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# England and Wales High Court (Administrative Court) Decisions

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**Neutral Citation Number: [2005] EWHC 896 (Admin)**

Case No: CO/4960/2004

**IN THE HIGH COURT OF JUSTICE  
QUEEN'S BENCH DIVISION  
ADMINISTRATIVE COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL  
18/05/2005

**B e f o r e :**

**MR JUSTICE STANLEY BURNTON**

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**Between:**

**The Queen on the application of JOAN  
MARGARET WALMSLEY**

**Claimant**

**- and -**

**JOHN LANE**

**First Defendant**

**-and-**

**THE PARKING AND TRAFFIC APPEALS  
SERVICE**

**Second  
Defendant**

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**The Claimant in person  
John Hardy (instructed by the Head of the Parking and Traffic Appeals Service) for the  
Defendants**

**Hearing date: 14 April 2005**

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**HTML VERSION OF JUDGMENT**

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**Mr Justice Stanley Burnton:**

**Introduction**

1. The Central London Congestion Charge Scheme ("the Scheme") affects millions of people. The congestion charge ("the charge ") is paid daily by very many thousands of motorists. It is obviously important that the provisions of the Scheme should be clear, and accessible to, and easily understood by, members of the public, and that the Scheme should operate fairly and efficiently.
2. The Scheme is operated by Transport for London, the charging authority, which is a body corporate established pursuant to the Greater London Authority Act 1999. Appeals against the imposition of penalties by Transport for London are heard by independent adjudicators of the Second Defendant, the Parking and Traffic Appeals Service.
3. In these proceedings the Claimant seeks judicial review of the decision dated 20 August 2004 of the First Defendant, an adjudicator of the Second Defendant, dismissing her appeal against two penalty charges. Her principal ground is that she paid the charge for her car for the two days for which she has been penalised, and was not therefore liable to any penalty. It is common ground that she did pay the charge on both days, but made an error in specifying the registration number of her car. The charge, she contends, is a charge on a car and not on its registration number. She contends that if she is indeed liable to pay the penalty charge in the events that happened, the Scheme operates unfairly and unjustly. She also raises grounds under Article 6 of the European Convention on Human Rights that require separate consideration.
4. The Defendants contend that the Claimant's appeal was rightly dismissed for the reasons given by the First Defendant.

**The facts**

5. The Claimant is the registered keeper of her car, a Ford Puma the registration number of which is W616 OJC. She used it within the charging area of the Scheme on 29 and 30 October 2003. Owing to a breakdown in the telephone system by which she usually pays the charge, she paid on the Internet. She correctly entered the first 4 characters of the registration number. Unfortunately, however, she keyed in the last 3 letters of the registration number of her previous car: she keyed in W616 JBF. She made the same mistake on both days. She paid a total of £10, the charge of £5 for each of the days in question.
6. The Claimant's car was duly photographed, and it was found that no charge had been paid on either date for W616 OJC. Transport for London promptly issued penalty charge notices dated 30 and 31 October 2003, stating that the car had been used in the charging area "without payment of the appropriate charge". The notices give information for paying the penalty charge. They inform the addressee:

"... you are advised to pay the penalty charge or, if you have reasonable grounds, dispute this notice in the form of a representation by completing and returning the representation section provided at the back of this form. You have 17 days to pay the discounted penalty charge of £40.00. If the discounted penalty charge is not received before 16 Nov 2003 then the full penalty charge of £80.00 is payable. If

you fail to pay the penalty chargeable or make a representation by 30 November 2003 a Charge Certificate will be pursued which will increase the amount payable to £120.00."

7. Page 3 of each of the notices contained information for the making of a representation against the penalty charge. It set out the grounds on which a representation against the notice could be made. The second ground reads:

"I had paid the congestion charge due on that date (*please enclose proof of payment*)."

8. Not surprisingly, the Claimant thought that this ground applied to her. She had indeed paid the charge, and she had proof of her payments. On 7 November 2003, she duly completed and returned the representation section in each of the notices. Under the heading "Details of your representation" she wrote: "I paid the charge and enclose a copy of the receipt." She also sent a letter dated 7 November 2003, stating that the penalty notices were both erroneous because she had paid the charge, and that she enclosed a copy of the receipt.

9. Transport for London replied on 24 November 2003, rejecting the representation. Its letter stated that the Claimant had paid for a different vehicle registration number. It informed her that the discounted penalty of £40 per penalty charge notice would be accepted if payment was received within 14 days, but that otherwise the full payment of £80 per penalty charge notice would be required, and failure to pay within 28 days of the date of the letter would result in the issue of a charge certificate, which would increase the charge by 50 per cent to £120 per penalty charge notice. The letter also informed the Claimant of her right of appeal, and a form of notice of appeal was attached.

10. The Claimant appealed against the rejection of her representation. She completed the notice of appeal and sent it off on 7 December 2003. The notice of appeal form set out the available grounds of appeal with tick boxes. One of the grounds stated was: "The charge has already been paid". She ticked the box for this ground of appeal, and stated, in the box for the details of her appeal:

"As you see from the attached receipt, I did pay the charge for the days in question. However, I paid on the Internet and made a keying error while inputting my car registration number. I put the 3 final letters as JBF – which were the letters of my previous car. ... Very sorry!"

She also enclosed a receipt for her payment of the charge on another date, so as to show that W616 OJC was indeed her car.

11. The Appeals Service received the notice of appeal on 10 December 2003. As mentioned above, it was not until 20 August 2004 that the adjudicator refused the appeal. He gave the following reasons:

"The issue in this appeal is whether the correct payment was made for the correct the vehicle registration for these charges in accordance with the Congestion Charge Regulations. 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 Charging 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."

12. The letter dated 20 August 2004 informing the Claimant of this decision stated that the full penalty charge of £80 had to be paid within 28 days, and: "If the penalty has not been paid Transport for London can issue a Charge Certificate increasing the full penalty charge by a further 50%."
13. The form accompanying the decision of the adjudicator informed the Claimant that an adjudicator had power to review the decision in certain circumstances. There were four grounds of review set out in the form, the first three of which related to procedural matters, such as a party who had failed to appear or be represented at a hearing having a good and sufficient reason for his failure to appear. The fourth ground was apparently more general: "The interests of justice require such a review." By letter dated 3 September 2004, the Claimant applied for review of the decision on this ground. She stated that the basis of her case was threefold, namely:
  - (a) She had paid the congestion charge for her vehicle for both of the days in question. She emphasised:

"Note that it is for the vehicle that one has to pay, not the registration plates."
  - (b) It was unjust and unreasonable for the Appeals Service to have taken 10 months to reach its decision.
  - (c) She had been penalised for appealing, since each penalty of £40 had been doubled to £80.
14. By letter dated 1 October 2004, the Appeals Service informed the Claimant that a different adjudicator had considered her application for a review of the decision of 20 August 2004, and rejected it on the grounds:
  - (a) The first adjudicator had been entitled to find that there had been a contravention. The representations relied upon by the Claimant amounted to mitigation that he had no power to take into account.
  - (b) "Once (an) appeal has been lodged, no time limit to determination applies."
  - (c) She was not entitled to the discount of the penalty amount of £80 (i.e., to pay only £40) because she had not paid within the stipulated time.
15. The delay in determining the Claimant's appeal was due to initial underestimate of the volume of appeals that would be made and consequential under-resourcing of the Appeals Service.
16. The Claimant began these proceedings on 12 October 2004.

### **The issues before me**

17. The Claimant contends that the adjudicator incorrectly applied the provisions of the scheme: she had paid the congestion charge in respect of both of the days in question, and should not, therefore, have been penalised. It follows from the adjudicator's decision that she intended to pay the charge for her car, and she did pay the charge for each day in question. It is not

suggested that there was a vehicle with the registration mark W616 JBF (i.e., the registration number she entered when she paid the charge) that entered the congestion charge zone on either of the days in question. As someone who did not seek to evade the congestion charge, but paid it, either she should not have been penalised or the adjudicator, in the exercise of his discretion under regulation 16(1) of the Road User Charging (Enforcement and Adjudication) (London) Regulations 2001 should have allowed her appeal. She also complains that her appeal led to an increase in the penalty payable by her from £40 per day to £120 per day.

18. In support of her contentions, the Claimant relied on the evidence of Lord Tordoff. On 14 July 2003 he used his car in the congestion charge area. When he paid the charge, he wrongly specified as his registration number X466 PAC instead of X466 PAG. When he received a penalty charge notice, he made representations to Transport for London, who by letter dated 12 September 2003 informed him that they had cancelled the penalty charge notice. The letter stated:

"Your representation has been accepted as when the charge was paid for the incorrect vehicle registration mark was entered. Please ensure that when paying from the charge you confirm the correct vehicle registration number has been recorded. ... We apologise for any inconvenience that may have been caused through the issue of this Penalty Charge Notice."

19. The terms of the letter suggest that the penalty had been incorrectly imposed. The Claimant pointed out that her case appears to be indistinguishable from Lord Tordoff's. Furthermore, relief from the penalty in cases similar to Lord Tordoff's appears to be common. The report of the Transport Committee of the London Assembly entitled "Congestion Charging: A first review" of February 2004 states:

"7.13 ... At present, roughly 1 in every 5 fines issued ends up being overturned either by a successful representation or by a successful (on non-contested) appeal.

7.14 Transport for London's explanation is that 'there were mistakes in people misrepresenting their registration numbers because they could not remember and were therefore giving the wrong data [and] there were mistakes in [Capita] recording registration numbers'."

20. The Defendants contend that they correctly applied the provisions of the scheme, and that the amount payable by the Claimant has been increased not by reason of her appeal but by reason of her delay in making payment so as to disqualify her from the benefit of the discount. They contend that an adjudicator has no discretion to direct the cancellation of a penalty charge notice if the charge has been paid otherwise than by reference to the precise registration number of a vehicle that entered the charging zone. They suggest that Lord Tordoff, and the many people referred to in the report cited in the previous paragraph, had been relieved of the penalty by Transport for London in the exercise of a discretion that it had as the charging authority that was not available to the adjudicators of the Second Defendant.
21. Thus there are two issues to be decided in relation to the provisions of the Scheme (including the provisions relating to appeals):

(a) In the events that happened, was the Claimant liable to penalty?

(b) Did the adjudicator have any discretion to reduce or to relieve her of the penalty by reason of her payment and her admittedly genuine error in specifying the registration number of her car?

22. There is an additional separate issue, namely whether the Defendants' delay in deciding her appeal was a breach of Article 6 of the European Convention on Human Rights giving rise to any right to relief on her part.

### Discussion

23. The Scheme is contained in the Greater London (Central Zone) Congestion Charging Order 2001 ("the Congestion Charging Order") made by Transport for London under the Greater London Authority Act 1999. The role and powers of the Parking and Traffic Appeals Service are the subject of the Road User Charging (Enforcement and Adjudication) (London) Regulations 2001 ("the Enforcement and Adjudication Regulations"), made under the same Act by the Lord Chancellor.

24. Article 4(1) of the Congestion Charging Order is as follows:

"Subject to the following provisions of this Scheme, a charge of the amount specified in article 7 or paragraph 3 of Annex 4 is imposed by this Scheme in respect of each charging day on which a relevant vehicle is used or, ..., kept on one or more designated roads at any time during charging hours."

The Claimant's car was a "relevant vehicle". Article 6(1) provides:

"(1) Subject to the following provisions of this article, a charge imposed by this Scheme shall be paid by the purchase from Transport for London of a licence for a specified period falling on or beginning with a specified date."

In the present case, the specified period was a charging day.

25. The crucial provision is paragraph (5) of article 6:

"Except in a case where paragraph (10) applies --

(a) a licence may be purchased only for a single vehicle having a specified registration mark;"

The remainder of that paragraph, including sub-paragraph (10), is irrelevant for present purposes.

26. Penalty charges are the subject of article 12.

"(1) A penalty charge shall be payable for each charging day as respects which --

(a) a relevant vehicle has been used on a designated road in circumstances in which a charge is imposed by article 4; and

(b) the charge has not been paid in full in the manner in which and within the time by which it is required to be paid by article 6.

(2) A penalty charge payable by virtue of paragraph (1) shall be paid within the period ('the payment period') of 28 days beginning with the date on which a penalty charge notice is served under regulation 12 of the Road User Charging (Enforcement and Adjudication) (London) Regulations 2001 in respect of the penalty charge and in the manner specified in the penalty charge notice.

(3) The amount of a penalty charge payable in accordance with paragraph (1) shall be £80 but, if the penalty charges paid before the end of the fourteenth day of the payment period, the amount shall be reduced by one half to £40.

(4) Where a charge certificate is issued in accordance with regulation 17(1) of the Road User Charging (Enforcement and Adjudication) (London) Regulations 2001, the amount of the penalty charge to which it relates shall be increased by one half to £ 120."

27. The Claimant submitted to me, as she did to the adjudicator, that a licence is payable for, and is therefore specific to, a vehicle, not to a registration number. Mr Hardy submitted that article 6(5) means that a licence may be purchased only by reference to the exact registration mark (i.e. number) of a vehicle.
28. Article 6(5) is not clear. Every vehicle lawfully on the road has a specified registration mark. Presumably, however, the adjective "specified" adds something to "registration mark". But Article 6(5) does not say by whom or how or when the mark is specified. It would have been easy to have provided in terms that, except in a case where paragraph (10) applies, "a licence may be purchased only for a single vehicle, by specifying its registration mark", but the Congestion Charging Order does not do so.
29. The Claimant's submissions receive support from the Explanatory Notes to the Scheme, paragraph 18 of which summarises the effect of Article 6, so far as is relevant, as follows:

"Article 6 (Payment of charges) provides for the congestion charge to be paid by the purchase of a licence from Transport for London and sets out the periods for which a licence may be purchased. A license is specific to one vehicle only. A single-day licence can only be bought on the day itself or in advance by the payment cannot be made after the date for which the licence is valid. ..."

There is no reference to the registration mark or number, and no indication that any error on the part of a purchaser of a licence in specifying the registration number of the vehicle for which he requires it means that he fails to obtain a licence for his vehicle, with the result that on using it in the Congestion Charge Zone he renders himself liable to a penalty. The Explanatory Notes say merely: "A licence is specific to one vehicle only."

30. Not surprisingly, the Claimant, who is not a lawyer, was not in a position to make submissions on the technical legal question of the admissibility of the Explanatory Notes as an aid to the interpretation of the Congestion Charging Order. Explanatory notes are an aid to the interpretation of Acts of Parliament: *Regina (S) v Chief Constable of the South Yorkshire Police* [2004] UKHL 39], [2004] 1 WLR 2196 at [4]. The Congestion Charging Order was made by Transport for London, which was also responsible for the Explanatory Notes, which were published contemporaneously with the making of the Order. While the Notes are not part of the Order, I assume that they were considered by the members of Transport for London when the Order was made, and the public may also be expected to rely on them. In these circumstances, I propose to take them into account.
31. I should also take into account the purpose of the Scheme and of the imposition of penalties. The purpose of the Scheme is, according to the witness statement of Melanie Holmes, Transport for London's Legal Affairs Manager, to reduce congestion in the Congestion Charge Zone and to raise revenue for transport improvements in Greater London by the imposition of charges. No other purpose appears from its provisions. Penalties are necessary to punish and to deter those who use vehicles within the Zone without paying. The Claimant was not such a

person. I apprehend that it is not the purpose of the provision of penalties to punish those who make an error in providing the registration number of their vehicle.

32. The Defendants are not assisted by the submissions made in paragraphs 8 and 10 of the witness statement of Melanie Holmes:

"8. It is submitted that (regulation 13(3)(b)) only applies if payment was made for the particular vehicle on the particular occasion in question. Put simply, any person can pay the congestion charge for a specific vehicle and if that charge is paid, the registered keeper's liability is discharged but if the charge is not paid for a specific vehicle, the registered keeper is then liable for a Penalty Charge.

...

10. In my view, ..., a purposive construction of the Scheme Order would lead to the conclusion that the intention underlying the order was that the charge must be paid for a particular vehicle identified by its registration mark and that payment for one vehicle does not amount to payment of it in for another vehicle."

I do not think that The Claimant would quarrel with the submission in paragraph 8. She says that she did pay for her vehicle, albeit that she misrepresented its registration number. Nor does she suggest that payment for one vehicle is payment for another vehicle.

33. However, I have reluctantly concluded that the Defendants' contention is correct. Melanie Holmes states that she "finds it difficult to envisage a charging scheme not being vehicle-specific (and she means registration number specific) as only by identifying particular vehicles by their registration mark can a charging authority know whether a contravention has occurred". This makes practical sense. Sensibly construed, the Scheme requires that when purchasing a licence, the purchaser must specify the registration mark of the vehicle to which it relates. The licence that the Claimant purchased was for a single vehicle having a registration mark that she specified when she purchased it on the Internet (i.e., W616 JBF), and the vehicle that she drove on 29 and 30 October 2004 did not have that registration mark, but a different one, namely W616 OJC. It seems to me that any other interpretation of article 6 of the Scheme is liable to render the Scheme unworkable. But I make it clear that this is the only consideration that leads me to this conclusion, and having regard to the lack of clarity of the provisions of the Scheme, I do so reluctantly and without confidence or satisfaction.
34. I turn to consider penalties and the powers of the adjudicator in a case such as the present. In this connection, it is important to distinguish between the charging authority, Transport for London, and the Defendants, who have a judicial function in relation to penalties.
35. The powers of the adjudicators are the subject of the Enforcement and Adjudication Regulations. Regulation 12 provides for the service by the charging authority of a penalty charge notice on the registered keeper of a vehicle "Where a charge with respect to a vehicle under a charging scheme has not been paid by the time by which it is required by the scheme to be paid". The notice must, among other things, state the grounds on which the charging authority believes that the penalty charge is payable with respect to the vehicle, and must inform the recipient that he may be entitled to make representations under regulation 13.
36. Regulation 13 makes provision for the recipient of a penalty charge notice who considers that one or other of the grounds specified in paragraph (3) of that Regulation are satisfied to make representations to the charging authority. The only relevant ground here is that specified in sub-paragraph (b):



"that the charge payable for the use or keeping of the vehicle on a road on the occasion in question was paid at the time and in the manner required by the charging scheme."

37. Paragraph (6) of regulation 13 requires the charging authority to consider the representations and to serve notice of its decision on the person who made them. If the charging authority accepts that the ground in question has been established, it must cancel the penalty charge notice. If, however, it rejects the representations, the person who has made the representations may appeal to an adjudicator under regulation 16. The powers of the adjudicator are set out in regulation 16(2):

"On an appeal under this regulation, the adjudicator shall consider the representations in question and any additional representations which are made by the appellant on any of the grounds mentioned in regulation 13(3) and may give the charging authority concerned such directions as he considers appropriate."

38. The effect of a direction under regulation 16(2) is specified in paragraph (3):

"It shall be the duty of any charging authority to whom a direction is given under paragraph (2) to comply with it."

39. On any basis, the form of penalty charge notice is misleading. As mentioned above, it states that representations may be made on the ground that the recipient "had paid the congestion charge due on that date". But that is not the ground specified in the Regulations. As has been seen, that ground is that the charge "was paid at the time *and in the manner required* by the charging scheme". The words I have italicised are important, and in a case such as the present, where the issue is not whether the Claimant paid the charge at the time required by the Scheme, but whether she paid it in the manner required by it, by specifying the registration mark of her vehicle, make a crucial difference. The wording of the form understandably misled the Claimant. Indeed, it would be understandable if a recipient of a penalty charge notice who had read regulation 13 of the Enforcement and Adjudication Regulations thought that the words "in the manner required by the charging scheme" referred to the available means of payment (text message, Internet, call centre, self-service machine, etc.) specified in the Table referred to in article 6.
40. The question that arises under regulation 16(3) is whether it confers a discretion on the adjudicator to direct the charging authority to cancel a penalty charge notice in circumstances where the appellant has not established one of the grounds set out in regulation 13(3), but there are grounds for mitigating the penalty or totally relieving the appellant of the penalty. The provision that the adjudicator "may give the charging authority concerned such directions as he considers appropriate" is entirely apt to confer a discretion on him to relieve the appellant in a suitable case. If it had been intended to restrict the powers of the adjudicator, I should have expected the regulation to provide that he is to consider the representations of the appellant on the specified grounds and determine whether or not that ground or those grounds have been established to his satisfaction, in which case he is to direct the charging authority to cancel the penalty charge notice, and if not to dismiss the appeal and direct that the notice is to stand. Such language is used in regulations 14 and 15, and it is to be presumed that different words were used in regulation 16 because a different meaning was intended. I add that, although it is a minor point, the use of the plural "directions" does not assist the Defendants' interpretation.
41. In her skeleton argument, the Claimant referred to the Appeal Service's own website, which, she stated, suggests that the adjudicator does have a discretion as to the direction to give to the

charging authority. It includes the following question and answer:

"Will the penalty increase if I lose my appeal?"

A. No. If you lose your appeal you will be given another 28 days to pay the penalty due before any further increase. The penalty due will normally be the full, not the reduced, penalty, unless the Adjudicator directs otherwise."

Quite apart from the fact that the Appeal Service's understanding of its powers is not an admissible aid to the interpretation of the Scheme, I do not think that the answer necessarily has the meaning for which the Claimant contends. The direction "otherwise" was probably intended to refer to the cancellation of a penalty notice on a successful appeal. But the impression is given that the adjudicator may, for example, direct that a reduced penalty only should be payable. This emphasises the lack of clarity in regulation 16(1).

42. Mr Hardy submitted that it follows from the restriction of representations to the adjudicator to the grounds specified in regulation 13(3) that he cannot take into account any facts outside those grounds. I recognise the logic of his submission. It is consistent with the absence of any express provision for a reduction of the penalty in circumstances where the adjudicator considers it appropriate. However, these considerations do not explain the wording of regulation 16(2) and the apparent discretion given to the adjudicator to give "such directions as he thinks appropriate".
43. Faced with these conflicting considerations, I think that it is right to construe the Regulations as conferring discretion on the adjudicator in a case such as the present. The Claimant did consider, and contended to the adjudicator, that she had established that she had paid the charge "in the manner required by the charging scheme", i.e. the ground set out in regulation 13(3)(b). After considering her representations on that ground, the adjudicator was entitled to "give the charging authority such directions as he considers appropriate", and, given the mitigating circumstances that he accepted, he might reasonably consider it appropriate to direct that the penalty charge notice be cancelled even though the ground had not formally been established.
44. This interpretation of regulation 16 has the effect of reconciling the provisions of the Scheme as a whole with its purpose, which is to ensure that charges are paid for cars that enter the Zone and that those who fail to pay are penalised. It is not a purpose of the Scheme to penalise those who make a genuine error as to their vehicle's registration number. As has been seen, many people do make such errors and are relieved of penalty. It is and must always have been obvious to Transport for London that there were bound to be many people who would mis-state the registration numbers of their vehicles. For example, it is obviously easy to confuse the letter I with the numeral 1, and the letter O with the number zero, quite apart from the room for mistyping or simple mistake as occurred in this case.
45. It follows from the above that the First Defendant misunderstood his powers. It was open to him in the circumstances of this case to direct that the penalty notices served on the Claimant should be cancelled. Indeed, there was good reason so to direct. It follows that his decision will be quashed.
46. I make it clear that it does not follow from my decision that it would be appropriate to cancel the penalty imposed on someone who repeatedly made an error as to the registration number of his or her vehicle. Nor does it follow that someone who has more than one vehicle, and enters the registration number of one and then uses another within the congestion charge zone, should be relieved from the normal penalty.

## Article 6

47. I can deal with the questions arising under Article 6 shortly. Mr Hardy was content for me to proceed on the assumption that Article 6 applies to proceedings before the adjudicators of the Parking and Traffic Appeals Service under regulation 16 of the Enforcement and Adjudication Regulations. I am content to proceed on that basis, since my provisional view is that Article 6 is indeed engaged.
48. The time taken to determine the Claimant's appeal was unreasonably long. Her rights under Article 6 were infringed, and it is no defence or justification that the Service was under-resourced.
49. However, The Claimant's penalty was not increased by the delay in the determination of her appeal. She did not avail herself of the discount from £80 to £40 by paying the latter sum within 17 days of the date of issue of each penalty charge notice, as offered by the penalty charge notices. Her appeal did not increase the sum payable. The provisions of article 12 of the Congestion Charge Order do not increase the penalty by reference to the making of an appeal. If she had paid under protest, and the adjudicator had upheld her appeal, Transport for London would have been bound to repay her. Similarly, she did not pay the penalty of £80 within 28 days of the decision of the adjudicator, and assuming his decision to be lawful, Transport for London would have been entitled to issue a charge certificate increasing the penalty charge to £120 for each contravention. Again, the increase was not caused by her exercise of the right of appeal.
50. The Claimant suffered no significant or discernible loss as a result of the delay in the determination of her appeal. It follows that she is not entitled to any remedy under this head.

## The position of Transport for London

51. It is a matter of regret that Transport for London was not made a formal party to and did not intervene in these proceedings. If the Claimant had sought relief against Transport for London, it would have had to explain why it relieved Lord Tordoff of his penalty charge, and apparently many others in similar circumstances (see the report of the Transport Committee of the London Assembly referred to above), but refused to relieve the Claimant. The only difference between the facts of his case and those of hers is that he made a mistake as to one letter of the registration number of his car whereas she made an error as to three. It is not obvious that that is a relevant difference. The purpose of the congestion charge is not to test whether the owner of a vehicle can correctly give its registration number
52. If the due payment of the charge requires precise specification of the registration, Lord Tordoff failed to pay the charge just as much as the Claimant. If Transport for London has a discretion to waive the penalty in circumstances where none of the grounds mentioned in regulation 13(3) of the Enforcement and Adjudication Regulations is established (and on Transport for London's and the Defendants' interpretation of the Scheme, none of those grounds was established by Lord Tordoff), it must exercise that discretion rationally and by reference to relevant facts. So far as possible, different decisions should be made in different cases only where there are relevant differences between their facts. Since Transport for London was not formally represented before me, I restrict myself to observing that it is not clear that it lawfully exercised its discretion in the case of Baroness **Walmsley**.
53. Lastly, at the beginning of this judgment I referred to the need for the Scheme to be clear, easily understandable and accessible and to be operated fairly. The provisions of the Scheme to which I have referred are not clear or easily understandable. If the Scheme requires accurate

specification of a registration number by the person paying the charge, the penalty notice is misleading. The wording of the Scheme (in particular article 6(5)) and of the documents used for it (in particular the penalty charge notice) should be made clear. The requirement that the correct registration number must be specified by the person paying the charge must be spelt out, and the relevant ground for challenging a notice clearly stated. If Transport for London has a policy for the exercise of the discretion that it assumes it has to relieve from penalties, the public is entitled to know what that policy is and to be assured that it is a policy that is fair and fairly applied.

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