

**PARKING APPEALS SERVICE**

**SUSAN PAMELA CARLESS - and- THE CORPORATION OF LONDON**

**PAS CASE No. 1970100003**

**DECISION**

Mrs Carless is the registered owner of the relevant vehicle in this case, registration mark J79 XHK. However, her husband conducted this appeal on her behalf and gave evidence in writing.

He said that, at about 2.20pm, he parked the car in a meter bay in Carmelite Street in the City of London. When he parked, the meter appeared to be in order. He inserted three £1 coins, which would have made up the 46 minutes unexpired parking time to 2 hours, i.e. he paid for time to about 4.20p.m. However, as he inserted the third coin, the “Out of Order” sign appeared in the window of the meter. He left a clear note saying “Put £3 in meter. Read out of order”. At 3.27pm, a Parking Attendant issued a Penalty Charge Notice (“PCN”) to the vehicle for being parked at an out of order meter. Mr Carless returned to the car at about 4.15pm - within the paid for time - when he found the PCN attached to the windscreen and the meter had a plastic hood over it saying that it was “out of order”.

I accept Mr Carless’ version of events, which is not challenged by the Corporation.

On the basis of those facts, in short, Mr Carless says that, having effectively paid for 2 hours’ parking, he was not committing any contravention when the PCN was issued about an hour after he left the car. He says that the meter “became defective” only after he had inserted his money.

However, the contravention alleged by the Corporation is not a failure to pay at the meter. The PCN on its face alleges the contravention: “Parked in an out of order meter day during control hours”.

The meter bay is governed by The City of London (Parking Places) Order 1990, which makes it a contravention for any person to cause or permit a vehicle to wait in a meter bay during the hours to which a charge applies if on arriving at the bay or on leaving the vehicle or at any time thereafter the words “out of order” appear on the meter display. The information plate attached to the meter warns that parking at an out of order meter is not permitted. In my view, the proper construction of the statutory provisions requires some knowledge of the unlawfulness of the parking, i.e. there must be some knowledge by a relevant person at the relevant time (i.e. at the time of issue of the PCN) that the meter was stating out of order. However, Mr Carless accepts that he had actual knowledge of that. Therefore, he did “cause or permit” the vehicle to wait in the meter bay whilst the words “out of order” were apparent on the meter display. It is common ground that this was during the hours when a meter charge was applicable. Therefore, on the basis of his own evidence, the vehicle was parked in contravention of the relevant Order in this respect.

Particularly bearing in mind the evidence of the note in the vehicle’s windscreen - which was seen by the Parking Attendant at the time the PCN was issued - I readily accept that Mr Carless paid the requisite charge. Therefore, he was not in contravention of the provisions requiring payment to park at the meter. However, this does not mean that he was not in contravention of the entirely separate provisions relating to parking at out of order meter. In my view, he was clearly in contravention of those provisions: and the fact that he had paid (and, therefore, the Corporation suffered no financial loss) is a matter of mitigation only, which I cannot take into account. Mitigation is a matter entirely for the Corporation.

For the above reasons, I dismiss this appeal.

**G R Hickinbottom**  
**8 October 1997**