

Neutral Citation Number: [2012] EWHC 3394 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Sitting at:
Manchester Civil Justice Centre
1 Bridge Street West
Manchester
M60 9DJ

Date: Tuesday, 31st October 2012

Before:
HIS HONOUR JUDGE RAYNOR

Between:

THE QUEEN ON THE APPLICATION OF
HACKNEY DRIVERS ASSOCIATION LIMITED **Claimant**

- and -

THE PARKING ADJUDICATOR **Defendant**

-- and--

LANCASHIRE COUNTY COUNCIL **Interested**
Party

(DAR Transcript of
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Mr Brown appeared on behalf of the **Claimant**.
Mr Rogers appeared on behalf of the **Defendant**.

Judgment

His Honour Judge Raynor:

1. This is an application for judicial review seeking to quash the decision of Parking Adjudicator Stephen Knapp dated 17 February 2012 dismissing the claimant's appeal against the validity of a penalty charge notice issued on 13 January 2011 by Lancashire County Council, the interested party. By virtue of the terms of the permission granted by HHJ Stewart QC, only one issue arises for my determination, namely whether the penalty charge notice was compliant with the requirements of regulation 3(2)(b)(i) of the Civil Enforcement of Parking Contraventions (England) Representations and Appeals Regulations 2007. Adjudicator Knapp held that it was. The claimant contends that he was wrong. As stated on its face, the penalty charge notice was issued under the provisions of the Traffic Management Act 2004, the Civil Enforcement of Parking Contraventions (England) General Regulations 2007 ("the General Regulations") and the Appeals Regulations 2007.
2. A full exposition of the statutory scheme that was introduced under the Act and the Regulations is contained in paragraphs 5 to 11 of the judgment of Burnett J in the case of Camden LBC v The Parking Adjudicator [2011] PTSR 1391, the relevant paragraphs being 5 to 11. Prior to the introduction of that scheme, section 66 of the Road Traffic Act 1991 governed the issue of penalty charge notices and in Barnet LBC v The Parking Adjudicator [2007] RTR 162 at page 174, Jackson J, as he then was, held that literal compliance with section 66 of that Act was not required and it was sufficient if there was substantial compliance.
3. The penalty charge notice in this case substantially adopted the specimen form for a Regulation 9 penalty charge notice contained in the report of the Independent Committee on the Review of Parking Documentation and Notices, dated September 2008. That committee was chaired by Mr Stephen Sauvain QC and included as members the local government Ombudsman at the time and others. The objective of the draft specimens, as described by Mr Sauvain in his foreword, was to:

“...combine the essential requirements of the statutory regulations with principles of good practice and use of plain English. Inevitably conflicts have occurred between the desire to produce simple and easily understandable documents and the sometimes complex requirements of the regulations and statutory guidance. Whilst it must be for each enforcement authority to satisfy themselves that each document meets the statutory requirements as well as their own needs, it is hoped that the specimen documentation produced will nonetheless provide some guidance and assistance for enforcement authorities and motorists.”
4. The specimen has been adopted by many local authorities around the country, but not, Mr Brown has informed me from his researches, London councils generally. It follows that if the claimant is right many penalty charge notices will be invalid, but that would not prevent me from holding there was non-compliance if indeed I was satisfied there was.

5. Regulation 3 of the Appeals Regulations is entitled "Scope of Part 2 and Duty to Notify Rights to Make Representations and to Appeal". Sub-regulation (2) provides:

"(2) A penalty charge notice served under regulation 9 of the General Regulations must, in addition to the matters required to be included in it under paragraph 1 of the Schedule to the General Regulations, include the following information—

(a) that a person on whom a notice to owner is served will be entitled to make representations to the enforcement authority against the penalty charge and may appeal to an adjudicator if those representations are rejected; and

(b) that, if representations against the penalty charge are received at such address as may be specified for the purpose before a notice to owner is served—

(i) those representations will be considered;

(ii) but that, if a notice to owner is served notwithstanding those representations, representations against the penalty charge must be made in the form and manner and at the time specified in the notice to owner."

As I have stated, I concerned here only with whether there was compliance with Regulation 3(2)(b)(i). It is material to point out that, as is apparent from the Regulations, further requirements as to what must be stated in the penalty charge notices are set out in paragraph 1 of the Schedule to the General Regulations, and those include by (g) and (h) statements:

"(g) that the penalty charge must be paid not later than the last day of the period of 28 days beginning with the date on which the penalty charge notice was served;

(h) that if the penalty charge is paid not later than the last day of the period of 14 days beginning with the date on which the notice is served, the penalty charge will be reduced by the amount of any applicable discount."

Regulation 3(2)(b) of the Appeal Regulations provides for informal challenges to a penalty charge notice before a notice to owner is issued. As is clear from what I have quoted already, if a Notice to Owner is issued, representations may still be made against it, but those representations must follow the instructions in the Notice to Owner, as indeed

is made clear in the penalty charge notice here. The Appeals Regulations provide for challenges on the ground of, among other things, procedural impropriety on the part of the enforcement authority, and regulation 4(5) provides that:

“...‘procedural impropriety’ means a failure by the enforcement authority to observe any requirement imposed on it by the 2004 Act, by the General Regulations or by these Regulations in relation to the imposition or recovery of a penalty charge or other sum and includes in particular -

(a) the taking of any step, whether or not involving the service of any document, otherwise than -

(i) in accordance with the conditions subject to which; or

(ii) at the time or during the period when

it is authorised or required by the General Regulations or these Regulations to be taken;”

6. It is necessary to set out the terms of the penalty charge notice that was issued in this case substantially in full. It stated the date it was served, the date of contravention, the vehicle, where it was seen, the alleged contravention and then it said:

“See Reverse For:
How To Pay. How to Challenge this PCN.
What happens if no payment is made.

The penalty charge notice must be paid no later than the last day of the period of 28 days beginning with the date on which the penalty charge notice was served. The full amount is £70.

If the penalty is paid no later than the last day of the period of 14 days beginning on the date on which the notice is served, the penalty charge will be reduced by 50%. The reduced amount is £35.00.”

In the context of this challenge, very important provisions are then contained on the reverse, starting:

“IF YOU BELIEVE THAT THE PENALTY SHOULD NOT BE PAID AND WISH TO CHALLENGE THIS PCN [and then there is a postal address to write to or an email address]

Challenges must be made in writing.”

Then it is stated:

“Details of the enforcement authorities policy and approach to challenges can be found [on its website] all cases will be considered on their individual circumstances. If you challenge this PCN within 14 days and the challenge is rejected the enforcement authority will decide in each case whether or not to extend the period within which the reduced penalty charge may be paid.

If the penalty charge is not paid on or before the end of the 28-day period as specified on the front of this notice or successfully challenged, the enforcement authority may serve a Notice to Owner...on the owner of the vehicle requiring payment of the penalty charge. The owner can then make representations to the enforcement authority and may appeal to an independent adjudicator if those representations are rejected. The [Notice to Owner] will contain instructions for doing this.

If you challenge this PCN but the enforcement authority issues a [Notice to Owner] anyway, the owner must follow the instructions on the [Notice to Owner].”

7. In his submissions, Mr Ian Rogers, counsel for the Parking Adjudicator, who is adopting a neutral position (that is, the Adjudicator), in this case submits that the first question which I must decide is whether there must be literal compliance with the regulation or whether, as Jackson J held as regards the previous scheme, it is sufficient that there is substantial compliance. It will, however, be unnecessary to address that question if I am satisfied that the PCN conveys the information stipulated in the regulation.
8. For the claimant, Mr Roger Brown accepts that the precise words of the regulation do not have to be used and that it is sufficient if the prescribed information is conveyed by the document read as a whole. However, he fairly says that, if the words of the regulation are not used verbatim, the local authority runs the risk that the PCN may be held to be non-compliant. He makes two submissions: first, that the information which is set out in Regulation 3(2)(b)(i) does not appear expressly in the PCN, nor in his submission is such information conveyed by the PCN even when read as a whole; second, he submits that by failing to state that representations received before the Notice to Owner is served will be considered, and on the contrary stating that:

“If you challenge the PCN within 14 days and the challenge is rejected, the enforcement authority will decide in each case whether or not to extend the period within which the reduced penalty charge may be paid.”

not only is the motorist not informed that representations received at any time before a Notice to Owner is served will be considered, but he may be misled into thinking that there is a 14-day time limit for informal challenges prior to the Notice to Owner being issued.

9. As to the first submission, in my view, it is important to read Regulation 3(2) as a whole, because in my view its provisions are intended to be cumulative. It is correct to say that the words of Regulation 3(2)(b)(i) are not expressly stated in the penalty charge notice and that instead it is stated that "If you believe that the penalty should not be paid and wish to challenge the PCN", you should write or email. Challenges must be made in writing, and "All cases will be considered on their individual circumstances". Mr Knapp held that the penalty charge notice in this case, read as a whole, did convey the requisite information.
10. In my judgment, having considered the first submission, I am of the view that, read as a whole, this penalty charge notice does convey what is required to be conveyed under Regulation 3(2). The person on whom the notice is served will understand that he is entitled to challenge the penalty charge notice and make representations as to why it should not be paid. Although the words "those representations will be considered" are not stated in relation to representations received before service of the Notice to Owner, I have no doubt that the recipient will understand from the statements on the reverse commencing "If you believe that the penalty should not be paid and wish to challenge this PCN" down to "All cases will be considered on their individual circumstances" that, in deciding whether to proceed with enforcement by service of Notice to Owner, the representations made in writing by of challenge will be considered. Indeed, the words "challenges in writing" as to why the "penalty should not be paid" which are stated in the penalty charge notice are in my view synonymous with the words "representations against the penalty charge". As Mr Knapp held, there is, assuming that I reject the second submission, nothing in the penalty charge notice which indicates a time limit on the making of informal challenges prior to the service of the Notice to Owner, and regulation 3(2)(b)(i) does not require information for such a time limit to be included.
11. What was fairly conveyed by the penalty charge notice, read as a whole, is that representations may be delivered, and if delivered will be considered, before a Notice to Owner is served and that if, following those representations, a Notice to Owner is served, representations against the penalty charge may be made but must be made in the form and manner and time specified in the notice to owner. That, read cumulatively, is the information which is required to be given by Regulation 3(2)(b) of the Regulations, and I consider that the information is fairly given.
12. I now deal with the second submission. I was at first attracted by that submission, but in the end again I am satisfied that it is unsound. As previously stated, the penalty charge notice must be read as a whole. The statement "If you challenge this PCN" going on to "reduced penalty charge may be paid" is clearly directed to the discount which is allowed for payment within the 14-day period that is referred to on the front of the document and it addresses the dilemma that a challenge may be made within the 14-day period but not dealt with until afterwards. The motorist will want to know what his position with regard to the discount is in that event, and is being informed. The statement I have quoted does not state, or even suggest, that any challenge prior to the Notice to Owner must be made within 14 days. In my view, the motorist, reading the document as a whole, as I have said, will fairly understand that he may make representations against the charge, both before and after the service of the Notice to Owner, but that representations made after

service of the Notice to Owner must comply with the instructions on the document, and, as I have said already, that in my view is the information which the regulation, read as a whole, requires to be conveyed.

13. It is also argued that the words “If the penalty charge is not paid on or before the end of the 28-day period as specified”, may mislead the motorist into believing that there is a 28-day time limit for informal challenges prior to the issue of a notice to owner. Again, I disagree, and agree with the reasoning in this regard of Mr Knapp. The words do not, in my judgment, suggest that there is any time limit on informal representations. It is made clear, as already stated, that representations may be made both before and after service of the Notice to Owner.

14. It follows that this claim for judicial review fails.

Mr Rogers: My Lord, the Adjudicator has no further requests.

Mr Brown: I would ask for leave to appeal on the grounds that this matter has not actually been before the courts before. There is clear evidence from the Parking Adjudicators that this matter has caused some disagreement between them and that it is of major interest to the general public.

HHJ Judge Raynor: You have nothing to say about that, I imagine?

Mr Rogers: My Lord, I will just take instructions.

(pause)

Mr Rogers: My Lord, we have no observation on that.

HHJ Judge Raynor: On balance, I am not persuaded that there is any real prospect of success. If the Court of Appeal believes otherwise or that there is good reason to have the matter come before the Court of Appeal, no doubt they will grant you leave when you apply for permission to that court. But I need to fill in the form.
