

## Sebastian Housden v London Borough of Hammersmith and Fulham

1. Mr. Housden, the Appellant, appeared before me in person.
2. The Enforcement Authority's case is that on Sunday, 28 July 2013 the Appellant's vehicle entered the box junction in the New Kings Road, and then stopped in the junction owing to stationary traffic impeding its exit from the box. A penalty charge notice was issued at 1358.
3. Mr. Housden's notice of appeal runs to some 119 pages and in oral at submissions before me he advanced several main arguments against this penalty. In view of the length and detail of his arguments I reserved my decision.
  - 3.1 Given the large number of appeals coming to this tribunal on box junction contraventions and the multiplicity of arguments advanced by Appellants, I consider it is a proportionate use of the tribunal's resources to provide a detailed decision on all the arguments advanced by Mr. Housden.
  - 3.2 Further, while no Adjudicator's decision binds another Adjudicator it may well be of some use to Appellants and Enforcement Authorities to set out my views as to the law on box junctions and on frequently advanced arguments before turning to the specifics of Mr. Housden's case.
4. I would add that I have had specific regard to the observations made by the recent Panel decision of Messrs Adjudicators Burke, Moore and Wilkinson in the consolidated cases of Gillingham v. The London Borough of Newham (2130193949); Esso v. The London Borough of Enfield (2130232767) and Khan v. Transport for London (2130261437).
5. The Contravention
  - 5.1 The contravention is set out in a statutory instrument, namely, The Traffic Signs Regulations and General Directions 2002 (TSRGD). Regulation 29(2) states that the road markings shown in diagrams 1043 and 1044 shall convey the prohibition specified in Part II of Schedule 19 of those Regulations. The prohibition under paragraph 7(1) of Part 11 of Schedule 19 states that these diagrams (which show yellow box junctions) shall each convey the prohibition that: "... no person shall cause

a vehicle to enter the box junction so that the vehicle has to stop within the box junction due to the presence of stationary vehicles."

6. Interpretation

6.1 The wording is problematic. Many motorists erroneously believe that the contravention is committed when a vehicle simply stops in a box junction.

6.2 There are the following elements: a. Causing a vehicle to enter the box junction, b. Stopping within the box junction, and c. That stopping being due to the presence of stationary vehicles. a. Causing a vehicle to enter the box junction This must mean that the driver causes the vehicle to enter the junction. If the vehicle was shunted into the junction by the vehicle behind or a third party made the driver drive into the junction, this limb would not be satisfied. b. Stopping within the box junction This means the vehicle must come to a stop within the junction. If the vehicle continues to move, this limb is, obviously, not satisfied. c. Stopping due to the presence of stationary vehicles This means that the vehicle has stopped due to the presence of stationary vehicles. If the vehicle stops because, for example, the driver wishes to read a book or light a pipe, while a criminal offence of driving without due care and attention may have been committed, it seems to me that this contravention would not have been committed. It is a question fact that any Adjudicator to conclude what the operative reason for stopping in the junction was.

6.3 In the Gillingham v. London Borough of Newham case, it was considered that the contravention places on the driver: "... The duty of exercising a judgment at the point of entry as to whether he can proceed into the box without the consequence that the vehicle has to stop due to the presence of stationary vehicles." The learned Adjudicators stated that in determining whether the contravention occurred: "... The essence of the case is crystallised in the choices and judgments made by the driver at the point of entry: the judgment to proceed, the choices of exit lane he directed his vehicle towards and the state of the traffic at that exit which could have been predicted by him at the point of entry." (The underlining is mine)

6.4 I am not persuaded that the wording of the contravention requires the Adjudicator to import the concept of reasonable foreseeability or predictability into the equation. If this approach is taken, a myriad of situations would fall to be assessed. Different Adjudicators could on the same or similar facts reach differing conclusions as to what

could have been predicted. Is a bus pulling out or a pedestrian crossing the road ahead predictable or unpredictable in London? While no Adjudicator can bind another, inconsistencies of approach on similar factual situations would lead to uncertainty and is not desirable.

6.5 Bearing in mind the more recent approach of the Courts to the work of this tribunal, for example in R v The Parking Adjudicator and Sunderland City Council on the application of Herron [2010]EWHC 1161(Admin) and in R (Hackney Drivers Association Ltd) v. Parking Adjudicator and Lancashire County Council [2012] EW HC 3394 (Admin) I think it is appropriate to take a purposive approach to the interpretation of the contravention. In my judgment the purpose of the contravention is self-evident - namely, to prevent vehicles stopping in the box junction.

6.6 I am satisfied that it is not unlawful for a motorist to enter a box junction in a line of traffic or before there is a receiving space for his vehicle beyond the junction. However, if having done so, his vehicle is caused to stop in the junction by stationary traffic ahead - for whatever reason - a contravention occurs. In my judgment, the contravention is akin to strict liability. If the stopping is because traffic ahead has stopped because a meteorite has landed in the road ahead - the contravention of stopping due to the presence of stationary vehicles has occurred. In such circumstances there is, of course, considerable mitigation - and it would be for the Authority to decide whether to proceed.

#### 6.7 Common Scenarios

6.7.1 Each case obviously turns upon its own facts. However, common examples re-occur in the cases.

a. No receiving space beyond the junction.

If the motorist enters the box junction when there is no receiving space for his vehicle beyond the junction, then self-evidently the contravention would be established.

b. Entering in the moving line of traffic

The Highway Code advises motorists as follows: "you must not enter the box until your exit road or lane is clear". This is clearly sensible advice and a motorist who follows it cannot commit this contravention.

However, the injunction does not have the force of law and is not what the contravention requires. Motorists do this in London all the time. If a motorist enters a box junction in a line of moving traffic before the vehicle ahead of him has cleared the junction and left a receiving space, there is always a risk that the traffic ahead will stop. In busy, congested London there may be many reasons for this - for example, changing traffic lights, buses pulling out, pedestrians using a crossing etc etc. While the Highway Code advice is simply that - advice - the motorist who does enter a box junction before his exit road or lane is clear, does so at his peril and takes the risk of a contravention should he be forced to stop because of traffic ahead stopping.

c. The motorist's intended space is taken by another vehicle cutting in.

Again each case turns on its own facts.

If the driver enters the box and there is already a clear space waiting to receive his vehicle when he enters, but, for example, a vehicle cuts across him and stops, forcing him to stop, the argument is that he could not be said to reasonably predicted this when he entered the junction, and therefore a contravention would not have occurred.

In my view, a motorist being "cut up" is a fact of life for London motorists, and a contravention would have occurred. However, if the motorist stops because he has to break suddenly because of a moving vehicle crossing his path, he is, of course, not in contravention in any event. This is because he did not stop as a result of the presence of a vehicle that the stationary at the time. The operative cause of his stopping was not a stationary vehicle and he would have a defence.

## 7. Mr Housden's case.

### 7.1 The penalty charge notice did not correctly describe the contravention.

The penalty charge notice states that the contravention is "entering and stopping in a box junction when prohibited". Mr Housden states this is "not an offence which is recognised in the black letter law". He refers to a case of Jennings v. Transport for London, where the Adjudicator held that the penalty charge notice did not contain an essential element of the allegation, namely that the vehicle was stopped due to the presence of stationary vehicles. He noted that this was referred to in the Joint Annual Report of the Parking Adjudicators to the Association of London Government Transport and Environment Committee 2005 to 2006.

Mr Housden contended that the penalty charge notice was not therefore compliant.

I am satisfied that a motorist receiving the penalty charge notice and considering it as a whole, would understand the contravention alleged against him. Literal compliance is not required. The leading case on the test to be applied when considering such issues is R (Hackney Drivers Association Ltd) v. Parking Adjudicator and Lancashire County Council [2012] EW HC 3394 (Admin) ("the Lancashire case"). A failure to follow the precise words of the contravention set out in the statutory instrument is not necessarily fatal. Under section 4 of the London Local Authorities and Transport for London Act 2003, the penalty charge must state "the grounds on which the Council or as the case may be, Transport for London, believe that the penalty charge notice is payable with respect to the vehicle". There is no statutory requirement for the exact wording of the contravention to be used.

I therefore reject Mr Housden's argument.

#### 7.2 The box junction was not compliant with the diagrams set out in the Traffic Signs Regulations and General Directions 2002.

Mr Housden stated that as this junction had a double yellow line running through it this meant it was not compliant with diagrams 1043 or 1044 in these regulations.

The Council respond that the layout of this junction has been authorised by the Secretary of State for Transport and supplied a copy of that authorisation.

It is clear from the Court of Appeal case of The Parking Adjudicator and Sunderland City Council on the application of Herron [2010]EWHC 1161(Admin) that what is required is that signage adequately conveys to the motorist the restriction and that substantial compliance as opposed to literal compliance, is sufficient. I am satisfied that the box junction at this location is substantially compliant with what the Council has been authorised by the Secretary of State to have in place at this location.

#### 7.3 Camera Issues

Mr Housden questions whether the camera operator has been properly trained in accordance with the recommendation contained in the "Council's Code of Practice for Operators of CCTV" dated 2009 and whether the Council have appropriate authorisation for the use of the camera. He relied upon the Council asserting that the

camera was owned and maintained by the City of London Police and requested production of the agreement between the Council and the City of London Police "to demonstrate the legal requirements are met and evidence of the correct maintenance has been undertaken". He questions the authorisation for the use of these cameras owned by a third party and questions the Council's contention that the equipment received certification from the Secretary of State in March 2009 and, in any event, questions whether approval from 2009 is "appropriate or adequate for operation in 2013".

Mr Housden further complains that he has not received evidence of appropriate servicing of the camera and that the certification provided states that it is for civil "parking" enforcement and contends that this is not valid for moving traffic contraventions.

The Council has responded by stating that their camera operators are directly employed, and it is a condition of their employment that they must hold one of the qualifications listed in Appendix 9 of the Council's CCTV Code of Practice. They apologise for an error in informing the Appellant that the camera was owned by third party when it is owned and maintained by them. They have also submitted a copy of the certification for this camera.

I am satisfied on the Council's evidence as to the validity of camera and the operator and the use of the camera at this location. Further, I note that under section 4 of the London Local Authorities and Transport for London Act 2003 there is no requirement for the camera to be a prescribed or authorised device. The section simply refers to the Authority being able to issue a penalty charge notice "whether or not on basis of information provided by camera or other device".

I am not persuaded that any of the Appellant's arguments under this heading have any merit.

#### 7.4 The merits

Mr Housden states that when he entered the box junction traffic ahead of him was moving and that he always had the ability to exit from the box junction in the left-hand lane, where there was a space to receive his vehicle.

I have carefully considered the CCTV evidence and I am satisfied that a clear example of the contravention occurred.

Mr Housden referred to a case of Sheikh v The London Borough of Newham, where the Adjudicator accepted an argument that the availability of an alternative exit lane, meant that the motorist could not be said to be stopped due to the presence of stationary vehicles. I note the Gillingham decision I have referred to above and agree with the Adjudicators' decision in that case, that the possibility of an alternative exit is irrelevant. Mr Housden did not take it. I also decline to follow the decision in the case of Sheikh.

#### 7.5 Absence of CCTV warning signs.

Mr Housden contends that there were no signs warning of CCTV enforcement at this location and that this constitutes a breach of the Data Protection Act 1988.

The Council assert that signs warning of CCTV enforcement are in place at the location and that there are other signs warning of this further west on the New Kings Road. They have produced photographs of these warning signs in section H of evidence.

I accept that signs warning of CCTV enforcement were in place at the time. In any event, I am satisfied that there is no legal obligation for such signs to be erected before traffic enforcement can take place.

#### 7.6 Revenue Generation

Mr Housden contends that the box junction constitutes "entrapment" and "is designed for the sole purpose of extracting maximum revenues with no corresponding transport benefits".

The Council refutes any suggestion that the junction is a "trap" and refers to the advice given in The Highway Code - namely that the Appellant should have waited before the junction until there was a clear space on the other side in order to guarantee not getting caught in it.

None of his submissions under this head have amount to a successful grounds of appeal.

#### 8. Conclusion

- 8.1 I am not persuaded that any of the arguments advanced by Mr Housden amount to a successful ground of appeal.
- 8.2 I am satisfied on the evidence produced by the Council that the contravention occurred and that the penalty charge notice was lawfully issued.
- 8.3 Despite the detailed arguments that Mr Housden (and other Appellants) frequently advance and the analysis of the law I have set out above, in my view in essence, the contravention is a simple one.

21 January 2014

Alastair McFarlane

Adjudicator