PARKING APPEALS SERVICE

LONDON BOROUGH OF ENFIELD

CHERYL ROSS

CASE NO. 1950094429

REVIEW OF THE DECISION OF THE PARKING ADJUDICATOR

Following a personal hearing on 7 October 1995, at which the appellant (Cheryl Ross) appeared but the London Borough of Enfield ("the Council") did not, the Parking Adjudicator Michael Greenslade allowed the appeal of Mrs Ross, and ordered the Council to cancel the relevant Penalty Charge Notice ("PCN") and refund the penalty charge and release charges paid by Mrs Ross. He gave the following reasons:

> "Mrs Ross has clearly always maintained that there was no sign indicating that parking at this part of the road on the broken yellow line was restricted at this hour. The time clearly varies from the Controlled Zone time. The map supplied by the Council showed a time plate located there but from the photographs I have seen this is incorrect. The Council should actually check the location when such an issue is raised, rather than relying just on a map."

As I indicated in my decision of 23 February in this case, the basic facts are not in dispute. Briefly, on 10 July 1995, Mrs Ross parked her vehicle registration number C74 NEV on a broken yellow line in Trinity Avenue, Enfield, about 20 yards or so from the junction of Trinity Avenue with First Avenue. The broken yellow line is replaced by a solid yellow line before the junction with First Avenue: that solid line follows the corner round into First Avenue. The vehicle was observed there by a parking attendant at 1.34pm. At 1.39pm, a PCN was issued and fixed to the vehicle and, shortly afterwards, the vehicle was clamped. Later, Mrs Ross paid a total of £58 for the release of her vehicle (i.e. £20 penalty, and £38 for the release fee).

The evidence before Mr Greenslade included the following:

(i) A map submitted by the Council showing the site, and in particular where the solid and broken yellow lines are. The relevant lines are marked in places with "WR/F" or "WR/P". No explanation was provided by the Council for these: Mr Greenslade appears to have assumed that they marked where there were plates indicating the relevant parking restriction. In the absence of any explanatory evidence from the Council, this was an understandable (although, as the photographs I now have show, incorrect) assumption.

(ii) Although the Council's letter to Mrs Ross of 24 July, rejecting her representations, says that "where there is a broken yellow line within a [CPZ], the Council is only required to display a time plate if the restriction differs from that of the [CPZ]", the Council submitted in evidence a document headed "Summary of Traffic Order" which said:

> "This road is within the Borough's Special Parking Area. The operational times of the Waiting Restrictions are 1.00AM [presumably a typographical error for "PM"] to 2.00PM Monday to Friday inclusive. *The broken yellow lines do have adjacent plates indicating the operational hours*" (emphasis added).

In a CPZ, the zonal restriction is marked by some form of yellow line, but the restriction is marked by entry plates, and not adjacent plates. This evidence from the Council indicates that the *broken* yellow lines *do* have adjacent plates indicating the operational hours, which is tantamount to saying that the broken yellow lines do not denote the CPZ zonal restrictions. No doubt, that is why Mr Greenslade in his Decision said: "The time [restriction denoted by the broken yellow line] clearly varies from the Controlled Zone time."

(iii) A photograph from Mrs Ross showing that the broken yellow line upon which she parked did not have an adjacent plate indicating the operational hours. (It is this photograph which is referred to below, to which the Council took exception).

I have looked carefully at all of the evidence before Mr Greenslade. In my Decision of 23 February, I said that: "[Mr Greenslade] appears to have taken the view - entirely understandable on the evidence before him - that the CPZ restriction was marked by the solid line: and the broken line was subject to some other (but unspecified) restriction". In my view, on the evidence before him (and particularly the summary of the Traffic Order submitted by the Council), it would have been very difficult for him to have come to a different decision.

However, shortly after Mr Greenslade's Decision, the Council applied for a review of his Decision. On 23 February 1996, following a further hearing before me at which the Council appeared but Mrs Ross did not, on the Council's application for this case to be reviewed, I indicated that (despite what I have said above about the apparent merits on the evidence before Mr Greenslade and despite the limited circumstances in which a review was warranted) I considered a review appropriate on the ground set out in Regulation 11(1)(e) of the Road Traffic (Parking Adjudicators) (London) Regulations 1993 i.e. that the interests of justice required a review in this case. In that Decision, as well as setting out the criteria for review, I said:

> "[T]he Parking Adjudicator admitted (and, from his Decision, clearly relied upon) photographs submitted by Mrs Ross on the day of the hearing. The Council indicated that, had they known of this evidence, they would have submitted photographic evidence of their own. They said that one photograph of the appellant was - the Council suggested, wittingly - misleading, and indeed the Adjudicator was misled by it. Far from "the nearest time plate [being] about 100 yards away on the other side of the road where the parking bays commenced", the Council say that there was a time plate governing the restriction on the solid line going round the corner from Trinity Avenue to First Avenue, immediately behind the appellant when she took one of her photographs ... Consequently, the Council say, Mrs Ross was (or should have been) well aware that the CPZ restriction was marked, not by the solid yellow line (which was subject to the specific plated restriction), but by the broken line ...
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> Despite the restrictions referred to above, I consider the decision of Michael Greenslade of 7 October 1995 ought to be reviewed. In coming to that view, I have taken into account all of the circumstances of the case as outlined above, including the fact that Mrs Ross put in photographic evidence at the hearing at which the Council was not represented and the fact that Mr Greenslade patently relied upon that evidence in coming to his decision. However, these various factors alone would not have been sufficient for me to consider a review was required under Regulation 11, but for the fact that, according to the Council, Mrs Ross misled the adjudicator with one of the photographs and, the Council suggested, she did so wittingly. In these circumstances, if the Council wish to pursue a review, then I consider a review should be ordered. If, upon reflection and considering the matters referred to above, the Council do not wish to pursue a review, they will no doubt advise the clerk to the Parking Appeals Service accordingly ..."

Further documentary evidence has been submitted by both the Council and Mrs Ross. For a case of this type, an enormous amount of evidence has been lodged. Virtually each piece of evidence has been the subject of a "riposte", in the form of further evidence and submissions, from the other side. In this

connection, I refer again to the comments in my Decision of 23 February in this case, and particularly the following:

> "... [I]t can be seen that the grounds for review are very restrictive in scope. This itself is a reflection of the general adjudication scheme set up by the [Road Traffic Act 1991], which was to provide a relatively cheap and expeditious appeal from a refusal of an authority to accept a car owner's representations against a penalty. Whilst I do not underestimate the high levels of feeling amongst motorists which parking "tickets" can engender - and of course the sums of money involved are not negligible, particularly when clamping and towing away is involved - the appeal procedure was designed to be appropriate and proportional to the subject matter involved. An inherent part of the scheme is to ensure that the adjudicator's decision is final and conclusive, save in very exceptional cases ..."

With regard to the "levels of feeling" engendered in these matters, suggestions have been made that some of the evidence submitted lacks credibility to the extent that it amounts to a deliberate attempt to mislead. Both the Council and the appellant have said that they have been subjected to unpleasant threats on the telephone, by the other. Whilst taking account of all which has been said to me in considering the weight to give evidence, I do not believe it is necessary (or would be helpful) to comment in detail on these matters. However, bearing in mind the stress the other parties have given to these matters, I consider I should make two points.

First, having reviewed all of the evidence and heard all of the submissions, I do not consider that either party has at any stage made any attempt deliberately to mislead either the other party, the original adjudicator (Mr Greenslade) or me. In particular, bearing in mind the suggestions made by the Council in seeking a review which provided the basis of my decision of 23 February, I would like to make it clear that I find there to be no cogent evidence that Mrs Ross has acted in any way improperly in this case, either in submitting her photographs to Mr Greenslade or otherwise. If some comments in her letters appear a little intemperate, it has to be remembered that Mrs Ross is an individual appellant, who has been responding to suggestions from the Council that she has acted improperly.

Second, I am bound to say that in this case there appears to have arisen in the Council a lack of proportion between the matters in issue and their response, which I am afraid I have found difficult to understand and not at all helpful. It must be remembered that, although the parking scheme under the Road Traffic Act 1991 is "decriminalised", it confers the right on London Councils to enforce penalties, and consequently puts them, in some respects, into the role of a "quasi-prosecutor". That is certainly how they are seen by some members of the public. The role demands that a proper sense of balance and proportion is maintained

by them. Whilst the policy with regard to the enforcement of penalties is a matter entirely for the individual Councils, the apparent lack of proportionality in this case (to which I have referred above) is of concern.

As indicated above, in my decision of 23 February I suggested that the Council reconsider whether they wished to pursue a review. They did so, and they indicated that they did wish to pursue it. Following that indication, there has been the exchange of yet further evidence between the parties, and also a further hearing on 16 April 1996, attended by the Council but not by Mrs Ross.

In my Decision of 23 February, I made it clear that I would not have allowed a review to proceed "but for the fact that, according to the Council, Mrs Ross misled the adjudicator with one of the photographs [she produced to him at the hearing] and, the Council suggested, she did so wittingly." That photograph was taken in Trinity Avenue, from a point towards the junction with First Avenue from where Mrs Ross parked, showing that there were no parking restriction plates in Trinity Avenue, on her side of the road. Again as indicated above, at the earlier hearing, the Council said "that there was a time plate governing the restriction on the solid line going round the corner from Trinity Avenue to First Avenue, immediately behind the appellant when she took one of her photographs." At the February hearing, that point was supported by a map produced by the Council, which showed the lamp post (with the plate governing the parking restriction on the solid yellow line) at the point of the corner of Trinity Avenue and First Avenue. The map was supported on this point by a note of explanation from the Council which says: "The lamp column is positioned approximately 11m from the end of the single yellow line". If the lamp post were where that map shows, Mrs Ross would have been almost bumping into it with her back, when she took the photograph produced to Mr Greenslade. Furthermore, that lamp post would have been clearly and unobstructedly visible from where Mrs Ross parked her car. On the basis of this evidence, I allowed the review sought by the Council: I considered the interests of justice required it, because of the suggestion of impropriety on Mrs Ross' part.

However, from photographs subsequently submitted by Mrs Ross, it is clear that this lamp post is not at the point of the corner of Trinity Avenue and First Avenue, as it is shown to be on the map submitted by the Council. It is, in fact, on the First Avenue side of that corner and the plate attached to the lamp post faces First Avenue. For the hearing on 16 April, in response to a request by me for further information as to the distance from the end of the solid yellow line to the lamp post, the Council produced a further map, which shows the lamp post on the First Avenue side of the triangle of pavement on which it is situate. This map also is not to scale in every respect, but it shows a number of measurements which have been made. It shows that it is 11.3m from the end of the solid yellow line to the lamp post as the crow flies, but 21m from the end of the solid yellow line round the kerb, to the lamp post. The Council confirmed these distances at the hearing of 16 April.

On the basis of this new evidence, it is clear that Mrs Ross was some way away from this lamp post when she took her photograph. It was not immediately behind her. Furthermore, the plate on the lamp post would have been facing away from her. In my view, it is clear from this new evidence that she did not seek intentionally to mislead Mr Greenslade. Indeed, with the evidence I now have, it seems to me almost inconceivable that Mr Greenslade was misled at all by that photograph. The photograph merely shows that there are no plates in Trinity Avenue on the side of the road on which Mrs Ross parked. It supported her case that the broken yellow line had no plates marking the relevant restriction: the Council's evidence was that "the broken yellow lines do have adjacent plates indicating the operational hours". It is now common ground between the Council and Mrs Ross that there are no adjacent plates to this broken yellow line.

I do not suggest for one moment that the original map produced by the Council was intentionally wrong, or that the Council in any way intended to mislead anyone by this map, but I do consider it to be materially inaccurate. That it was inaccurate is particularly disappointing, bearing in mind the comment in Mr Greenslade's Decision: "The Council should actually check the location when such an issue is raised, rather than relying just on a map."

On 23 February, I agreed to review this case on the basis that Mrs Ross misled the adjudicator with one of her photographs which, the Council suggested, must have been intentional. On the basis of the evidence subsequently submitted, I find that she did not seek intentionally to mislead Mr Greenslade, and it seems to me that the photograph in fact could not have misled him as to any material fact. Before me, the Council sought review of Mr Greenslade's Decision on the basis of that photograph, and certainly that is the only basis upon which I allowed the review to proceed.

At the hearing on 16 April, the Council submitted that, my having decided on 23 February that a review was appropriate because the interests of justice required it, I was now bound to review it in the sense of hearing the case *de novo*. In other words, they indicated that they considered the grounds set out in Regulation 11(1) of the Road Traffic (Parking Adjudicators) (London) Regulations 1993 to be "gateway" provisions for an appeal. With respect, I do not consider this to be correct. Again I would stress that this is not an appeal procedure, but one of review. In conducting that review (and in the directions ultimately given, following review), the Regulations give an adjudicator very wide discretion. For example, Regulation 11(4) provides that, even if (after a review) an adjudicator considers the original Decision be set aside, the adjudicator is enabled to "substitute such decision as he thinks fit". He is not, even in these circumstances, required to substitute his own decision on the merits. This fits with the general scheme of the Act, to which I referred in my earlier Decision.

As indicated above, the evidence before me now is materially different from the evidence before me in February. If the evidence available to me now had been available to me prior to 23 February, I would not have considered that the interests of justice required a review of Mr Greenslade's Decision. In my view, no review is called for. However, insofar as I have revisited Mr Greenslade's Decision (and consequently reviewed it), for the reasons set out above, I consider it should stand, and I direct the Council to issue a cheque to Mrs Ross for the refund of £58 forthwith upon receipt of this Decision, and in any event within 7 days.

G R Hickinbottom
18th April 1996

GUIDELINES FOR REVIEW OF AN ADJUDICATOR'S DECISION UNDER REGULATION 11 OF THE ROAD TRAFFIC (PARKING ADJUDICATORS) (LONDON) REGULATIONS 1993

From Cheryl Ross -v- The London Borough of Enfield (23 February 1996)

1. The grounds for review under Regulation 11 are very restricted in scope. This itself is a reflection of the general adjudication scheme set up by the 1991 Act, which is to provide a relatively cheap and expeditious appeal from a refusal of an authority to accept a car owner's representations against a penalty. Whilst the high levels of feeling amongst motorists which parking "tickets" can engender cannot be underestimated - and of course the sums of money involved are not negligible, particularly when clamping or towing away is involved - the appeal procedure was and is designed to be appropriate and proportional to the subject matter involved. An inherent part of the scheme is to ensure that the adjudicator's decision is final and conclusive, save in very exceptional cases. It is clear from the narrow grounds set out in Regulation 11 (and the general scheme of the Act) that reviews will be rare.

2. It is certainly clear that a party is not able to seek a review of a decision merely because that party believes the decision is wrong. Further, each appeal depends upon its own facts. This may result in decisions which appear to be inconsistent on their face, because the decisions may be based on very different evidence. Mere apparent inconsistency of decisions does not mean that either decision is wrong, and is certainly not in itself a ground of review.

3. Furthermore, where a car owner produces evidence at a personal hearing of an appeal, it will not be in every case that a review will be allowed where the adjudicator proceeds to come to a decision without giving the authority an opportunity to respond to the evidence, the authority (quite understandably and sensibly) having decided not to appear personally at the appeal. That will be so even where the authority has asked for an opportunity to respond to *any* evidence produced by an appellant at a hearing at which the authority is not represented. The interests of justice will not in every such case require an adjudicator to adjourn the appeal or, if he does not, a review. Whether they do, will depend upon the circumstances of each case.

4. In considering whether or not to review a particular decision, weight has to be given to the fact that the scheme of the 1991 Act - although decriminalised - is penal in nature. Therefore, in considering whether or not to review a decision at the request of the enforcing

authority, an adjudicator must bear in mind that a review of a decision that no penalty is payable results in the owner being placed in what would be called "double jeopardy" in a criminal case: that is, the owner having successfully avoided the penalty before the adjudicator, a review revives his potential liability for that penalty. That is the reason why many authorities seeking a review do so expressly on the basis that, if they are successful, they will in any event not pursue the owner for any penalty. Such a course is a sensible and proper one, and it enables an authority to seek the review of a decision, which (for example) may have wider implications for it, without imposing the burden of double jeopardy upon the owner in the particular case in which a point is raised.

The basis upon which an authority is able to seek a review under the grounds set out in Regulation 11(1)(a)-(d) are narrow and well-defined. With regard to the ground in Regulation 11(1)(e), whether the interests of justice require a review will depend upon the circumstances of any specific case. However, the statutory language - in context - is clearly restrictive.

In a case with ramifications wider than simply a single PCN, the review of a decision may be allowed. Where a party indicates an intention to judicially review a decision in the High Court, again that may be a circumstance in which a review under Regulation 11 will be ordered. If a party misleads an adjudicator, the interests of justice may demand a review of the ultimate decision (even where the case does not fall within Regulation 11(1)(c) or (d)). These circumstances are not intended to be exhaustive or limit in any way the categories of case in which a review may be ordered under sub-paragraph (e): each case will depend upon its own facts. Nevertheless, the interests of justice will require the review of an adjudicator's decision in only very rare cases. Any authority considering a possible application under Regulation 11(1) should bear this in mind.

5. Again because of the penal nature of the statutory scheme, the review of a decision may be required at the request of an appellant where it might not be required at the request of an authority. For example, when deciding under Regulation 11(1)(c) whether the existence of new evidence could or could not have been reasonably known of or foreseen, the test of reasonableness may be less onerous for an appellant than for an authority, who should understand fully the implications of the statutory scheme and who will be familiar with the type of evidence adjudicators expect to see. This is not to suggest that there is not "a level playing field" for appellants and authorities, but rather it is a necessary corollary of the different roles played by an appellant and an authority in an appeal under the statutory scheme.

6 Where one of the grounds set out in Regulation 11(1) is proved, that merely gives an adjudicator a discretion whether or not to review the decision. Even if a ground is proved, the adjudicator is not bound to exercise that discretion to review the decision.

7. In the exercise of his or her discretion, it is open to the adjudicator to allow the review of a case, but on conditions. For example, it may be a condition of the adjudicator allowing an owner to review a decision that the owner lodges with Parking Appeals Service the amount of the penalty but would be due if the review failed. Equally, it would be open to an adjudicator, in an appropriate case, to allow an authority to review a decision on condition that the authority refunds release charges/penalty charges as directed in the original decision, or that the authority does not pursue any penalty or other charges from the owner in any event. Specific reference to these possibilities should not be taken as an indication of even the types of condition that an adjudicator might impose in exercising the discretion to review. Once again, any conditions that might be appropriate will depend upon the facts and circumstances of each case.

8. The costs provisions of Regulation 12 apply to a review as much as to an initial appeal. Although it is not normal for an adjudicator to make an order awarding costs and expenses, where a party pursues a review wholly unreasonably, then an adjudicator can - and, in exercising his discretion, may well - award costs. Such potential costs orders are a further disincentive for a party to pursue a review which in all the circumstances ought not to be pursued.