

**PENALTY CHARGE NOTICE; COMPLIANCE WITH REQUIREMENTS AS TO FORM;
STATEMENT OF GROUNDS ON WHICH PARKING ATTENDANT BELIEVED PENALTY
PAYABLE**

Keystone Distribution v City of Westminster

Case No. : 2070217513
PCN Number: WM27903335
Contravention: Parked or loading or unloading when prohibited
Adjudicator: Martin Wood
Decision: Refused
Decision date: 14 December 2007

Statutory Register entry:

- 1) The Appellant was represented by Mr Segal. On behalf of his client he submitted essentially two arguments.
 - a) That the Penalty Charge Notice did not comply with the statutory requirements as to form.
 - b) That the contravention did not occur.

I will deal with each in turn.

The compliance point

- 2) The Appellant contended that the Penalty Charge Notice did not comply with the requirements of section 66(3)(a) of the *Road Traffic Act 1991* and therefore was unenforceable.
 - 3) Section 66(3)(a) requires the Penalty Charge Notice to state '*the grounds on which the parking attendant believes that a penalty charge is payable with respect to the vehicle*'. The Penalty Charge Notice in this case says that the parking attendant '*had reasonable cause to believe that the following contravention occurred*', and then states the alleged contravention.
 - 4) Mr Segal referred to section (66)(1), which states as follows.
 - 5) *Where, in the case of a stationary vehicle in a designated parking place, a parking attendant has reason to believe that a penalty charge is payable with respect to the vehicle, he may [serve a Penalty Charge Notice].*
 - 6) Mr Segal pointed to the fact that this empowers a parking attendant to issue a Penalty Charge Notice where he has '*reason to believe*' that a penalty is payable. The Penalty Charge Notice is therefore not compliant, he said, because it states that the parking attendant '*had reasonable cause to believe*'. He argued that this is different from having reason to believe and gives wider scope to the parking attendant than the statutory requirement. He said that '*has reason to believe*' means on the strength of his own observations or his own direct knowledge. Having reasonable cause to believe, he argued, is not restricted to the parking attendant's personal knowledge and would allow hearsay evidence to be used.
 - 7) Mr Segal cited no authority for this proposition and I do not accept it. I do not see that there is anything in the natural meaning of the two phrases that imports the distinction Mr Segal advocated. Both a 'reason' and a 'reasonable cause' could be based on direct personal

knowledge or on information gathered in some other way, such as from a third party. In fact, if a distinction is to be drawn, a requirement for a 'reasonable cause' would in my view be more stringent than for a 'reason'. The Oxford dictionary cites 'cause' as a synonym for 'reason' and vice versa, and it is this sense that each is used in the phrase in question. So 'reasonable cause' could be recast, inelegantly, as 'reasonable reason'. To require a 'reasonable reason' would, as I say, if anything be a more stringent requirement than for a mere 'reason'.

8) If one wished to pursue these linguistic matters, one might point to a distinction between section 66(1), which requires the parking attendant to have a '*reason to believe*', and section 66(3)(a), which requires the Penalty Charge Notice to state '*the grounds on which the parking attendant believes*'. One might argue that the latter refers to the parking attendant actually believing, whereas the former in its terms requires only a reason to believe without actual belief. It is indeed unclear why section 66(1) does not simply say 'believes'.

9) But all these linguistic niceties are in my view irrelevant. The issue is whether the Penalty Charge Notice complies with the requirement to state '*the grounds on which the parking attendant believes that a penalty charge is payable*'. The simple purpose of that requirement is so that the recipient of the Penalty Charge Notice is informed of what the alleged contravention is. Section 66(3)(a) does not require any particular form of words to be used. One should not be over technical or legalistic in considering whether the requirement has been complied with. One should simply ask whether the words used convey the substance of the allegation. In my view in this case they plainly do. Whether they are prefaced by 'had reason to believe', 'had reasonable cause to believe', or simply 'believed' really does not matter. The evidence that the local authority may produce in support of its case is in no way affected by the wording of the Penalty Charge Notice, as Mr Segal argued.

Did the contravention occur?

10) The Penalty Charge Notice was issued for parking on a restricted street where loading/unloading was also prohibited during the times of restriction.

11) I adjourned the case for the local authority to produce a copy of the relevant provisions of the Traffic Management Order. It has done so. The photographic evidence shows that the restriction signed was no waiting at any time and no loading 8.30 am to midnight. The Penalty Charge Notice was issued to the vehicle at 10.22 pm. So on the basis of the signage, the contravention occurred.

12) Mr Segal, however, contended that the local authority had not established that there had been a breach of the Traffic Management Order. I adjourned the case for the local authority to produce the Traffic Management Order. It produced extracts from it - no doubt, in an effort to be helpful, just those that it considered to be relevant. Whether there had been a contravention depended on the application of article 5, which provided as follows.

5(1) No person shall cause or permit any vehicle to wait during the prescribed hours in any restricted street except, subject to the provisions of the next paragraph, for so long as may be necessary for the purpose of delivering or collecting goods or loading or unloading the vehicle at premises adjacent to the street.

(2) No person shall cause or permit any vehicle to wait for the purpose of delivering or collecting goods or loading or unloading the vehicle –

(a) in any of the streets specified in Schedule 2 (which consist of restricted streets or parts thereof) during the restricted hours; or

(b) without prejudice to the provisions of the last foregoing sub-paragraph –

(i) for a period of more than 20 minutes in the same place during the prescribed hours in any part of any street in the City of Westminster specified in Schedule 6 which is a restricted street;

(ii) for a period of more than 20 minutes in the same place during the prescribed hours in so far as the same fall between the hours of 11 a.m. and 6.30 p.m. in any other restricted street.

This sub-paragraph does not apply to the restricted streets specified in Schedule 3.

13) Holles Street is in Schedule 2. So, article 5(2)(a) applies to it. The substance of that article is that the loading exemption in article 5(1) does not apply in those streets. It would therefore appear that a contravention under article 5(1) occurred. However, at the resumed hearing on 8 November 2007, Mr Segal pointed out that the local authority had not provided a copy of Schedule 6, and that there was therefore doubt about whether article 5(2)(b)(ii) might also apply. My initial impression was that that would not be the case, but I nevertheless adjourned the appeal for the local authority to produce Schedule 6. It has not done so. However, I have now scrutinised article 5 at length, and have concluded that my initial impression is correct. I will explain why.

14) As I say, Holles Street is governed by article 5(2)(a). It would be utterly inconsistent with that for Holles Street also to be in Schedule 6 and so for loading/unloading to be permitted for up to 20 minutes. But even if Holles Street is named in Schedule 6, the position is that article 5(2)(a) will still govern it, because article 5(2)(b) is stated to be without prejudice to article 5(2)(a). So the result is that the loading/unloading exemption does not apply in Holles Street.

15) Accordingly the contravention occurred and the signage reflects the Traffic Management Order.

16) I refuse this appeal.