

JANE PACKER FLOWERS AND OTHERS

ADJUDICATION

INTRODUCTION

These consolidated appeals raise questions of great practical importance for local authorities and those doing business - and indeed the general motoring public in the London area. In each case the ground of appeal relied on either wholly or in part is that the vehicle was parked whilst the driver was delivering/collecting or loading/unloading goods. Although the factual situations covered in these appeals can only be a small sample of the multifarious situations that may arise on the streets every day nevertheless they provide an opportunity to systematically examine the law in this area such as it is and to attempt to lay down the principles which may be of some use to Parking Attendants, Boroughs and any tribunal of fact.

I am grateful to counsel for the Despatch Association, the Freight Transport Association, and the Local Authorities respectively for their detailed and well researched submissions.

LIST OF AUTHORITIES

Sprake - v - Tester (1955) 53 LGR 194

Richards - v - McKnight [1977] RTR 289

Bulman - v - Godbold [1981] RTR 242

Boulton - v - Pilkington [1981] RTR 87

Whiteside - v - Watson 1952 SLT 367

McLeod - v - Wojkowska 1963 SLT (Notes) 51

Holder - v - Walker [1964] Crim LR 61

Chafen - v - Another Supplement to the Justice of the Peace and Local Government Review 21st March 1970

Pratt - v - Hayward [1969] 3 All ER 1094

Funnell - v - Johnson [1962] Crim LR 488

Police - v - Hadelka [1963] Crim LR 706

Decision of a Stipendiary Magistrate sitting at North London Magistrates Court, Journal of Criminal Law Vol XVI No 3, 193 (1952)

Decision of a Stipendiary Magistrate sitting at Clerkenwell Magistrates Court (102 SJ 358) (1958)

THE EXEMPTION

In each of these cases the vehicle in question was observed by a Parking Attendant in apparent contravention of a parking restriction prohibiting parking on a yellow line or bay. There is, however, an exemption under each of the local Traffic Management Orders in identical terms. The relevant text reads as follows:

“No person shall cause or permit any vehicle to wait during the prescribed hours in any restricted street except.....for so long as may be necessary for delivering or collecting goods or loading or unloading the vehicle at premises adjacent to the street”

In the cases of .F & M Services, Karen Burgess, and one of the Jane Packer Flowers cases (residents etc. bay cases) the exemption reads:

“Notwithstanding the foregoing provisions of this Order any vehicle may wait during the permitted hours in any part of a parking place.....if....

h)the vehicle is waiting for the purpose of delivering or collecting goods at premises adjacent to the parking place at which the vehicle is waiting.....”

MEANING OF “GOODS”

“Goods” is defined in .Para 3(1) of the schedule as

“goods of any kind whether animate or inanimate and includes postal packets of any description; and “delivering” and “collecting” in relation to any goods, include checking the goods for the purpose of their delivery or collection”.

Taken literally this is a circular definition in that it does not actually define the meaning of the word “goods”; but it seems clear that the intention is that goods should be given a very wide meaning.. As counsel for the Despatch Association pointed out there is no requirement that the goods should be of a particular size weight or bulk and the inclusion of postal packets suggests that the draftsman had in mind even comparatively small items. It seems to me that had the draftsman who was applying his mind at this point to the meaning of goods and what goods should be covered intended to limit the definition of the word “goods” to heavy or bulky goods he would have said so at this very point - or at least left the word to stand without further qualification.

It might therefore appear at first sight that once an article falls within this definition and the action that is being applied to it can fairly be described as delivery the motorist is home and dry. The difficulty, however, is that if this were the case, it would mean that virtually any movement of any article to or from a vehicle would enable a motorist to park in restricted streets etc. which would drive a coach and horses through the legislation. Every motorist doing his shopping, for example would be covered. Not surprisingly the courts have not been prepared to allow such a liberal construction and in a number of decided cases, notably *Sprake - v - Tester* and *Richards - v - McKnight*, have set out the limitations in this and similar provisions. As Lord Goddard C.J. said in

Sprake - v - Tester “What is said here is that the mere placing of a parcel which a person can quite easily carry in his hands makes it a loading or unloading of goods. Of course in one sense that is perfectly true but it cannot be the sense that is meant in this order”.

PRINCIPLES OF CONSTRUCTION

One thing if nothing else is clear from the authorities which is that these regulations should be construed in the light of the purpose for which they were drafted and applying common sense.: .. “one has to think what is the object of the order and what is the object of the exemption”. I think it has to be left to the good sense of the Justices to say whether when the transaction is going on it can fairly be said to be a loading or unloading for the purpose for which this order is designed and which the exemption is intended to protect.....” *Sprake v Tester*. Bearing in mind the infinite variety of situations that will arise in practice it seems to me impossible to arrive at a n interpretation which leaves no room for argument, a line which will always clearly divide the motorist who is covered from the one who is not. There will always be borderline cases where the local authority, tribunal or court will have to exercise its judgement as to where the case falls.

It seems to me the purpose of the regulations is to limit the number of vehicles parked in the streets to promote the flow of traffic whilst making allowance for those who need to park for various reasons - see list of other exemptions. In particular it cannot have been the intention to make life extremely difficult, if not impossible for ordinary commercial activity

THE TRUE MEANING OF THE EXEMPTION - THE AUTHORITIES

SPRAKE - V - TESTER

This was a case where a motorist went into a shop, bought six champagne glasses packed into a parcel about a foot each way and returned and put it in his car. There was an exemption in the local order for the loading and unloading of goods. The High Court rejected the argument that anyone putting into his car something bought from a shop was covered by the exemption. It was held that this kind of transaction was not within the intention of the exemption although the fact that the vehicle in question was not a goods vehicle was not of itself fatal.

“It means a loading or unloading for some commercial purpose, and I think there is a reason why it is not limited to goods vehicles. I can understand a private motor-car coming along with a load of things inside it; it might be a piece or two of furniture, it might be half a dozen pictures to be reframed or cleaned, I would not even exclude a heavy laundry basket. There may be many cases in which the motor-car would be used for something which it would not be reasonable for anybody to carry in his hand; and therefore it might be said persons putting such things into or out of the car were loading or unloading within the terms of this order.”

RICHARDS - V - McKNIGHT

In this case the motorist parked his car in a restricted street while collecting wages which fitted in the breast pocket of his coat. The exemption in the local parking Order allowed a vehicle to wait “*for so long as may be necessary for the purpose of delivering or collecting goods or merchandise or loading or unloading a vehicle at premises adjoining the road*” (and certain provisos followed)

The High Court held by a majority that although cash was covered in the definition of goods under the terms of the proviso the real question that had to be addressed was whether the vehicle was used for the purpose of delivery/collection and on the facts found it was not. “*The driver put the money in his pocket. He merely used the car for convenience and it is he who collected it and not the vehicle*”

Both these leading cases involved private motorists going about their own business and do not directly deal with the cases raised by some of these Appeals of the delivery in the course of trade or business of articles which, although “goods” within the wide definition in the Order are nevertheless not heavy or bulky ,and could be carried in the hand.

Clearly one has to look at the purpose and intention behind the exemption and I respectfully adopt the words of Slynn J in Richards - v - McKnight construing what is essentially an identical “delivery” exemption to that in the present cases:

“It seems to me that the object and purpose of the exemption conferred by article 29 with which the court is concerned is to exempt from the prohibition against waiting vehicles which are parked in order that the person can deliver from the vehicle or collect and put into the vehicle , goods or merchandise which are in the course of trade or which are collected or delivered by a vehicle because they cannot reasonably be carried by hand. It is in effect the collection and delivery of goods in a vehicle which is covered, not merely collection and delivery of goods by a person. Thus, a man who delivers or collects commercial goods or merchandise, or goods or merchandise which reasonably need to be transported by a vehicle, is enabled to park”

I accept the contention of counsel for the Despatch Association and the Freight Transport association that a distinction is clearly being drawn here (-twice-) between commercial deliveries or deliveries in the course of trade and other deliveries where it is necessary to show that the use of a vehicle was necessary and not merely convenient. It seems to me that both in this case and in *Sprake - v - Tester* (“*loading or unloading for some commercial purpose*”) (in the context of loading/unloading) the assumption is that in a commercial context a delivery will always fall within the object of the exemption.

In my view there are good practical reasons for such a distinction. A delivery in the course of trade or business seems to me to fall more easily within the ordinary meaning of “delivering goods” even if the size/ weight of the goods is small. In his submissions counsel for the FTA referred to the situation of a delivery round where a number of individual items, small in themselves, are dropped off at various locations; and I put to counsel in argument the example of the milkman. In these cases each delivery is of items small enough to be carried in the hand etc. but it seems to me that the man in the street (to adopt one test in *Sprake - v - Tester*) would have no difficulty in coming to the conclusion that the driver in this situation is delivering goods; indeed to hold that a delivery driver in the ordinary sense of the word is not parked for the purpose of delivering goods would be an

affront to common sense. Multiple drop-off cases illustrate the point neatly but it is equally justifiable for one-off deliveries to be covered. All commercial deliveries have more to them than mere convenience in that there are obvious constraints of time and money involved and to put commercial businesses making trade deliveries to proof that the use of a vehicle was justified on every occasion seems to me to be unrealistic and to impose a restriction on commercial activity which on the face of it the exemption actually seeks to avoid.

Making a distinction between trade or commercial deliveries and private motorists has in addition the practical advantage that it is a relatively easy line to draw and is one that is readily comprehensible to the average motorist or Parking Attendant. Drivers making deliveries in the course of a trade or business will in the normal course of events be able to produce some form of supporting documentation which should make these cases easy for the Local Authority to identify if representations are made.

Counsel for the local Authorities submitted that in all cases the Appellant has to demonstrate that parking at the particular location was “necessary” in the sense that the vehicle could not reasonably be parked elsewhere or the delivery made at some other time. If this is correct it would mean that even in cases where there was clearly a delivery taking place -50 sacks of potatoes for example -the tribunal of fact would have to investigate such matters as the availability of alternative parking in the area and the way the motorist organised his business. This seems to me to be unsatisfactory and to be avoided unless the wording of the provision admits no other interpretation. Fortunately it seems to me that counsel for the FTA is correct in his submission that “necessary” is to be read as referring to the time limitation; and that once a motorist is parked for the purpose of delivering/collecting goods he may remain there for as long as it takes - and no longer - to effect the delivery/collection. Some support for this interpretation is to be found in *Funnell v Johnson* . The High Court was dealing with an exemption “*for so long as may be necessary for the purpose of delivering or collecting goods or merchandise or loading or unloading the vehicle at premises in the street*”. It held that the defendant had to establish “*that the waiting was for a permitted purpose and for no longer than was necessary*”.

Although I am of the view that in the light of the authorities trade deliveries of small items would be covered local Authorities will bear in mind that the smaller and lighter the goods the shorter the time that should be needed to deliver them and the greater the evidential burden on the driver to justify a lengthy absence from the vehicle.

THE DIFFERENCE BETWEEN DELIVERY/COLLECTION AND LOADING/UNLOADING

Although in the great majority of cases the exemption relied on will be delivery” the second part of this exemption refers to the loading or unloading of a vehicle and often but not always the two parts will overlap. The obvious distinction between this and the delivery exemption is that here there is no requirement that what is loaded/unloaded be “goods” or that whatever is loaded/unloaded be taken to a particular place as implied by the word “delivery”. It seems to me one application will be in those cases where tools, materials or equipment are removed from a vehicle and deposited for use nearby. Clearly the items in question will have to amount to a “load” which in my view does carry with it connotations of weight or bulk

SHOPPING

It is sometimes said (e.g. in the Parking Attendants Handbook - see below) that shopping is not goods. This is an oversimplification. Certainly a person buying small items is not covered (*Sprake - v - Tester*) and even in the case of large and bulky items it seems to me the time spent choosing the goods, talking to the shop assistant etc. I.e. the normal processes of shopping would not properly be described as collection or loading. However the fact that goods could be described as “shopping” does not prevent the exemption applying if the other criteria are met. If the goods are heavy or bulky their actual transfer to a vehicle would be “loading” under the examples given in *Sprake - v - Tester*. And if a motorist for example brings his car round to pick up the goods one a purchase has been made that would also be a “collection” provided the goods warranted the use of a vehicle (*Richards - v - McKnight*)

THE BOUNDARIES OF “DELIVERY AND COLLECTION” AND “LOADING/UNLOADING”

It seems to me that delivery/collection in this context means the taking of the goods from the vehicle to where the recipient requires them (or may reasonably be taken to require them) to go and vice versa; it certainly means more than merely depositing them at the first available space within the receiving premises. Two authorities throw light on this point.

MACLEOD v WOJKOWSKA

In this Scottish case a woman left a van parked in a restricted street in Edinburgh while collecting goods for delivery. The van was left parked for 15 - 20 minutes, the woman was inside the premises for 12 - 15 minutes and the van was left unvisited for about 12 minutes. The delay was caused by her having to wait while a parcel was made up for despatch. The exemption covered waiting “for so long as may be necessary to enable goods to be loaded on to or unloaded from the vehicle...”. The Lord Justice Clerk said

*“ The proviso in regard to waiting for the purpose of loading or unloading is one which, in my opinion, should be interpreted in a reasonable way. Indeed I did not understand the Crown to contend otherwise and the advocate-depute conceded that it covers more than merely taking goods out of a motor car and putting them on the pavement and taking them from the pavement and putting them into the car .
Accordingly the proviso covers not merely the acts of loading and unloading in the narrow literal sense but also the taking of the goods into those premises and putting them in some part of those premises; vice versa it covers the taking of goods from some part of the premises , carrying them to the car and putting them on to it. The matter is one of degree and there may be borderline cases where it is difficult to tell whether the actings of the driver are or are not such as to enable him to pray in aid the provision in question. In the present case the appellant founded strongly on the fact that, for a period of not less than twelve minutes the driver was continuously in the firm’s premises without visiting the van. That makes this an extremely borderline case but, looking at the whole processes which were carried out by the driver.....I am satisfied that during the period in question the process of loading and unloading was in fact being carried out.”*

BULMAN v GODBOLD

A van driver left his van with the engine running in a restricted street for 15 minutes whilst unloading frozen fish into a freezer. The relevant exemption permitted a vehicle to wait “ for so long as may be necessary to enable goods to be unloaded from the vehicle”. The High Court held that it was quite unable to say that the Justices finding of fact that the vehicle was waiting only for so long as was necessary to complete unloading was wrong, bearing in mind the load was frozen fish which could not be dumped on the pavement.

These two cases clearly show that in the context of an exemption for loading/unloading taking the goods into/out of the premises is covered and in some circumstances the putting away of the goods may also be covered. It seems to me that a fortiori this would apply even more in the case of a delivery/collection exemption

PAPERWORK AND OTHER DELAYS

It also seems to me that delivery should extend to the completion of paperwork which is reasonably required. To permit the commercial delivery of goods but not to permit the completion of the delivery note or the obtaining of a signature for the goods or whatever it may be, undermines the point of having the exemption for all practical purposes. It is unrealistic to expect deliveries to be made without some form of paperwork and I have no difficulty in regarding this as part of the “delivery process” referred to in *Macleod v Wojkowska*. Checking the goods is specifically covered by the definition paragraph in the Orders.

Difficulties commonly arise where there are delays in this process: The supervisor cannot be found or is engaged; there is some defect in the paperwork requiring correction; the goods have to be located or further enquiries need to be made. At some point there will be a fine line to be drawn between what is acceptable and what is not. It seems to me that the driver should normally be covered during unexpected delays (as the driver waiting for the parcel was in *Macleod v Wojkowska*) but if he embarks on some other activity such as going off for refreshment or starting some other work it will be difficult for him to say that the process of delivery /collection is still continuing. This was clearly the approach of the Stipendiary Magistrate in the *Clerkenwell case* in holding that a motorist who took two parcels into a building but was there 18 minutes while he took out an electric fire was not covered.

So far as delays while goods are located are concerned I note the case of *Chafen* where an art dealer parked his car for 35 minutes outside a shop where he was buying a picture. He was delayed as the shop assistants were unable to find it. The very brief report reads “ *HELD that while there was an exemption from the provisions of a no waiting order given for the purpose of loading or unloading goods the exemption did not extend to leaving a vehicle for as long as might be necessary for the goods to be located. No criticism could be made of the finding that 35 minutes was unreasonable*”. I read this as meaning that a motorist is allowed a reasonable time for goods to be located but does not have an automatic exemption to cover him for as long as it might take to trace the goods; clearly the last sentence of the report implies that there is an element of discretion.

PARKING IN ANTICIPATION OF A LOAD OR COLLECTION

It seems clear from *Holder v Walker* that parking whilst going to investigate whether or not there might be goods awaiting loading or collection is not covered by the exemption. In that case a lorry driver parked for 24 minutes whilst he visited three regular customers to see whether they had any goods to be loaded that day; but in the event there were none. The High Court held that where no loading had taken place the exemption did not come into play. However it seems to me a very different situation would arise in the case of a driver going to premises where he could reasonably expect to collect or load goods and finding unexpectedly that there were none. A prior appointment or a regular round is very different from what was effectively a canvassing situation in *Holder v Walker*. It seems to me that a driver in a case of this sort can fairly be said to be parked “for the purpose” of loading/collecting and provided he is not, as it were, on a “fishing expedition” it would seem unfair to penalise him for what will probably be a failure or inefficiency by a third party..

EVIDENTIAL AND PRACTICAL ISSUES

THE BURDEN AND STANDARD OF PROOF

The burden of establishing that the exemption applies is on the appellant motorist. This seems clear from *Funnell v Johnson* where the High Court decided that “*the defendant’s contention that the prosecution must establish that the defendant’s conduct did not fall within any of the exceptions in regulation 3 was wrong. The offence was causing the vehicle to wait in a restricted street; it was for the defendant to establish that the waiting was for a permitted purpose....*”. The standard will be the civil standard i.e. the balance of probabilities.

THE OBSERVATION PERIOD AND LOCAL AUTHORITY EVIDENCE

In view of the fact that the burden of proof is on the motorist there is nothing to prevent a Parking attendant issuing a PCN forthwith to any vehicle that appears to be unlawfully parked, subject to any exemption. The Attendant will normally simply observe a vehicle apparently in breach of the regulations and will not be in a position to say what the motorist is doing away from the vehicle. However, it must be said that the shorter the observation period the easier it will be evidentially for the motorist to establish that the exemption applies. If a delivery driver says he was taking a small packet into a nearby building he may easily be able to justify an absence of one or two minutes; but if the attendant observed the vehicle for ten or fifteen minutes with no sign of delivery or unloading taking place the driver will be in some difficulty. Whilst it may not be impossible for him to show that although he was away from his vehicle he was nevertheless engaged in the delivery/unloading process he will have far more of an uphill struggle than if he were justifying a two minute absence

It must be stressed that the lack of any delivery /unloading activity at the vehicle does NOT automatically mean that delivery/unloading is not taking place - see above. Nor is it correct to follow a policy that “it was not seen therefore it could not have happened”. Local Authorities often state that “loading or unloading must be continuous” implying that there must be an uninterrupted movement of the goods to or from the vehicle for the exemption to apply. I can find no authority in these terms for this proposition - indeed in *Macleod v*

Wojkowska it was put forward in argument by the Crown and rejected by the decision of the court. It is, of course correct to say that the exemption only applies whilst the unloading/delivery is taking place but as I have set out above these words cover rather more than simply moving the goods.

It is of course up to Local authorities whether they lay down a particular observation period for their Attendants before issuing a PCN. However, for my own part I would have thought that in the case of any commercial vehicle or other vehicle showing signs of possible delivery/unloading activity a zero observation period would inevitably lead to unnecessary correspondence and appeals. Whereas an observation period of, say, 5 or even 10 minutes in these cases would in some cases save the issue of a PCN at all and in the remainder the Local authority would be entitled to take a stricter line when considering explanations given for longer absences - always bearing in mind that each case must be considered on its own merits.

THE 20-MINUTE MAXIMUM

The Orders provide an overriding maximum period of waiting under the delivery/unloading exemption of 20 minutes. Counsel for the FTA submitted that this should entitle a driver making a delivery to the full 20 minutes parking before a PCN could be issued. Alternatively that as a matter of good practice Parking Attendants should not issue PCNs until the expiry of that period. I am unable to agree with either proposition. It is clear from the terms of the Orders that this an overriding maximum and that the exemption itself only permits delivering etc. for so long as may be necessary. It seems to me clear that the intention of the provision in the interests of keeping the streets clear and traffic moving is that vehicles should be moved once the need for the parking has ceased. Similarly If Parking attendants were to wait for 20 minute whenever they saw a vehicle apparently parked in breach of a restriction it would give substance to the myth, widely believed, that a flat 20 minutes was always allowed come what may and encourage drivers to park for longer than was necessary. It would also add to the time necessary for an attendant to complete his round.

CONSIDERING REPRESENTATIONS

Local Authorities should consider every representation relying in a delivery/loading exemption on its merits. They should not apply a blanket policy such as “we cannot allow your representation in the absence of documentary proof”. Documentation or confirmation by a third party may be the best evidence, but it is not the only evidence. Local Authorities should consider what the driver says even if unsupported and take it into account with the other evidence such as that of the Attendant. In many cases the two will not be incompatible in that the fact of the parking and the observation time will not be disputed but the driver will be attempting to show that the time he was away from his vehicle was wholly occupied with delivering/loading as defined above. In these cases should consider whether in all the circumstances the driver’s evidence is persuasive and, if so, allow the representations. In cases where representations are rejected the Local Authority should always give some indication why the drivers evidence cannot be accepted.

Although in a delivery case the absence of documentary evidence confirming the delivery is not to be treated as automatically fatal, the Local Authority would be entitled to expect some explanation why such evidence is not forthcoming; and the absence of such an explanation would be a factor they could take into account in assessing whether the drivers assertions were correct..

INADEQUACY OF EXISTING GUIDELINES - SCOPE FOR A CODE OF PRACTICE

At present guidance is given to Parking Attendants and others in the Parking Attendants Handbook published by the PCFL and Shaw & Sons (1995), at page 10. I regret to say that in the light of these decisions it needs substantial revision. I set out the guidance and the main defects below:

GUIDANCE	COMMENT
<i>loading or unloading activity should be continuous</i>	no authority for this as such.
<i>And vehicles should not be unattended</i>	no requirement to this effect either in the TMOs or in any case law. It is a requirement in footway parking cases. How a sole driver could deliver at all in many situations if this were the law is a mystery.
<i>There is no right to park for 20 minutes</i>	agreed
<i>In order to qualify for the exemption vehicles must be parked near to the premises being serviced</i>	TMO says at premises adjacent to the street
<i>and it must be reasonably necessary to park there in order for the activity to be carried out</i>	This is not correct. The tests are as outlined in extenso above
<i>Goods do not include items such as wages and small fragile items</i>	TMO says that goods includes goods of any description; Richards - v - McKnight does not decide that wages cannot be goods. Commercial deliveries of small items and wages (e.g. Securicor } are covered.
<i>Delivering or collecting covers the checking of goods</i>	Agreed
<i>If pre ordered but not purchased at the same time.</i>	There is no hint of this rider in the TMO or any case law. However it might be difficult on the facts for a driver to say he was “collecting” goods if he was parked in order to purchase goods. The fact that money changes hands at the time of collection would not of itself be fatal.
<i>Shopping is not goods</i>	an oversimplification see above.

Bearing in mind the surprising complexity of the law in this area and the vast number of different situations that will arise in practice it seems to me it would be preferable if there were to be created a Code of Practice based on a common understanding of the law by the Local Authorities giving guidance on good practice in the enforcement of the regulations and responding to representations once a PCN has been issued. Such a Code of Practice could be published and would doubtless be found helpful by the motoring public and particularly large firms and organisations whose business regularly brings them into conflict with Local Authorities over parking restrictions.

DECISIONS

In the light of the law as I find it to be as set out above my adjudication in these cases is as follows:-

Jane Packer Flowers Limited

Case Reference 1960034955

Westminster

On 23 May 1995 a parking attendant saw a vehicle H428 YHX at 11.03 am parked in a restricted street during controlled hours on a single yellow line outside number 6 Derby Street, W1. This was a florist's van and a note was displayed on the vehicle stating "florist making a delivery". At 11.08 a Penalty Charge Notice number WE43102127 was issued to the vehicle. The driver was absent from the vehicle at the time delivering flowers to an address in Derby Street. There is no evidence as to the precise size or nature of the flowers being delivered but I am prepared to infer from the circumstances that it would not have been smaller than a normal bouquet.

On the facts as I have found them this is clearly a case of a commercial delivery of goods in the course of a trade or business. However, although I am satisfied that flowers of some description were being delivered I have no evidence from the Appellant *in relation to this particular delivery* as to the precise nature of the goods, their weight, bulk, quantity, or exactly where they were being taken to. The Attendant observed the vehicle for 5 minutes before issuing a PCN without seeing any signs of delivering going on. The Appellant has only satisfied me on the evidence of the *minimum* bulk/quantity that must have been delivered and has not explained why on this particular occasion it would take as long as 5 minutes to deliver that amount. On the evidence provided by the Appellant therefore I am not satisfied that the vehicle was parked only for so long as may be necessary and I **refuse** this appeal

Jane Packer Flowers Limited

Case Reference 1960215927

Westminster

On 8 September 1995 at 11.54 am the vehicle H428YHX was seen parked in Grays Yard, W1, about 20 yards from James Street in a restricted street during controlled hours on a single yellow line. A notice was displayed "florist making a delivery". At 11.59 the attendant issued a Penalty Charge Notice WE52729030. The vehicle was at the time being used for the collection of flowers but the Appellant has provided no details of exactly what was being collected or loaded beyond the statement that the "goods were of a heavy / awkward nature". I note this evidence is repeated in identical terms in relation to the third case below. In the absence of proper details about the particular collection on this occasion the Appellant has not satisfied me that the period of 5 minutes during which no goods were seen arriving on the vehicle can be justified and I **refuse** this appeal.

Jane Packer Flowers Limited

Case Reference 1960215927

Westminster

On 9 September 1995 at 10.23 am a parking attendant observed a vehicle H428 YHX parked in a restricted street during controlled hours on a single yellow line in James Street, W1. There was a note on the vehicle "florist making a delivery". A Penalty Charge Notice WE52599784 was issued at 10.28 am. The driver was collecting flowers from 56 James Street and the evidence as to what the goods were is identical to that in the previous case. Again, although this is a case prima facie of a collection of goods in the course of trade or business, in the absence of sufficient evidence from the Appellant to justify a delay of 5 minutes as recorded by the Attendant I cannot be satisfied the vehicle was parked only for so long as may be necessary and I **refuse** this appeal.

Jane Packer Flowers Limited

Case Reference 1960215927

Westminster

On the 12th September 1995 at 3.59pm a parking attendant observed a vehicle H428 YHX parked in a resident's bay in Grosvenor Crescent. No residents permit was displayed and the attendant saw no movement of goods to or from the vehicle during an observation period of 5 minutes. A Penalty Charge Notice WE52255730 was issued at 4.04pm. The Driver was delivering flowers to Grosvenor Crescent and the evidence as to what the goods were is identical to that in the previous case. Again, although this is a case prima facie of a collection of goods in the course of trade or business, in the absence of sufficient evidence from the Appellant to justify a delay of 5 minutes as recorded by the Attendant I cannot be satisfied the vehicle was parked only for so long as may be necessary and I **refuse** this appeal.

Richard Few (All London Cleaning Company)

Case Reference 1960190327

Westminster

On 17th August 1995 at 8.31 am (- I prefer the Attendant's evidence as to the time -) the appellant's vehicle, M710 MKE, was observed by a parking attendant in Bruton Street, W1, parked in a restricted street during controlled hours on a single yellow line. At 8.36 am Penalty Charge Notice WE53233868 was issued to the vehicle. The appellant returned to his vehicle shortly afterwards whilst the ticket was still being written, and informed the attendant that he was delivering, although there was no note, hazard warning lights, or other sign of unloading from the vehicle which was an estate car. The appellant had in fact been delivering cleaning materials and toilet rolls to number 27 Bruton Street, outside which the vehicle was parked.

Although this was not a commercial vehicle it is clear that the Appellant was using the vehicle in the course of his business to make a commercial delivery to a customer although the Attendant could not have known that at the time. Although 5 minutes elapsed without any sign of delivering being seen in view of the nature of the goods

being delivered I am just persuaded that the Appellant was parked for no longer than was necessary and I therefore **allow** this appeal.

Richard Few (All London Cleaning Company)

Case Reference 1960171388

On 13 February 1996 a parking attendant observed the same vehicle in Bruton Street outside number 27 at 8.43 am parked in a restricted street during controlled hours (a “loading gap”) marked by a single yellow line. No loading was observed at the time by the attendant. Penalty Charge Notice number WE45443162 was issued immediately. At the time the appellant was again delivering toilet rolls/janitorial supplies to the address.

I **allow** this appeal for the same reason save to note that this was a case where the PCN was issued forthwith

Mr Peter Summerfeld

Case Reference 1960182974

The appellant’s vehicle L95 RFL was seen parked in a restricted street during controlled hours on a single yellow line in St Martin’s Lane, W1, on 30 January 1996 between 12.41pm and 12.44pm when a Penalty Charge Notice was issued. The appellant returned to the vehicle and informed the attendant that he had been collecting goods. The goods he had been collecting was a carton containing 22 video tapes which he had ordered from a firm Dance Books Limited at 9 Cecil Court - a street or alley to which there is no vehicular access.

I am satisfied from the evidence this was a collection in the course of a business. I accept the Appellant’s evidence confirmed by a director of the company that he distributes the products of Dance Books “to the retail trade” and this is supported by the invoice which shows more than one copy of each title. In view of the geography of the location I am satisfied he was parked only for so long as necessary to collect the goods and I **allow** this appeal

Mr Malcolm Granger

Case Reference 1960073786

Brent

On 5 February 1996 the appellant’s vehicle A711 NBW was seen parked in Walm Lane in a restricted street during controlled hours on a single yellow line between 9.10 am and 9.14 am when a Penalty Charge Notice number BT01534095 was issued. During this time the appellant was collecting a sum of money from the Post Office. There is no evidence as to the amount involved or its bulk, beyond the appellant’s description of it as “large” and that in his letter of the 14th May 1996 the Appellant appears to accept that it fits into a briefcase.

It seems to me this case is on all fours with *Richards v McKnight*. the Appellant was using his vehicle for convenience rather than necessity to collect the money. I therefore **refuse** this appeal

Mr Malcolm Granger

Case Reference 1960052582

On 21 November 1995 the appellant's vehicle was seen by an attendant parked in a restricted street during controlled hours in Walm Lane at 11.44 am on a single yellow line. There was a note displayed on the vehicle stating that the appellant was in the Post Office or Barclays Bank and that this had been permitted by the Parking Appeals Service. Penalty charge Notice BT 01322246 was issued at 11.44 am.

In this case it is necessary to refer briefly to details of the appellant's evidence. In his Notice of Appeal dated 14 March 1996 he states that he "was collecting a large sum of money from a Post Office in full view and hearing of other customers". However, in a letter to the Parking Appeals Service dated 12 April 1996 the appellant makes it clear that he was at the paying in counter in Barclays Bank and describes asking the teller to continue counting the cash whilst he went out to see the warden. It seems to me that these statements are incompatible with one another and, in the circumstances, I cannot treat the appellant's evidence in this case as reliable.

As I make clear in my findings of fact I am unable to accept the Appellant's evidence in this case. However, even if I were able to do so the Appellant has again failed to satisfy me that the use of the vehicle was necessary rather than convenient I therefore **refuse** this appeal

Mr Nicholas Roach

Case Reference 1960205468

Camden

On 11 July 1996 the appellant's vehicle, a van K530 MWP was seen parked in a restricted street during controlled hours on a single yellow line in Tavistock Square between 1.40 pm and 1.48 pm and the attendant observed no sign of loading and unloading and a Penalty Charge Notice CD42881122 was affixed to the vehicle. At the time the driver was delivering "print" to Quorum Training in Tavistock House. There are three entrances to Tavistock House and, having gone to the correct entrance the driver was told that the lift was out of order and that he should go to another entrance. The driver was delayed finding the rear entrance to the premises and then had to go upstairs to the consignee's office. There is no evidence as to the size or weight of the "print" in question, beyond the description of goods on the Consignment Note as a "packet". From this I draw an inference that it was of such a size and weight as being capable of being carried a reasonable distance without difficulty.

This is a case of a delivery driver making a delivery in the course of business. Although the size and weight of the packet cannot have been great it took him over 8 minutes - the observation period. It seems to me that during this time the driver was bona fide engaged on the delivery process i.e. trying to find his way into the building to make the delivery to the office where it had to go. It seems to me he is covered by the exemption and I **allow** this appeal.

Mr Stephen Rosen

Case Reference 1960145537

Hackney

On 10 April 1996 in Britannia Walk the appellant's vehicle D27 KMT was observed parked in a restricted street during controlled hours on a single yellow line. During a 6 minute observation period no delivering was seen to be taking place and Penalty Charge Notice HK02495563 was issued. During the period in question the Appellant, who had been delivering cleaning supplies, was storing them into a storage cupboard allocated for that purpose, which involved stacking and arranging the goods so as not to obstruct the cleaner from gaining access to equipment. Following that he had to wait several more minutes for a signature whilst the consignee was making a telephone call.

Although this is perhaps a borderline case I am not persuaded that storing of the cleaning supplies in a cupboard can be treated as part of the delivery. Whilst it was no doubt convenient to store the goods away to make life easier for the cleaner this seems at first sight a separate task from the delivery. The waiting for the consignee to finish his telephone call could in my view be seen as part of the delivery had it been the only delaying factor. I therefore **refuse** this appeal.

F & M Services

Case Reference 1960130992

Hammersmith and Fulham

On 2 February 1996 the appellant's vehicle M742 MJU was seen parked in Barclay Road in a shared use bay without displaying either a residents' permit or a pay and display ticket. The parking attendant observed the vehicle for 9 minutes, during which time there was no sign of loading or unloading taking place. Penalty Charge Notice HF37030063 was issued at 12.11pm. The appellant was in fact delivering a washing machine and thereafter paperwork was being completed inside the customer's premises.

This was a delivery in the course of the Appellant's business (and even if it were not it would nevertheless be covered in view of the weight and bulk of the goods). Taking these factors into account I am satisfied that the Appellant has given a satisfactory explanation for the 9 minutes during which no activity was seen. Although the paperwork is not specified I am satisfied it was part and parcel of the delivery process. I therefore **allow** this appeal.

Mr M Mesgian

Case Reference 1960208069

Harrow

On 11 July 1996 the appellant's vehicle THX 515M was seen parked in Imperial Drive, Rayners Lane, in a restricted street during controlled hours on a single yellow line between 4.22 pm and 4.27 pm. During this time the appellant was moving heavy roofing materials from his car into his shop ("Aqua Roofing") 50-60 feet away and down two flights of stairs into a basement. There is a small service road by which entry could have been gained to the rear of the premises and where the vehicle could have parked.

I am satisfied on the evidence that this was a delivery in the course of business in view of the Appellant's address - and even if that were not the case I am satisfied that the materials in question were heavy/bulky enough to justify the use of a vehicle. The combination of the nature of the goods and the distance they had to be moved is more than enough to justify the 5 minute observation period during which no movement of goods was observed. The taking of the goods down to the basement seems to me a part of the delivery /unloading process; it seems to me on these facts not unreasonable for the Appellant to take the goods to the room where they were to be stored. The Appellant is covered both by the delivery and the unloading a vehicle exemption; and that being the case the fact that there may have been other places from which he could have performed the operation does not bring him outside the exemption. I **allow** this appeal.

Mr Rupert Lipton

Case Reference 1960182238

Redbridge

On 21 June 1996 the appellant's Kawasaki motorcycle H803 NOM was seen by a parking attendant parked on a single yellow line in a restricted street during controlled hours at Cranbrook Road between 11.35 am and 11.40 am. The appellant, who was working as a courier at the time, had been instructed by his firm to make a collection from a shop in Cranbrook Road named Fairhead Hosiery. He parked on a single yellow line expecting to collect a package. He entered the firm's premises and was then directed elsewhere whilst someone went to find the package. He waited for at least five minutes but no longer than ten minutes. He was eventually given the item to be collected, which was a bag, not heavy, and which he assumed to contain hosiery of some description. Upon return to his vehicle he did not find a Penalty Charge Notice, although one had been issued. There is a service road available for these particular premises but, although the appellant was on the look out for such a road he failed to notice it as it would not have been in his direct line of vision from the way he was approaching. There were parking meters available in the vicinity.

The Appellant as it seems to me went to the premises in question in the course of his business as a courier for the purpose of collecting goods although he did not know precisely what the goods were. He was away from his vehicle somewhere between 5 and 10 minutes - a period which places a fairly high evidential burden on the Appellant bearing in mind all he was collecting was a bag (or, as he would have known, something small and light enough to be carried on a motorcycle). The bulk of the period in question seems to have been taken up with someone from the firm locating the package. In view of *Chafen* the question is whether this delay was reasonable and in all the circumstances I am persuaded that it was. The delay is in itself quite modest and there is nothing to suggest it was something the Appellant should have anticipated; nor is there any suggestion that he was told when he arrived how long the delay would be which might arguably place him under a duty to go and move the vehicle rather than wait. I consider it reasonable for a motorcycle courier, no doubt anxious to move

on, to wait for a short time if told the goods need to be looked for. I am therefore of the view that the collection exemption applies; and this being the case the fact that there was somewhere else he could have parked does not affect the position. I therefore **allow** this appeal.

Mr Carlo Gabrielle

Case Reference 1960112990

Sutton

On 14 October 1995 between 11.28 am and 11.30 am the appellant's vehicle D319 BLY was observed by a parking attendant parked in a restricted street during controlled hours on a single yellow line in Mulgrave Road. Penalty Charge Notice SU63510501 was issued at 11.30 am. The appellant had been engaged in moving various items (unspecified) from his vehicle into his house and at the time the vehicle was observed had left it unlocked with the door open whilst he had gone inside to get help from his girlfriend to move a large and heavy typewriter.

During a two minute observation period there was clearly no movement of goods from the vehicle whilst the Appellant went to get help to move an object that was too heavy for him. I have little hesitation in regarding this as part of the process of delivery or of the unloading of the vehicle (the weight of the article and the other items clearly being sufficient to constitute a "load"). I therefore **allow** this appeal.

Miss Karen Burgess

Case Reference 1960140067

Sutton

On 21 May 1996 between 2.18 pm and 2.23 pm in Manor Place, Sutton, the appellant's vehicle F691 RHX was observed parked in a residents' parking bay without displaying a valid permit. Penalty Charge Notice SU11404851 was issued at 2.23 pm. The appellant runs a greengrocery business and on this occasion was delivering an order consisting of two heavy boxes and a sack of potatoes to a sandwich bar in Manor Place. The delivery of the fruit and vegetables took approximately 3 minutes following which there was a further delay of a few minutes (unspecified) for a cheque to be collected.

The delivery of the boxes/potatoes is plainly covered as a delivery and as an unloading of the vehicle. The period afterwards waiting to collect the cheque is perhaps on the borderline but as the delay was not in my view inordinate and payment was no doubt an important part of the delivery for the Appellant I do not consider the delay unreasonable and I **allow** this appeal.

Mr George Rickwood

Case Reference 1960222649

City of London

On 1 October 1996 the appellant's vehicle (a DHL Courier van registration P793 RGH) was seen by a parking attendant parked in a restricted street during controlled hours in Fore Street, EC2, on a single yellow line between 3.00pm and 3.10pm when A Penalty Charge Notice CO03253204 was issued to the vehicle. The appellant returned from a round of morning collections to deliver the contents of the van to the DHL office in Fore Street. As there was no room within the DHL "station", it was necessary for him to park outside. There is no evidence as to precisely what the contents of the van were.

Although the transfer of the contents of the van at the end of the round would be covered both by the delivery and unloading exemptions it is clear that the Attendant observed the vehicle for 10 minutes during which time no delivery or unloading appeared to him to take place. In my view the Appellant has not provided any adequate evidence as to the nature of the goods or what he was doing with them during this period and I am therefore unable to find that throughout this period he was parked only for as long as necessary to complete the delivery/unloading. I am satisfied that a PCN was affixed to the vehicle as noted by the Attendant at the time. I therefore **refuse** this appeal

Mr David Juran

Case Reference 1960227121

Kensington and Chelsea

On 17 April 1996 the Appellant's vehicle N93 HLE was seen parked in Brunswick Gardens, double parked in a restricted street (a single yellow Line) between 3.31 and 3.36 pm. The appellant was delivering a piece of furniture (unspecified) to the basement of a house in Brunswick Gardens, which took 6-8 minutes. A Penalty Charge Notice KC7304993A was correctly issued to the vehicle at 3.31 pm but I am prepared to accept that it never came to the appellant's attention at the time.

It seems to me that it was not within the object of the delivery/unloading exemption to cover double parking and I therefore find the offence was committed.

As the Appellant never found the PCN on his vehicle I would however ask the Local Authority to reset the discount, payment to be made within 14 days.

In all case where the Appeal is allowed I quash the Penalty Charge Notice and the Notice to Owner

E.J.W.HOUGHTON
Parking Adjudicator

19 July 1997