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GUARANTEED CLEANING LTD

-v-

Transport for London

(the Enforcement Authority)

This is an application by the respondent Authority for a review of the decision of the adjudicator Ms Alderson who allowed the Appellant's appeal.

The hearing was conducted via Teams. Mr Murray-Smith represents the Appellant. The Authority who asked for a personal hearing did not attend. Leaving aside the discourtesy, the availability of personal hearings is limited. It is a waste of the Tribunal's resources to ask for a personal hearing and then not to attend it.

The first point raised by the Authority is Practice Direction no. 2 of 2024. The Practice Direction was aimed at curbing excesses by parties when they submit lengthy skeleton arguments, often for no good reasons. As with all Practice Directions, this Practice Direction is a case management tool. It does not act as a test for admissibility as argued by the authority. The Adjudicator has the power to regulate proceedings and they can have regard to the Practice Direction when doing so. However, non-adherence with a Practice Direction does not mean that submissions must be excluded.

The second objection is the alleged admission of hearsay evidence. There is no rule against the admission of hearsay evidence in this Tribunal. Regulation 9 (8)(b) of the Road Traffic (Parking Adjudicators) (London) Regulations 1993 provides that: "the adjudicator may receive evidence of any fact which appears to him to be relevant notwithstanding that such evidence would be inadmissible in proceedings before a court of law."

Hearsay evidence is regularly adduced and admitted without challenge in this Tribunal. Indeed, in adducing evidence of the maximum gross weight of the vehicle in this appeal, the Authority was adducing hearsay evidence in that they do not produce a witness who has first hand knowledge of the maximum gross weight of the vehicle. The Authority's submission flies against the Regulations and common practice.

The Authority's third submission was that Mr Murray-Smith should have been excluded. Mr Garrett for the Authority sought to rely on the decision of a Road User Charging Appeal. That decision was premised upon Paragraph 9, Schedule 1 to the Road User Charging Schemes (Penalty Charges, Adjudication and Enforcement) (England) Regulations 2013 which Mr Garrett has not cited in his application. It provides:

"At the hearing of an appeal, the appellant may conduct the appellant's case in person (with assistance from any person if the appellant wishes) or may be represented by a solicitor, counsel or any other person" but "If in any particular case the adjudicator is satisfied that there are sufficient

reasons for doing so, the adjudicator may prohibit a particular person from assisting or representing either party at the hearing."

It follows that the adjudicator at a Road User Charging appeal has a discretion not to allow a person other than a solicitor or Counsel to represent the Appellant.

There is no such provision in the Road Traffic (Parking Adjudicators) (London) Regulations 1993. Regulation 9 (7) of the 1993 Regulations provides that: "At the hearing of an appeal, the appellant may conduct his case himself (with the assistance from any person if he wishes) or may appear and be represented by any person whether or not legally qualified.

However, if in any particular case the adjudicator is satisfied that there are good and sufficient reasons for doing so, he may refuse to permit a particular person to assist or represent the appellant at the hearing."

Mr Garrett has not said what "good and sufficient reasons" exist to give the adjudicator a power to exclude Mr Murray-Smith in this case.

I turn now to the substantive issue in this case. The adjudicator found that there are statutory requirements regarding the contents of a PCN. She went on to find that the information contained within this PCN regarding the statutory discount was contradictory, partially incorrect and potentially confusing. The sentences which gave rise to this finding read:

"You have 14 days from the date the notice is served to pay at the discounted amount. No further reminders will be sent. The date of posting is the date on the notice."

This is incorrect and, as I understand it, Mr Garrett does not argue the contrary. Mr Garrett argues that it has given the motorist a longer discount period. I disagree.

The date of service is the day on which the notice reaches the motorist. It is deemed to be the second working day after the date of posting. The date of posting cannot be after the date of service so using the date of posting as the start of the period always reduces the discount period, unless the notice reaches the Appellant on the day that it is posted. If there is a postal delay, the discount period would have been curtailed substantially.

Mr Garrett argues that the case of *Halton* made clear that "non-mandatory items within the enforcement procedure fell outside of adjudicator scrutiny. The *Halton* case deals with procedural impropriety as were the cases of *Walmsley* and *Westminster*.

Litigation is not just about citing decisions. One has to look carefully at the decisions to understand the *ratio*. Chadwick LJ said (at paragraph 43) in the *Walmsley* case: ".... that the question whether adjudicators are given power to determine a collateral challenge under the Enforcement and Adjudication Regulations may well be both "difficult and interesting" - to borrow Mr Justice Scott Baker's description. But it is not a question which arises in this case. In my view that question should be left to be decided by this Court in an appeal in which it does arise."

The point was picked up in *R (on the application of LB Camden) v the Parking Adjudicator and others [2011] EWHC 295 (Admin).* Burnett J held (at paragraph 46): "In my judgment, in framing the new regulations, the policy maker has heeded the suggestion of Chadwick LJ and made clear the nature and extent of collateral challenges that may be considered by Parking Adjudicators whilst adhering to the principle found in the judgment of Elias J in the *Westminster* case, that the four corners of

their powers are contained within the Appeals Regulations. There are three significant changes between the old powers found in schedule 6 to the 1991 Act and those found in the Appeals Regulations which unequivocally lead to that conclusion."

The changes to which Burnett J referred were the introduction of procedural impropriety as a ground of appeal (para 47), the adjudicator's power to make recommendations when there are compelling reasons (para 48) and the circumstances in which 'invalidity' of the underlying order can be relied upon (para 49). All three changes were introduced under the 2002 Appeals Regulations made under the Traffic Management Act 2004.

None of these changes apply to PCNs issued under the London Local Authorities and Transport for London Act 2003. It must therefore follow, or at least there is a strong argument, that the adjudicator retains the power to hear a collateral challenge against a PCN issued under the 2003 Act. In other words, for cases to be decided under the 1993 Regulations, the adjudicator has the power to determine a collateral challenge See *R v the Parking Adjudicator ex parte Bexley, CO- 1616-96*.

A contrary argument would mean that the adjudicator does not have the power to intervene when, for example, an authority issues a 2003 Act PCN out of time, or the PCN fails to contain any information required by legislation, or when the authority fails to issue a Notice of Rejection. I doubt this analysis to be correct.

Mr Garrett's argument that the incorrect information does not form part of the PCN is a rather curious one. Even if I were to hold that the information was part of a leaflet and not part of the PCN, and I make no such finding, not least because the "leaflet" is presented to the adjudicator under section C of the evidence pack, the logical extension to this argument is that a public authority can put out any incorrect information concerning a demand for a statutory penalty without consequence. I do not accept the validity of this argument.

I am satisfied that the issue falls within the ambit of a collateral challenge. I am satisfied that the adjudicator was entitled to determine the appeal on a collateral challenge. I am satisfied that the adjudicator was entitled to conclude that the challenge succeeds.

There is no ground for a review.

Anthony Chan
Adjudicator
14th May 2025