**Walmsley v TfL and Others [2005] EWCA Civ 1540**

**Issue: Judicial Review - Mitigating circumstances and Adjudicators’ discretion**

The Court of Appeal, overturning an earlier decision of the High Court (referred to in the Road User Charging Adjudicator’s Annual Report 2004-2005), upheld the Adjudicator’s decision to refuse an appeal.

Baroness Walmsley had used her vehicle in the Congestion Charge zone on 29 and 30 October 2003 and had sought to purchase a Congestion Charge licence for her vehicle via the internet. Although she had correctly entered the first four characters of her registration number the last three letters, she entered were those of her previous vehicle and were not those of her current car. This mistake was made for both days of travel.

Two Penalty Charge Notices (‘PCNs’) were issued by TfL and sent by post to Baroness Walmsley.

The Baroness made representations asserting that she had paid the Congestion Charge. TfL rejected those representations. The Baroness appealed to an Adjudicator.

The Adjudicator refused her appeal indicating that, “There is a high level of responsibility on the registered keeper of the vehicle to pay any charge incurred by it by midnight of the day on which the charge was incurred. Liability is strict. *The Congestion Charge Regulations afford no discretion in this situation. The registration recorded on the receipt must be for the vehicle used within the Zone during the prescribed hours. Article 6(5)(a) of the Congestion Charge Scheme states, ‘a licence may be purchased only for a single vehicle having a specified registration mark’. The Appellant did not pay for the vehicle’s specified registration mark. I accept that this was a genuine error, but I have no alternative other than to refuse this appeal.”*

This decision was upheld on review by another Adjudicator. The Baroness applied for and was granted Judicial Review in the High Court by Mr Justice Stanley Burnton.

In his decision Mr Justice Burnton indicated that he considered that as the Baroness had made an error when specifying her vehicle registration mark, she was liable for a penalty. However, he went on to indicate that Regulation 16(2) of the Road User Charging (Enforcement and Adjudication) (London) Regulations 2001 afforded Adjudicators discretion to cancel Penalty Charge Notices in situations such as the Baroness’s where the error was genuine and accordingly the case was remitted back to the Adjudicator for re-determination.

**ort 2005-2006** Road User Charging Adjudicators

TfL appealed Mr Justice Burnton’s decision.

**Held:** In the Court of Appeal Lord Justices Chadwick, Sedley and Keene upheld TfL’s appeal, reinstating the original Adjudicator’s decision. The Court of Appeal held that Regulation 16 (2) did not provide any discretion to Adjudicators along the lines suggested by Mr Justice Burnton and that the only time an Adjudicator could direct a Penalty Charge Notice be cancelled was if one of the six statutory grounds of appeal under the Regulations were made out. None of the grounds of appeal were in fact made out by the Baroness.

In addition, their Lordships were critical of TfL having a policy on the use of its discretion which it had not made available to the public.