

2nd June 2025

Case Reference: 224058486A

PAUL MCKENNA

-v-

Transport for London
(the Enforcement Authority)

This is an application by the Authority for a review of the adjudicator's decision. The application was heard via a video link. The Appellant attended the application. Despite asking for a personal hearing, the Authority did not attend nor was it represented. This is not an isolated occurrence. It is a waste of the Tribunal's resources and the Appellant's time.

The adjudicator found that there was a significant ambiguity in the amount of the penalty stated so that amounted to a procedural impropriety. The adjudicator further found that the Notice of Rejection (NOR) failed to state what Regulation 7(6) of the Representations and Appeals Regulations requires it to state, namely that 'the penalty charge' of £160, if it is to be paid, must be paid within 28 days.

As a time-limited discount was being offered in the Notice of Rejection, the timelines were important but not very clearly expressed. In particular, the description of "those PCNs held at the discounted penalty charge amount" is meaningless. No PCNs are held at the discounted penalty charge amount by the time the representations were rejected. On the other hand, I am not persuaded that the Notice was so confusing that the Appellant did not know how much was demanded by reference to a deadline. There was no evidence that this was the case, nor had the Appellant even made the issue as part of his case.

That said, I am not going to disturb the adjudicator's finding at a review. The issue is whether an ambiguity in the Notice of Rejection could have resulted in a finding of procedural impropriety within the meaning of the Appeals Regulations. I am satisfied that the adjudicator misdirected himself on the law.

I should note firstly that while the adjudicator had referred to Regulation 7(6), I have taken that he was referring to Regulation 6 (6) of the Appeals Regulation. I produce it below:

"If the enforcement authority does not accept the representations, its decision notice-

(a) must-

(i) state that a charge certificate may be served on the recipient unless within the period of 28 days beginning with the date of service of the decision notice-

(aa) the penalty charge is paid, or

(bb) the recipient appeals to an adjudicator against the penalty charge,

(ii) indicate the nature of an adjudicator's power to award costs, and

(iii) describe the form and manner in which an appeal to an adjudicator must be made, and

(b) may contain such other information as the enforcement authority considers appropriate."

It can be seen that nothing in Regulation 6(6) requires the amount of the penalty to be stated at all. I am aware that some adjudicators have interpreted "The penalty charge" in (bb) to mean the "correct" amount of the penalty charge. I do not accept the validity of this interpretation. If Parliament had intended that the NOR specifies the amount of the penalty, it would have said so. I find that (bb) simply means that the NOR must tell its recipient that the representations have been rejected and the penalty must be paid. My view is supported by the High Court's decision in the *London Borough of Camden v the Parking Adjudicator and others* [2011] EWHC 295 (Admin).

Burnett J held, that there is a requirement for a Notice to Owner to state the 'amount of the penalty charge payable' so it imports the requirement to state the penalty in the correct amount, and overstating the amount

payable in a Notice to Owner is procedural impropriety
Burnett J drew a distinction between a Notice to Owner and a Notice of Rejection at paragraph 37 of the decision:

"The third and fourth appeals are factually different. There was no penalty charge notice. The notice subsequently served by post correctly identified the penalty charge and methods of payment without any reference to the surcharge. At that stage, no procedural impropriety is apparent in the Council's conduct. The surcharge was first mentioned in the notices of rejection sent to the motorists following representations. The statutory scheme does not specify the content of a notice of rejection in the same way as it does penalty charge notices and notices to owners."

I am therefore satisfied that the adjudicator's decision should be reviewed. I am setting aside and hearing the matter afresh.

The Appellant tells me that he had not been sent a copy of the CCTV recording. I shall therefore not include that evidence in my consideration of the appeal. I am not satisfied that the contravention occurred. I allow the appeal.