PARKING APPEALS SERVICE

LONDON BOROUGH OF HAMMERSMITH & FULHAM

MIRANDA MARIE TAVARES

CASE No. 1970003663

REVIEW OF THE DECISION OF THE PARKING ADJUDICATOR

At 9.09am on 29 June 1996, Miss Tavares' car (registration mark L971 WFB) was parked in Fulham Road at a place where and time when restrictions against parking were in force. At that time, a Penalty Charge Notice (PCN) was attached to her car by Parking Attendant HF47 Breege Clancy. Miss Tavares accepts that she was parked in contravention of the parking regulations and that a PCN was properly served on the vehicle and that, consequently, she was liable for a penalty of £40 (or £20, if paid within 14 days).

However, very shortly afterwards, the vehicle was towed away. There was a conflict in the evidence as to the circumstances of this. Miss Tavares said that she heard the motor of the tow truck winch outside her window, and shouted out of the window that she would go and move the car. She ran out. She said that, when she got to the car, all four wheels were still on the ground: but, despite her entreaties, the men continued with their operations to tow the car away to the pound. Miss Tavares went to the car pound and paid £105 release charges (as well as the £20 penalty) for the return of her car.

The version of events put forward on behalf of the London Borough of Hammersmith & Fulham ("the Council") was somewhat different. Notably, the Parking Attendant said, in a statement dated 3 September 1996 (about 10 weeks after the incident):

> "On 29/06/96 at 9.01 [this appears to be an error for 9.09: however, nothing turns upon this point], I issued a PCN to vehicle reg L971 WFB black Ford Fiesta. The

> offence was 02 [i.e. parking, loading or unloading contrary to restrictions in force] obstruction to flow of traffic. *I would not have continued with the removal if all four wheels were not off the ground when the owner returned*" [emphasis added].

Miss Tavares did not object to paying the £20 penalty, but she did object to paying the release charges. She made representations to the Council, who turned them down. She then appealed to the Parking Appeal Service, and that appeal was heard by the Parking Adjudicator Edward Houghton on 9 November 1996. He heard the evidence of Miss Tavares and a witness she called, and allowed the appeal in the following terms:

> "[Miss Tavares] does not dispute that the offence was committed and [the Council] was entitled to have the vehicle removed. However, I prefer the evidence of [Miss Tavares] and her witness who both have a very clear recollection of events to that of [Parking Attendant Clancy's] statement made many weeks after and referring only to usual practice. I find that the vehicle had not been lifted when [Miss Tavares] returned and she should have been allowed to remove it."

Mr Houghton directed the Council to refund the release charges paid, but not the penalty charge (which, as indicated above, was not disputed by Miss Tavares).

The Council now seek a review of Mr Houghton's decision. They cannot properly dispute Mr Houghton's finding of fact, nor do they do so, but they say that he made an error of law. It is upon this point of principle which, in the interests of justice, they seek clarification. In line with usual practice where a local authority seeks a review on a matter of principle, the Council have already refunded the release charges as directed in the original decision, and have indicated that they will not pursue these charges whatever the outcome of this review. That was a very proper course for the Council to follow.

Turning to the issue of principle before me, it is clear that the scheme of the Road Traffic Act 1991 gives a local authority a wide discretion in the enforcement of parking regulations, if there is a contravention of those regulations. The enforcing local authority has a full panoply of procedures

available. It may merely issue a PCN. It may proceed to immobilise the vehicle, by clamping it. It may tow the vehicle away. Whether the authority takes any steps at all (and, if it decides to act, the steps it does take) are matters within its own discretion. No doubt all authorities will have certain classes of contravention which they may particularly target for specific enforcement steps: for example, an authority may prioritise vehicles parked in doctor-only bays for towing away. Nevertheless, if a vehicle is parked in contravention of any regulation, subject to very limited exceptions provided by the regulatory scheme (e.g. special restrictions on steps which can be taken against disabled badge holders), the owner cannot complain about the method of enforcement adopted by the authority.

In this particular case, Miss Tavares accepts that she was parked in contravention of the regulations, and the Council were perfectly entitled to tow away her car.

Were they disentitled because Miss Tavares returned to the vehicle (on the basis of Mr Houghton's finding of fact) prior to any of the heels being lifted from the ground? The relevant statutory scheme is found in Part II of The Road Traffic Act 1991, and The Removal and Disposal of Vehicles Regulations 1986 as amended by The Removal and Disposal of Vehicles (Amendment) Regulations 1993 and The Removal and Disposal of Vehicles (Amendment) (No 2) Regulations 1993. This statutory scheme does not provide any such limitation on towing away: it does not provide that a vehicle cannot be towed away if none of the wheels of the vehicle has been lifted prior to the return of the vehicle owner. It simply provides that a Parking Attendant acting on behalf of a local authority may authorise the towing away of a vehicle, if it is in contravention of the regulations. Despite the finding of fact by the Parking Adjudicator in this case, that all four wheels of the vehicle were on the road when Miss Tavares returned, in terms of the statutory scheme, the Council were still entitled to continue the tow away operation.

This conclusion is supported by Section 71(4) of the Road Traffic Act 1991, which sets out the grounds upon which an owner can make representations to an authority against the payment of release charges where his vehicle has been immobilised or towed away. Where the authority does not accept the ground(s) put forward, the owner can then appeal to a Parking Adjudicator against the authority's refusal: consequently, the grounds listed in Section 71(4) are effectively the grounds upon which an owner can appeal to the Parking Appeals Service when his vehicle has been immobilised or towed away. None of those grounds covers the situation where a contravention has occurred, but an owner or driver returns to the vehicle prior to lifting. Consequently, in this case, the Adjudicator had no jurisdiction to allow the appeal on the ground upon which he purported to allow it.

However, the Council is a member of the Parking Committee for London (which is a committee comprising all of the 33 London boroughs within the decriminalised scheme of the 1991 Act for the enforcement of parking regulations). The Parking Committee have a Code of Practice on Parking Enforcement, Paragraph 16.3 of which provides:

> "Occasionally the situation will arise when the vehicle owner returns while the vehicle is in the process of being lifted. The ruling adopted by the Metropolitan Police is that the vehicle must be returned to the owner if the wheels of the vehicle are still on the ground; authorities should adopt the same rule. The PCN will still be enforced in the normal manner."

This reflects guidelines given by the Department of Transport who, in Paragraph 9.15 of Guidance on Decriminalised Parking Enforcement Outside London (Local Authority Circular 1/95), say:

> "Where the driver of a vehicle returns whilst a removal is being carried out, the Metropolitan Police have adopted the policy that the vehicle should be returned to its driver unless all the vehicle's wheels have left the original parking position. Local authorities should consider adopting the same guideline."

Although the Department's guideline was specifically directed to local authorities outside London, it was given under the same statutory scheme.

The guidance given in the Parking Committee's Code of Practice, whilst not having the force of a statute or a regulation, is an eminently sensible provision and appears to be written in mandatory terms. The primary purpose behind the statutory scheme as a whole, and the tow-away provisions in particular, is traffic management and to enable free-flow of traffic. Parking Attendants employed by the Council - certainly, the Parking Attendant in this case - appear to be well-acquainted with these provisions of the Code, as they should be: and, in my experience, this guidance is also common knowledge amongst many members of the public. The sense of having a practical direction such as that given in the Code of Practice, for the benefit of those enforcing on the streets and the drivers of vehicles, is self-evident. Although the Code does not have the force of law, I am sure that no authority which is a member of the Parking Committee would ignore its provisions in the absence of very good cause. There is no evidence that I have seen in this case of any such cause.

Once the Adjudicator had made his finding of fact that all four wheels were on the ground when Miss Tavares returned, one course open to him would have been to remit the matter to the Council who would, no doubt, on the basis of that finding and their own Code of Practice, have repaid the release charges to Miss Tavares without the need for any further hearing. Alternatively, he could have refused the appeal, with an indication that the Council reconsider the provisions of the Code of Practice in the light of his finding of fact: again, I am confident that the Council would have followed their own Code and remitted the release charges. To that extent, there was no injustice in the Adjudicator's decision, because the end result would have been exactly the same, whichever of these courses he had followed.

However, for the reasons set out above, it was not open to the Adjudicator to allow Miss Tavares' appeal as he did. Therefore, I now formally revoke that decision, and refuse the appeal. As indicated above, very properly, the Council has already repaid the release charges and has indicated that, whatever the outcome of this review, it will not seek recovery of those charges.

G R Hickinbottom

11 June 1997