

Colin Watts
-v-
City of Westminster

Mr Colin Watts appealed against liability for the payment of the Penalty Charge and associated release fees paid in respect of:

Vehicle Registration Number:	L451OCH	Full Penalty Charge:	£ 80.00
Penalty Charge Notice:	WS97384837		
Date of Issue:	Fri 18 May 01	Time of Issue:	14:45
Parking Attendant:	L2907		
Location:	Gloucester Place		
Contravention:	Parked in a meter bay when penalty time is indicated		

Adjudicator's Decision

The Adjudicator, having considered this appeal on the basis of written evidence from the Appellant and written evidence from the Council, has allowed the appeal on the grounds that the penalty exceeded the amount applicable in the circumstances of the case.

The reasons for the Adjudicator's decision are attached.

The Adjudicator directs the City of Westminster to refund the release charges paid.

The Council should issue a cheque for the refund within 28 days. Enquiries regarding payment of this refund should be directed to the Council.

Adjudicator's Reasons

This appeal is in respect of a Penalty Charge Notice (PCN) issued to Mr Watts' car on 18th May 2001 while the car was parked in a bay in Gloucester Place, on a meter which was in penalty.

Mr Watts does not seek to dispute that the contravention occurred. He freely concedes that he did not return to the vehicle before expiry of the time paid for. He accepts that the PCN was properly issued.

The issue on the appeal concerns the subsequent clamping action taken by the Authority.

Having considered the evidence before me, I make the following findings of fact:

- The PCN was issued at 14.45pm. The Council was entitled to issue this PCN, and the contravention is established because the parking attendant has recorded it and because Mr Watts had admitted it.

- At 15.55 a clamping device was fixed to the vehicle by a parking attendant. Mr Watts returned to the vehicle within 5 minutes of it being clamped.

- At 16.54 payment was made by Mrs Watts, the appellant's mother, by Visa credit card over the telephone. The Council produces a Visa debit receipt showing the sum of £85.00 paid at this time. The Council at one stage suggested that there had been a 'system failure' which meant that the declamping contractors received late notice, but this is not pursued with any enthusiasm and no details of this alleged failure are given. I am not persuaded that such a failure occurred. Even if it had, I am satisfied that the payment was made at 16.54.

- This £85.00 comprised the £40.00 penalty due under the PCN (the £80.00 penalty reduced by 50% for early payment) and a £45 charge for declamping. This payment was in satisfaction of the charges the Council could levy under Section 69(4) of the Road Traffic Act 1991 (the Act), and it triggered an obligation to release Mr Watts' car.
- The vehicle was released at 21.10. In its Notice of Rejection of Mr Watts' initial representations, the Council stated that the declamp was effected at 20.00. Mr Watts disputed this and in the appeal the parties are agreed that the time was 21.10. The vehicle was, therefore, released 4 hours and 16 minutes after payment was made.

-
There is no evidence before me to suggest that there were any unusual circumstances leading to a compromise of the Council's ability to respond.

Mr Watts does not dispute the issue of the PCN, nor the subsequent clamping. He does not dispute the penalty charge imposed. His assertion is, simply, that the time taken to release, following payment, was excessive. In these circumstances Mr Watts, by implication, relies on the ground of appeal in Section 71(4)(e) of the Act that "the [penalty or other] charge in question exceeded the amount applicable in the circumstances of the case".

The power to clamp a vehicle is in Section 69 of the Act and arises where a parking attendant "has reason to believe that the vehicle has been permitted to remain at rest there in any of the circumstances specified in Section 66 (2)(a)(b) or (c) of the Act". Section 66 gives a parking attendant power to issue a PCN, and the circumstances specified in Section 66 (2)(a)(b) and (c) are briefly, and as one could expect, where a parking contravention has occurred. The power to clamp arises therefore in exactly the same circumstances as the power to issue a PCN, the PCN being issued and placed upon the vehicle first. Mr Watts does not dispute that the Council was entitled to issue the PCN and take subsequent clamping action. Upon issue of a PCN the penalty charge incurred because of the contravention becomes payable. Upon clamping, a further fee, a release fee, is payable.

The arrangements for payment and release following immobilization are set out in Section 69 (4), which states:

- ‘... a vehicle to which an immobilisation device has been fixed in accordance with this section shall be released from that device on payment in any manner specified in the notice affixed... of... (a) the penalty charge payable; and (b) such charge in respect of the release as may be required., ‘

Thus the condition precedent to release of the vehicle is payment of the penalty charge and the release fees. The amounts of both of these are set by the London Authorities under Section 74 of the Act.

This process is directly analogous to that where a vehicle is towed away. Once again, power to remove arises where a contravention occurs and a PCN is issued, although the arrangements for this are contained in different legislation. (The Road Traffic Regulation Act 1984, Sections 99-103, and the Removal and Disposal of Vehicles Regulations 1986). Under these regulations a parking attendant can authorise removal where a vehicle is in contravention. The vehicle is removed and the driver attends the pound and pays the penalty and release fees. At that point he is free to drive his vehicle away.

In this case the issue on appeal is the width of the Council’s powers or duties in relation to the declamp, or release. Put shortly, is the Council under any duty to release a vehicle promptly once the fee has been paid, or is the time for release open-ended?

The Council’s view is succinctly put in its evidence on adjournment, wherein it stated;

‘The Council does not have a published policy. The Council endeavours to declamp the vehicle as soon as possible but cannot promise that it will do so.’

The Council goes on further to note that the Act does not, in its view, lay down a time limit within which it has to remove a clamp. In its Rejection of Mr Watts’ representations, the Council opined;

‘The Council has no legal time-limit to adhere to regarding the declamping of the vehicle.’

The starting point is the Act itself. Section 69 (4) states that the vehicle is to be released “*on payment*” in the manner specified. There is no interpretation of the words in the statute and I construe them in the ordinary sense. The meaning is clear and unequivocal, the vehicle is to be released as soon as payment is made. Therefore, for the Council to argue that it is under no obligation as regards the time to release is clearly wrong.

The Courts have in previous cases considered similar wording in different situations:

In R-v- Arkwright [12 QB 970] Denman CJ held that ‘on’ or ‘upon’ may mean ‘before’... ‘simultaneously with’...or ‘after’ according as reason and good sense require, with reference to the context and subject matter of the enactment’.

In Paynter -v- James, [LR 2 CP 398] in the context of a commercial transaction ‘payment on delivery’ was construed to mean ‘simultaneously’.

The common ground of these cases is that where words such as ‘on’ or ‘upon’ are used in statutes or contracts, in relation to a duty to act, then there is incorporated a compulsion to do so in good time. The question of timing is not left at large, or open ended, but must happen within reasonable time, depending on the context.

Clearly the context is important, and the courts take this into account. It will usually not be possible to declamp a vehicle ‘simultaneously’ to payment, where payment is made at some distance from the clamped vehicle.. The courts have considered the specific situation of clamping in Arthur v Anker (1996) RTR 308. In this case, which concerned a private clamping on private land, Bingham MR held that: ‘Nor may the clamper justify detention of the car after the owner has indicated willingness to comply with the condition for release: the clamper cannot justify any delay in releasing the car after the owner offers to pay,’

Specifically in the clamping context, therefore, Court takes a robust approach, where a motorist has offered to pay. In my view, where the clamper is a public authority, and the motorist has already paid, the duty to act is even more pressing.

Furthermore, the courts have held that generally Councils are under an implied duty to act 'reasonably' or 'fairly' in pursuance of statutory powers or duties. A Council's powers or duties are derived entirely from statute, and the courts have held that these powers are tempered by an implied duty to act 'fairly' or 'reasonably'. It has been held in the case of Davis v Royal Borough of Kensington and Chelsea (PAS 1998) that that rule applies equally in the decriminalised parking scheme, and that in exercising its functions under the Act a local authority is under a duty to act fairly.

In the specific context of clamping, the wording of the statute imports in my view, the obligation to act promptly and without delay. This must mean that there is an obligation to act promptly to declamp once payment is made.

My conclusion is therefore that a Council which has exercised the power to clamp under Section 69 of the Act, is under a duty to act reasonably in relation to the declamp, which is to happen 'on payment' of the requisite charges. At the very least this means using reasonable endeavours to release in good time and following the case of Arthur -v- Anker, there can be no delay.

There then follows the question 'what is within good time' in this context, or 'what is a reasonable time within which the Council must declamp which is not dogged by delay?'

This is perhaps a technical question, having regard to operational requirements of the declamping process. There is no evidence before me from the Council on the point, and the Council declares itself to have no published policy on it. I assume that there are internal Council performance standards and targets but I am not shown these. Indeed the Council appears to have no aspirations at all as far as the timing of release of vehicles is concerned.

I turn therefore to the only published documents on the point, namely the Guidance of, variously, the Secretary of State for Transport, Government Office for London, and the Code of Practice of Parking Enforcement of the Parking Committee for London (now the Association of London Government – Transport and Environment Committee). The earliest

ministerial guidance is in the Secretary of State's **Guidance on Decriminalised Parking outside London (1992)** – a detailed government circular on all aspects of decriminalised parking enforcement by local authorities. As to declamping, at paragraph 8.17 it states *'It is important that motorists who have paid their declamping charge and associated penalty charge should be able to use their vehicle as soon as reasonably possible. The punishment of wheelclamping should be the cost of the release fee, not the time and inconvenience in arranging and waiting for the vehicle to be declamped. Local authorities should therefore set and publish a maximum time for releasing vehicles from wheelclamps once the appropriate charges have been paid.'*

There is no equivalent document in relation to London. The **'Traffic Management and Parking Guidance for London'**, published in February 1998, is a less detailed document combining general government transport policy with more detailed advice on selected topics. On 'arrangements for release' at paragraph 11.9 it says: *'Local authorities should set a maximum timescale for releasing vehicles from wheelclamps once the appropriate charges have been paid. This should be no longer than 4 hours.'*

In the London Boroughs own **'Code of Practice'** (1995), to which this Council was presumably a signatory, it states at paragraph 24.2 *"the police aim to declamp within 4 hours of paying, and authorities should try to get this down to under two hours on average"*.

Taking this into account, the Council has fallen below the requirements of even its own non-statutory guidance, which holds 2 hours to be the optimum time within a declamp should be effected. Indeed, the longest period countenanced in any of these documents is 4 hours.

The Council has on this occasion fallen below the standard set in its own non-statutory policy. The appearance the Council gives is that it has barely considered the point. Presumably if pressed it would rely on the longest time mentioned, in the 1998 Guidance, but is to be noted here – that Mr Watts' car was detained even in excess of the 4 hour period mentioned therein..

The Guidance and particularly the Code of Practice are non-statutory but of some weight in determining what is fair and reasonable. In the circumstances there was a clear breach on this occasion of the duty to release in good time as required.

This being so, Mr Watts seeks a remedy. He says that the 'period from payment to being de-clamped was [excessive] ...' and I agree. This I conclude renders the clamping process in this instance defective.

Section 71 of the Act provides that the owner of a vehicle who 'secures its release from an immobilization device ... shall be (entitled to) make representations to the [Council]'. Mr Watts did so. The Council having rejected his representations, he may appeal, and Section 72 (2) provides that an adjudicator has power to order a refund of sums paid if he finds the representations made by the appellant to be justified.

The ground on which Mr Watts seeks redress is ' that the penalty or other charge in question exceeded the amount applicable in the circumstances of the case'. I have considered his representations and find them justified. I therefore direct the Council to refund that part of the sums paid which relates to the release. The clamp and subsequent release were rendered wholly defective by the unreasonable time it took to release this vehicle, and the Council should not be in a position to retain charges imposed in pursuance of a defective process. By extension any charges should be refunded.

I therefore ALLOW this appeal and direct the Council to REFUND the release charges.

On the facts of this case the time to release Mr Watts' car was manifestly unreasonable, and exceeded even the longest time-limit put forward in ministerial Guidance and the Boroughs' own Code. On those facts alone this appeal should be allowed. But in the course of considering this appeal it has become clear that the legal requirement for release of vehicles, as set out in the Act, is actually more stringent than that envisaged by Guidance or the Boroughs' Code. The Act requires that a vehicle be released 'on payment', and I have concluded that in the context of declamping this means using reasonable endeavours to

release in good time without delay. In those circumstances, it seems to me that any time in excess of 2 hours would, prima facie, be unreasonable. Each case will turn on its own facts – there may be instances where much less time than 2 hours would, on the facts of the case, be unreasonable. For example even perhaps 20 minutes would be excessive where the release vehicle is present in the same street when payment is made.

It would only be in the most extreme circumstances which were entirely outside the Council's control, that a Council could reasonably claim that a time in excess of two hours should stand.

Jennifer Shepherd

Adjudicator appointed under Section 73(3) of the Road Traffic Act 1991