PCN with the Parking Appeals Service. A failure to do so renders the appeal liable to be allowed in default. In the instant case (of Mr Chase), the Council did indeed lodge a copy of the PCN. However, other authorities lodge a computer-generated reproduction PCN. There is nothing inherently wrong in this, so long as the document lodged with the Parking Appeal Service exactly reproduces the information contained in the PCN issued and served. If the PCN lodged is computer-generated, the Adjudicator must be able to have confidence that nothing has been added or taken away from what appeared on the PCN itself. Bearing in mind the mandatory requirements of Regulation 4(2), an Adjudicator must be entitled to assume that the PCN lodged with the Parking Appeal Service is an exact reproduction of the information contained in the PCN issued and served.

5. Similarly, with a notice of rejection of representations by an authority. Again, it is incumbent upon authorities to lodge a copy of this document with the Parking Appeals Service and a failure to do so renders the appeal liable to be allowed in default. The letter lodged must be identical to the letter sent to the appellant (although, again, the actual document lodged can properly be a computer-generated reproduction as opposed to a photocopy, so long as it is substantively an exact replica). A standard form document, without the variables shown in the letter that went to the appellant, does not comply with the requirements of the statutory provisions.

6. There is no express duty of disclosure on either an owner or an authority.

However, where an authority has relevant evidence - particularly evidence relating to a specific issue raised by an owner - it is incumbent on that authority to disclose this to the owner. A failure to do so would lead to a patent injustice to the owner. For example, where the Parking Attendant's contemporaneous notes include relevant material - perhaps supporting the owner's case - these must be disclosed to the owner at the appropriate time. Where the owner raises a point in representations in respect of which the authority has relevant evidence, that evidence should be dislosed at that (representation) stage: it should not be withheld until any appeal is made. The reason for this is not just that for an authority to withhold evidence in such circumstances would be patently unfair: disclosure of evidence at that stage also limits the number of unnecessary appeals to the Parking Appeals Service, because an owner may be persuaded not to proceed to an appeal if he has disclosed to him cogent evidence in the hands of the authority. Certainly, where an authority relies upon specific information in an appeal to the Parking Appeals Service (e.g. they rely upon contemporaneous notes of the parking attendant of the tax disc details, or other details concerning the vehicle), this must be disclosed to the appellant. If the appellant denies that those details relate to his vehicle, then it will be for him or her to put forward cogent evidence in rebuttal (e.g. a copy of the relevant tax disc, or a photograph of the vehicle or log book).

The circumstances in which it would be appropriate for an authority not to disclose evidence upon which it was relying - either at the stage of representations or an appeal - will be very rare indeed. An authority is bound to disclose such evidence by virtue of the rules of natural justice: and, as I have said, disclosure of the information at an early stage can only result in fewer unnecessary appeals being pursued, with the attendant saving of costs that that would entail.

An appellant should also disclose any documents upon which he or she proposes to rely and, where there is to be an oral hearing, before any hearing. Of course, where there is late disclosure of evidence by either party, it will be a matter for the adjudicator as to whether to proceed or to adjourn: it will be a question in each case of what justice requires, bearing in mind the nature of the proceedings. Certainly, it will be a very rare case when evidence, no matter how late, will be shut out.

The Hearing

A hearing of this application for review took place before me on 21 February 1997. Mr Kevin McKee and Miss Susan Howell represented the Council: the Appellant did not attend.

Decision

In this case:

1. The Appellant throughout said that he was not in Melbourne Place at the relevant time, and no PCN was served on him or his vehicle.

2. Before me, the Council readily accepted that, where tax disc details are recorded by a Parking Attendant, this is often put forward as cogent evidence that the vehicle was where the Attendant said it was and that the PCN was issued and served. In my experience, such evidence is frequently relied upon by local authorities and, usually, it is properly treated as compelling evidence by adjudicators. Before me, the Council submitted that they considered the tax disc details "a conclusive piece of evidence, if available".

3. In this case, the Council expressly relied upon the Parking Attendant having taken a note of the tax disc number and expiry date. As indicated above, in their covering letter to the Parking Appeals Service, the Council said: "Item 6 [of the history & audit log] shows that a vehicle excise licence number 52024642445 with an expiry date of 30 June 1996 was also seen.". It is true that this is not the only matter upon which the Council relied: in that same covering letter they also indicated that "details of 3 other PCNs issued to this vehicle under the make, model and colour match those seen by [the PCN] the subject of the appeal hearing was issued." Nevertheless, the evidence relating to the tax disc was apparently particularly compelling, and the Council well understood this.

4. In fact, the Parking Attendant did not take down any details of the tax disc. I was told by Mr McKee and Miss Howell that that field was left blank on the computer when the Parking Attendant's notes were downloaded, but that the Council's computer system automatically completes the tax disc field from information received from the DVLA when it is received.

Therefore, important evidence put forward by the Council as contemporaneous, was not contemporaneous. Miss Howell herself wrote the covering letter that indicated reliance on this evidence. I fully accept that, in purporting to rely upon the evidence, she made a bona fide mistake and there was no sinister intent on her part at all.

5. I do not agree with the Chief Adjudicator's finding of fact that the information concerning the tax disc was taken in from other PCNs issued to the same vehicle. I accept, on the evidence, that the information was taken from DVLA data. I accept the evidence that, where there is a blank tax disc field, it is automatically filled in when information from the DVLA is obtained and loaded. However, the source of the information did not bear heavily on the Chief Adjudicator's mind: it is clear from her Decision that what was important to her was that the information purported to be contemporaneous and derive from the Parking Attendant's notes, but it was in fact input into the computer at a later date and did not derive from the Attendant at all.

6. However, the position with regard to the information relating to the tax disc in this case is in fact somewhat more complex than that. Because of an error in the Council's computer programme, when the DVLA information is loaded up, the wrong field is transposed from that information into the tax disc number field. The result is that what purports to be the tax disc number of the computer is not a tax disc number at all: indeed, Mr McKee pointed out to me that the number of digits in the field was different from the digits in a tax disc number.

7. As I have indicated above, when rejecting Mr Chase's representations, the Council asked him to provide (amongst other information) his tax disc number. Miss Howell said that they asked for that information to see whether it matched the information on the computer: she said, frankly, that, had Mr Chase sent details of his tax disc into the Council, they would probably have accepted his representations and cancelled the NTO. I fully accept that. On the basis of this it seems to me that this was a case in which, had the Council sent Mr Chase details of the tax disc which it held on its computer, the matter would probably have been resolved without the need for any appeal.

However, the exercise in asking Mr Chase for the tax disc number was in fact an empty one. First, the Council had no evidence from the Parking Attendant as to the number seen on the tax disc at the time of the alleged contravention. Further, because the tax disc number field on the

Council's computer contained something which was not a tax disc number, any number sent in by Mr Chase was bound not to correspond with the number on the computer.

8. In my view, prior to contesting this appeal, the Council ought to have realised that (i) the Parking Attendant had not taken down any details of the tax disc: and (ii) because of a fault in the programming of their computer, the number in the tax disc field was not a tax disc number at all.

9. The Chief Adjudicator took the view that, had the Council known that the tax disc details were input into the computer, not from notes taken by the Parking Attendant at the time of the alleged contravention, but from an outside source much later, they would not have contested the appeal. Before me, the Council said that this was putting too much weight on the tax disc evidence, and ignored the other evidence, notably the make, model and colour of the vehicle (a note of which was taken down by the Parking Attendant). Miss Howell - who would have effectively been responsible for the relevant decision - said that she would have contested the appeal even if she had known the tax disc information had been done from elsewhere after the event.

10. Although I have found that the Chief Adjudicator erred in determining the source of the tax disc information, the actual source of that information was of little or no significance to her thinking and her decision on costs. She concluded her decision by saying: "In all the circumstances I consider that the City of Westminster were wholly unreasonable in contesting the appeal and relying on evidence that had not been obtained contemporaneously." From this, it is quite clear that the Chief Adjudicator had well in mind the proper test for the award of costs set out in Regulation 12: and also that it was at the forefront of her mind that the tax disc information came from a source other than the Parking Attendant, and after the date of the alleged contravention. In my view, she took into account all of the matters she ought to have done, and there is no evidence that she took into account any extraneous matters. Having properly directed herself, she came to the view that the Council would not have contested the appeal had they properly borne in mind the source of the tax disc information. Although the Council may disagree with that finding of fact, it is not a finding to which an adjudicator could not properly have come on the evidence, and I do not consider it is open to me to interfere with it. On the basis of that finding of fact, it was clearly within the Chief Adjudicator's discretion to award costs against the Council.

In the circumstances, having reviewed the decision, I do not propose either revoking or varying it. The Chief Adjudicator's decision on costs in this matter will stand.

G R Hickinbottom
19 March 1997