

Kensington and Chelsea v Mr L Flannery

Case Reference : 2020400959 **PCN:** KC68840717

DECISION

This is an unusual case. The Council alleges that on 20 May 2002 a Penalty Charge Notice (PCN) was issued to Mr Flannery's vehicle in the manner prescribed by section 66 of the Road Traffic Act 1991. Mr Flannery denies that it was so issued. The enforcement process prescribed by the 1991 Act has been followed by the parties and on 18 December 2002 Mr Flannery lodged an appeal with the Parking and Traffic Appeals Service. However, on 18 February 2003 he gave notice of the withdrawal of his appeal.

Regulation 14(1) of the Road Traffic (Parking Adjudicators) (London) Regulations 1993 provides:

The adjudicator may, if he thinks fit-

.....

(b) if the appellant at any time gives notice of the withdrawal of his appeal, dismiss the proceedings;

.....

My power under this provision is discretionary and I must consider whether to exercise it.

I have made Mr Flannery aware that the effect of withdrawal is that the Council may serve on him a charge certificate, which increases the penalty by 50%, if the penalty charge is not paid before the end of 14 days beginning with the date of withdrawal. He has nevertheless confirmed that he wishes to proceed with the withdrawal. The Council has said it has no objection to the withdrawal. I have accordingly decided that I should dismiss the proceedings and I do so.

However, there is one particular matter put forward by Mr Flannery with which I should deal, given its general importance. He contends that the Adjudicator does not have jurisdiction over this matter because, he says, the basis of his challenge to any enforcement action by the Council does not fall within any of the grounds prescribed by paragraph 2(4) of Schedule 6 to the 1991 Act, as amended. He has therefore commenced proceedings in the West London County Court seeking a declaration that the PCN has not been validly issued and an injunction restraining the Council from taking further enforcement action until the issue of whether the PCN was properly served has been determined. His argument, as I understand it, is that the 1991 Act enforcement process is triggered by the service of a PCN; and therefore if the PCN was not served that process, from which the right to appeal to the Adjudicator and so the Adjudicator's jurisdiction derive, does not apply. Therefore, he says, in those circumstances the Adjudicator has no jurisdiction and the proper forum is the County Court.

I do not agree with his analysis. The circumstances seem to me to fall within ground (f) in paragraph 2(4) of Schedule 6 to the 1991 Act: *that the penalty charge exceeded the amount applicable in the circumstances of the case*. If the PCN was not served, the penalty payable would be nil and therefore would exceed the penalty claimed by the Council. Even if this were not so, the issue raised by Mr Flannery would be a collateral challenge and therefore justiciable by the Adjudicator: *R v Parking Adjudicator Ex p. Bexley LBC QBD 29 July 1997*.

If the position were as Mr Flannery contends, undesirable consequences would follow. Whenever the issue in this case arose, whether the Adjudicator or the County Court had jurisdiction would depend on whether the PCN was properly issued. If it was, the Adjudicator would be the proper forum, if not, the County Court. So in every case one or other would have to make a finding of fact as to whether the PCN had been properly issued and on the basis of that determine its competence. If it found it were not competent, then there would arise the question whether the appellant could mount proceedings in the other forum, and perhaps even have the issue of fact determined afresh there. And in the case of then seeking to bring the matter before the Adjudicator, the 28-day time limit on lodging an appeal would come into play.

There are also many cases in which an appellant contests liability on the basis that arises in this case and another; for example, that the contravention did not occur anyway. If Mr Flannery is right, the appellant would have to bring proceedings in the County Court for determination of the first issue and appeal to the Adjudicator for determination of the second.

There is also the point that there is no fee payable by the appellant for appealing to the Adjudicator, whereas fees are payable for bringing proceedings in the County Court. Furthermore, enabling an appellant to challenge liability in the County Court would undermine the intention encapsulated in regulation 12 of the 1993 Regulations that costs should be awarded against either party only where they had acted frivolously, vexatiously or wholly unreasonably.

The complications and undesirable consequences that would arise from Mr Flannery's argument being right are to my mind obvious. They could only be highly disadvantageous to the ordinary member of the public who contested liability to a penalty charge and undermine Parliament's clear aim in the 1991 Act of providing a simple means of challenging liability.

Mr Flannery says that the County Court has accepted jurisdiction in this matter. I have seen the Order made by the District Judge on 4 February 2003 ordering, amongst other things, that the action be listed for hearing in June. I cannot see that there has been any decision on whether the County Court has jurisdiction and would have thought that is a matter that is open for argument at the hearing. In any event, it is at this stage for me to determine whether I have jurisdiction and I am satisfied I have.

I would add this for the sake of clarification. The first page of this decision is generated automatically by the computerised adjudication system. I should therefore make it clear that despite what is said on the first page:

the Council was represented at the hearing on 27 March and I heard briefly from its representative, who did not oppose the withdrawal; and Mr Flannery did not attend
As I have said above, the penalty charge is payable within 14 days, not 28.

I have directed that a copy of this decision be sent to the County Court so that the District Judge is aware of it

Adjudicator

Mr Martin Wood

Decision

Refused