

PARKING APPEALS SERVICE

CHRISTINE JANE BARNES

-and-

THE LONDON BOROUGH OF HILLINGDON

JOHN FREDERICK CLARKE

-and-

THE LONDON BOROUGH OF BEXLEY

IAN JEFFERSON MAYOR

-and-

THE LONDON BOROUGH OF CAMDEN

DONALD RICHARD WILCOX

-and-

THE CORPORATION OF LONDON

DECISION

In each of these cases, the alleged contravention of the parking regulations relates to a parking bay in which payment is required for parking, e.g. at a meter or by purchase of a pay and display voucher ("a pay bay"). In each case, the Appellant accepts that, at the time the penalty charge notice ("PCN") was issued, payment had not been made: but they say that it was their intention to make payment and, indeed, they were in the course of obtaining change to make payment. Whilst making attempts to obtain change, they say they were not in contravention of the regulations governing the pay bay. The Respondent Councils each say that, in these circumstances, they were committing a contravention.

On 18 June 1997, there was an oral hearing of these appeals. Mr Codd of The London Borough of Hillingdon, Mr Stannard of The London Borough of Bexley, Mr Hill of The London Borough of Camden and Mrs Vincent-Merritt of The Corporation of London appeared for the various Councils. Mr Stannard and Miss Vince of The London Borough of Wandsworth also attended, as having an interest in the issue. None of the Appellants attended, but all made written representations.

I was referred to two authorities by the Councils.

In Strong -v- Dawtry [1961] 1 All ER, Mr Strong parked at a meter bay at 11.05am. He had no change with which to pay, so he approached a policeman about 15 yards away and asked him for change: but he was unable to give it to him. Mr Strong then obtained change from a taxi driver, and returned at once to the parking meter to make the initial payment. While he was obtaining change, a traffic warden attached an excess charge notice to the car under the then current criminal scheme for the enforcement of parking regulations. The notice was attached at 11.10 am. The enforcement authorities accepted that Mr Strong had only left the bay for a couple of minutes, and he had left for the purpose of obtaining change. However, when he failed to pay the excess charge and was prosecuted for non-payment, the Magistrate found him guilty, and he appealed to the Divisional Court. His appeal was dismissed.

The relevant Traffic Management Order was The Parking Places (Westminster) (No.1) Order 1959, which provided that the charge was "payable on the leaving of the vehicle in the parking place". The Court held that Mr Strong's liability depended upon the construction of these words. Lord Parker CJ (giving the judgment of the Court) said:

"It was apparently argued before the Magistrate that a reasonable time must be imported between, as I understand it, the time when the driver leaves his driving seat and the time when the coin is inserted, and that reasonable time is to be governed by all the circumstances, including whether he has the necessary change in his pocket. The Magistrate clearly did not accept that argument and, indeed, it has not been advanced in this court. It seems to me that no element of reasonable time can be imported at all

unless it be such reasonable time as is involved in getting out of the driving seat and putting the coin into the meter: in other words, between stopping the car and stepping onto the pavement and inserting a coin.

The argument, however, that has been adduced to this court is based on the word "leaving". It is said that a driver has not left a vehicle until he has done all he intends to do as part of the operation of parking. That argument is based on an interpretation of "leaving" as meaning the driver physically leaving the car. It is to be observed, however, that the words here are "payable on the leaving of the vehicle in the parking place" which, to my mind, clearly denote the placing or depositing of the car in the parking bay. Accordingly, I read those words as meaning that the payment is to be made as soon as the vehicle is placed in the parking place. Whether the driver leaves the vehicle in the sense that he gets out of the driving seat, or whether he stays there cannot affect the matter at all. Looked at in that way, I am perfectly clear that the Appellant in this case was rightly convicted."

The second case to which reference was made was Riley -v- Hunt [1981] RTR 79. Mr Hunt drove his car into a pay and display car park. He did not have, and was unable to obtain within the car park, appropriate change to insert into the pay and display machine. He left the car in the parking bay with the intention of obtaining the requisite change while shopping. He returned some 12 minutes later and purchased a ticket using change he had obtained. However, before he had returned to his car an excess charge notice had been affixed to it, which he refused to pay. In the ensuing prosecution, the information was dismissed by the Magistrates on the basis that Mr Hunt complied with the relevant regulations by paying the initial charge as soon as he was able. However, on appeal, the Divisional Court allowed the appeal and the case was remitted to the Magistrates with a direction to convict.

The relevant Traffic Management Order was The Mendip District Council (Off-Street Parking Places in Street) Order 1976, which contained the same relevant words as in Strong -v- Dawtry, i.e. "shall on leaving the vehicle in the parking place pay the appropriate charge...". However, no reference was apparently made to Strong -v- Dawtry. Nevertheless, in the judgment of the Court, Bridge LJ said:

"In my judgment [the opinion of the Magistrates was] based on a misconstruction of the phrase: "... shall on leaving the vehicle in the parking place pay the appropriate charge".

It is perfectly true, as the justices say, that it is not practicable for the person parking his vehicle in the car park to pay the charge the very moment he leaves his car: he has got to go, within the car park, from his car to the coin-operated ticket-issuing machine, put in his coin, obtain his ticket and return to his car in order to affix the ticket to it. But it seems to me clear that the latest time at which the charge must be paid is before the person parking the vehicle himself leaves the car park, as the Defendant did, in order to go off shopping. It simply is not good enough to arrive at the car park without the appropriate coin and then to go off shopping, with the intention of returning and paying the charge after your shopping expedition is complete".

In my view, the following principles can be derived from these cases:

1. The obligations of a driver when parking in a pay bay depend upon the relevant Traffic Management Order as properly construed.
2. In Strong -v- Dawtry, the Divisional Court held that the words "on leaving the vehicle in the parking place" meant "the placing or depositing of the car in the parking bay." Therefore, if a Parking Attendant comes upon a car at a meter bay showing penalty time, with a driver in it asleep, the car is nevertheless parked in contravention of parking regulations in these terms although the driver has not left the vehicle in the sense of moving away from it.
3. However, the vehicle having been put into the bay, the driver must have a reasonable time in which to pay. Neither Strong -v- Dawtry, nor any of the Councils before me in these appeals, suggested otherwise. It could not conceivably have been intended by those responsible for the legislation that a person in charge of a vehicle commits a contravention of the parking regulations every time he parks at a meter - at least until money has been put into the meter - even if he gets out of the car and puts money into the meter promptly.
4. However, Strong -v- Dawtry makes clear that, in relation to a meter bay, a reasonable time to pay is restricted to "such reasonable time as is involved in getting out of the driving seat and putting the coin into the meter." It does not extend to time expended in seeking change.
5. Extrapolating that to a pay and display bay, a reasonable time to pay would be restricted to such time as is involved in getting out of the driving seat, going to the appropriate pay and display machine, making payment and obtaining the voucher, and displaying that voucher in the vehicle. Again, it does not extend to time expended in seeking change.

6. Riley -v- Hunt is authority for the proposition that you cannot leave a car park to do your shopping, and pay at the pay and display machine on your return from the shopping expedition, a somewhat extreme case. It is not authority for the proposition that there can be no contravention if the driver remains within the confines of the car park, e.g. whilst attempting to obtain change.

7. Whilst a driver is taking reasonable time to pay (as described above), no contravention of the regulations occurs. Indeed, all of the Councils before me said that Parking Attendants are instructed to check whether the driver of a vehicle has gone to pay at a pay and display machine, prior to issuing a PCN for non-display of a pay and display voucher. However, as soon as the driver goes outside the steps in terms of payment referred to above, there is a contravention of the regulations. Then, any mitigating circumstances are matters for the relevant Council to consider, when they consider whether or not to pursue the penalty. Such mitigating circumstances are not matters which a Parking Adjudicator can take into account.

In short, the cases are authority for the proposition that, if a driver parks at a pay bay, he should only do so if he has available adequate change to pay.

Both of the cases to which I have referred are relatively old. Has anything subsequently occurred to make them inapplicable? It is true that, in the cases before me, the contraventions alleged are under the decriminalised scheme of The Road Traffic Act 1991, whereas the two authorities were under earlier criminal schemes. However, I do not believe a difference in the scheme of enforcement affects the interpretation of the Traffic Management Orders considered in those cases. It is also true that there are now considerably more pay bays than there were in 1980, yet alone 1961. However, this can only make more cogent - rather than less - the proposition that it is reasonable to expect drivers to carry sufficient change with them to make payment for their parking. In my view, nothing has occurred since those two earlier cases that make the above propositions less applicable or less authoritative.

Therefore, I am bound by the above authorities, and the propositions derived from them. However, it is only right that I should add that, if the issues had been at large, I would have arrived at the same conclusion with regard to the construction of the relevant words as did the Divisional Court in these cases.

I now turn to the individual cases before me.

1. Christine Jane Barnes -v- The London Borough of Hillingdon (PAS Case No. 1960033828)

On 24 October 1995, the Appellant parked at a meter in Belmont Road, Uxbridge. The meter only accepted 20p and £1 coins. She only had 10p pieces. She went to obtain change. She says, in her various representations, that she was away from the car between five and ten minutes. On her return, she found that a penalty charge notice ("PCN") had been issued, and affixed to her car, for being parked in a meter bay with penalty time indicated. The Appellant does not dispute that the meter was indeed showing penalty at the relevant time.

I accept that the Appellant had the intention of paying at the meter and, indeed, was in the process of obtaining change in order to pay. However, did she commit a contravention of the parking regulations?

The relevant Traffic Management Order is The Hillingdon (Parking Places) (No.1) Order 1991, as amended by The Hillingdon (Parking Places) (Amendment No.1) Order 1993 (which brings the bay in which the Appellant was parked in Belmont Road within the scheme of the 1991 Order). The relevant provision is found in Article 7(1) of the 1991 Order:

"The initial charge shall be payable on the leaving of the vehicle in a parking place ... by the insertion in the appropriate slot in the parking meter relating to the parking bay in which the vehicle is left... of coins..."

The phrase, "... shall be payable on the leaving of the vehicle in a parking place..." is of course identical to the phrase used in the Traffic Management Order in the Divisional Court cases referred to above.

For the reasons set out above, I do not consider the Appellant can avoid liability for the parking penalty by virtue of the fact that she was obtaining change for the purposes of making payment at the meter.

I find the contravention proved, and I refuse the appeal.

2. Ian Jefferson Mayor -v- The London Borough of Camden (PAS Case No. 1970053388)

On 2 July 1996, Mr Mayor parked at a meter in Warren Street, W1. He says - and, on the evidence, I accept - that he did not have any change for the meter, and went into a shop to obtain change. He returned about 3 minutes later, when the Parking Attendant was writing out a PCN which was then served by being handed to Mr Mayor.

The relevant Traffic Management Order is The Camden (Parking Places) (CA-E No.2) Order 1993. The relevant provision is in Article 8(1):

"... [T]he parking charge shall be payable on leaving the vehicle in a parking place... by the insertion in the parking meter relating to the parking bay in which the vehicle is left, of a coin..."

Again, the relevant phrase, "... shall be payable on the leaving of the vehicle in a parking place..." is identical to the phrase used in the Traffic Management Order in the Divisional Court cases: and, for the reasons set out above, I do not consider the Appellant can avoid the liability for the parking penalty by virtue of the fact that he was obtaining change for the purposes of making payment at the meter.

I find the contravention proved, and I refuse the appeal.

3. John Frederick Clarke -v- The London Borough of Bexley (PAS Case No. 1960138280)

This case concerns not a meter bay, but a pay and display bay: and not on-street parking, but parking in an off-street car park.

On 27 April 1996, Mr Clarke parked his car in the Bowling Centre Car Park, Bexleyheath. He says that he only had a £5 note, and went straight to a kiosk within the Bowling Centre so that he could get change for his pay and display voucher. He said this took him only two and a half minutes. On his return to the vehicle, a Parking Attendant was issuing a PCN for parking without displaying a valid pay and display voucher, which he served upon Mr Clarke. Mr Clarke does not dispute that the car did not have a pay and display voucher displayed at that time.

The Parking Attendant's contemporaneous note reads:

"No P&D. Owner saw me and left to go to Bowling Alley. He said when he returned, claimed he had gone for change. He came back with two kids and got in his car. Did not buy a ticket."

The Council say in their representations to me that they are satisfied that Mr Clarke had no intention of purchasing a voucher, but was merely collecting his children from the Bowling Centre. I make no finding with regard to that. For the purposes of this appeal, I will assume in Mr Clarke's favour that he had an intention to pay, and was indeed obtaining change in order to do so.

The relevant Traffic Management Order is The London Borough of Bexley (Off-Street Parking Places) Order 1995. The relevant articles of that Order provide:

- "6(1) The driver of a vehicle leaving the vehicle in a parking place shall pay the appropriate charge applicable to the class of vehicle, and period of parking ascertained by reference to the Schedule to this Order...

- 6(4) Where a parking apparatus is in use, the charge referred to in Paragraph 1(1) of this Article shall be payable by the insertion of appropriate coin, coins or banknotes into the apparatus provided...

- 7 Any ticket issued on payment of the charge referred to in Article 6 of this Order shall be displayed in the relevant place [which is duly defined elsewhere in the Order] so that the date and times shown on the ticket are clearly visible from outside the vehicle."

The wording of this provision is not identical to that in the Divisional Court cases referred to above, or the previous cases before me now. Payment is not said to be due *on* the leaving of the vehicle: merely that, "the driver of vehicle leaving the vehicle in a parking place shall pay the appropriate charge...". However, although the wording of this Traffic Management Order is not as clear as the wording in Strong -v- Dawtry and Riley -v- Hunt, I consider that, on its proper construction, it means the same thing. The provision cannot mean that payment can be made at any time and, in my view, it means that payment must be made within a reasonable time of leaving the vehicle in a parking place, in line with the principles set out above.

Therefore, this case is on all fours with Riley -v- Hunt, in that Mr Clarke not only sought change but left

the car park to do so.

In the circumstances, for the reasons set out above, I do not consider the Appellant can avoid liability for the parking penalty by virtue of the fact that he was obtaining change for the purposes of making payment at the pay and display machine.

I find the contravention proved, and I refuse the appeal.

4. Donald Richard Wilcox -v- The Corporation of London (PAS Case No. 196019426A)

On 13 August 1996, Mr Wilcox parked in a pay and display bay in East Poultry Avenue. He went to obtain a pay and display voucher, and complains that a sign pointed him in the wrong direction. However, when he got to the voucher machine, he found he did not have sufficient change. He says, in his representations to the Council:

"I was at the machine trying to get change of £5 note from passing people when somebody called out that there was a traffic warden at my car. I ran back but she had already started to write the ticket out and by her own figures only 1 minute had passed."

This is a reference to the fact that the Parking Attendant observed the vehicle for only one minute before issuing the PCN for the car being parked without displaying a valid pay and display voucher. The observation period is confirmed on the face of the PCN itself. In her contemporaneous notes, the Attendant has written: "Driver drinking tea outside his office." The Council say that is why the Attendant did not observe the vehicle for longer, prior to issuing a PCN. However, without making any finding, for the purposes of this appeal, in Mr Wilcox's favour, I accept that he was at the pay and display machine attempting to obtain change for a note. In his representations, he says that the signs to the pay and display voucher machine pointed in the wrong direction, but he also says that, at the relevant time, having found the machine, he was attempting to obtain change from passers-by. Consequently, in this particular case, I do not consider that any mis-signing is relevant.

The relevant Traffic Management Order is The City of London (Parking Places) Order 1972, Article 6(1) of which provides:

"The [relevant] charge shall be payable on the leaving of the vehicle in a parking place by the insertion in a ticket parking meter of coins..."

Again, it is to be noted that the phrase, "... shall be payable on the leaving of the vehicle in a parking place..." is materially identical to the phrase in the Traffic Management Order in the Divisional Court cases referred to above.

On the basis of the principles set out above, I consider that Mr Wilcox would not have been in contravention of the regulations whilst he was taking a reasonable time to obtain and display a pay and display voucher, i.e. a reasonable time to get out of his car, go to the pay and display machine and obtain a voucher, return to his car and display the voucher. Such reasonable time would not extend to time expended in seeking change from passers-by at the machine, as he was doing.

For these reasons, and the reasons set out above, Mr Wilcox cannot use his attempts to obtain change as a defence to the contravention. In the circumstances, for the reasons set out above, I do not consider the Appellant can avoid liability for the parking penalty by virtue of the fact that he was attempting to obtain change for the purposes of making payment at the pay and display machine.

I find the contravention proved, and I refuse the appeal.

G R Hickinbottom
19 June 1997