

ETA Register of Appeals

Register kept under Regulation 20 of the Road Traffic (Parking Adjudicators) (London) Regulations 1993, as amended and Regulation 17 of the Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) (England) Regulations 2022.

Case Details

Case reference	2050448466
Declarant	██████ S ██████
Authority	Royal Borough of Kensington and Chelsea
VRM	██████████

PCN Details

PCN	KC42394671
Contravention date	28 May 2005
Contravention time	14:31:00
Contravention location	The Vale
Penalty amount	GBP 100.00
Contravention	Parked in a suspended bay/part of bay
Referral date	21 Oct 2005
Decision Date	31 Jul 2006
Adjudicator	Martin Wood
Appeal decision	Appeal refused
Direction	None

Reasons

The Appellant raises an issue about the interpretation of section 66 of the Road Traffic Act 1991. He argues, put shortly, that on its proper interpretation a motorist can pay the reduced penalty charge and still go on to contest the penalty, ultimately by appealing to the parking adjudicator.

The statutory enforcement scheme is prescribed by the Road Traffic Act 1991. It provides, so far as relevant, as follows.

66(3) A penalty charge notice must state-

(a) ...

(b) the amount of the penalty charge which is payable;

(c) that the penalty charge must be paid before the end of the period of 28 days beginning with the date of the notice;

(d) that if the penalty charge is paid before the end of the period of 14 days beginning with the date of the notice, the amount of the penalty charge will be reduced by the specified proportion;

(e) that, if the penalty charge is not paid before the end of the 28 day period, a notice to owner may be served by the London authority on the person appearing to them to be the owner of the vehicle;

...

(7) Schedule 6 to this Act shall have effect with respect to penalty charges, notices to owners and other matters supplementing the provisions of this section.

...

SCHEDULE 6

1.-(1) Where-

(a) a penalty charge notice has been issued with respect to a vehicle under section 66 of this Act; and

(b) the period of 28 days for payment of the penalty charge has expired without that charge being paid,

the London authority concerned may serve a notice

("a notice to owner") on the person who appears to them to have been the owner of the vehicle when the alleged contravention occurred.

The Schedule then goes on to provide that where a Notice to Owner is served, the recipient may make representations to the local authority; and if those representations are rejected the recipient of the Notice of Rejection may then appeal to the parking adjudicator.

This scheme is in my view comprehensive and its interpretation straightforward. Section 66(3)(c) prescribes a period of 28 days for payment of the penalty charge. If the penalty is not paid within that time, paragraph 1 of Schedule 6 empowers the local authority to pursue enforcement of the penalty charge by serving a Notice to Owner. There is then a mechanism for the recipient of the Notice to Owner to contest liability, ultimately by appealing to the parking adjudicator. But if the penalty charge is paid within the 28 days that is an end of the matter. There is then no power to serve a Notice to Owner, because, of course, there is nothing to pursue enforcement of. And it is only through the enforcement process starting with the Notice to Owner that the right to challenge the penalty and ultimately the right to appeal to the parking adjudicator arise. So, if the penalty charge is paid within the 28 days prescribed by section 66(3)(c), those rights never arise. Nor can the motorist require the local authority to serve a Notice to Owner where the penalty has been paid. There is no power to serve a Notice to Owner unless the penalty has not been paid.

The Appellant suggests that the draftsman must have omitted to think of the possibility of paying and challenging. I do not agree. The scheme the draftsman has plainly quite deliberately provided for is "pay or challenge".

There is no distinction in this respect between paying the full penalty or taking advantage of the reduced penalty available under section 66(3)(d). As the Appellant admits, his argument relies on interpreting "paid" differently in sections 66(3)(d) and (e). There is no justification for so doing. As the Appellant says, it is generally presumed that the same word means the same thing if used in different provisions in the same statute. Here, the same word is used in successive paragraphs of a sub-section, and I can see no reason for departing from the usual

presumption. The natural interpretation does not lead to an unreasonable or irrational result.

But that is not the only reason. The Appellant treats paragraphs (c) and (d) as both making provision for payment of the penalty, but at different amounts. This is not so. It is paragraph (c) that deals with the requirement to pay the penalty. Paragraph (d) does not set out any requirement to pay; it merely sets out a particular consequence if the payment is made within the first 14 days.

The Appellant argues that "one would naturally expect the provisions to permit payment under reserve, payment without prejudice to liability or conditional payment". I cannot see why one would expect this. It may be this is common practice in other areas, but the Appellant's reliance on this in this context is misconceived. This is a statutory scheme and one must take the scheme as it is on its ordinary and natural interpretation.

Nor, contrary to what the Appellant submits, is there any need to imply anything to come to this interpretation. As I say, it is the ordinary and natural one. It is in fact the Appellant who has to resort to implication for the interpretation he advocates.

This scheme does not in my view breach the requirement under Article 6 of the European Convention of Human Rights for there to be an effective right of access to the tribunal. As I said in *S [redacted] v C [redacted]* (PATAS Case No. 2010000692), the provision for the reduced penalty serves the clear public interest in providing an incentive to motorists to settle their parking penalties promptly and so minimise the need for the Council having to pursue enforcement through further action. To allow motorists to pay at the reduced rate but still go on to contest the penalty would plainly undermine that legitimate aim. Whilst proportionally a difference of 50% may seem high, the penalties themselves are relatively small and the difference between the full and reduced penalties is therefore modest in absolute terms. The difference must nevertheless be sufficient to provide some encouragement to prompt payment. The provision for the reduced penalty is therefore an entirely proportionate measure in relation to the legitimate aim it seeks to achieve.

I might say something about the facts relating to the

payment made by the Appellant in this case. He sent a cheque for £50 but said that he nevertheless wished to pursue the formal process following the Notice to Owner. The local authority cashed the cheque, but later, when it appreciated the terms on which the payment had been made, it sent a cheque to the Appellant by way of a refund. Had the Appellant, having had the legal position explained to him, opted to make his payment unconditional, then he would in my view have been entitled to have the benefit of paying at the reduced rate. He has, however, never done so. On the contrary, he has maintained his position that he was entitled to make payment on the terms he sought to impose. As I have said, he was not. His payment on terms therefore was not and never has had the status of a payment for the purposes of section 66 of the 1991 Act. The local authority was therefore entitled to serve the Notice to Owner, because the penalty had not been paid in the sense required by the scheme. That that is so is entirely the Appellant's choice. The Appellant would no doubt have equally taken issue with the local authority if it had told him that the payment ended the matter and had not served the Notice to Owner.

As to whether the contravention occurred, the only issue was whether the suspension was adequately signed. The sign was placed on the post to which the time plate was fixed, only a few yards from where the Appellant parked. The Conditions of Use on the ticket machine state "check nearest pay + display sign to ensure bay is not suspended". The suspension was therefore adequately signed. I do not accept the Appellant's contention that it is not reasonable to expect people to read the conditions, if necessary using reading glasses. That is what the conditions are there for; to be read. I accordingly find the contravention occurred.

I refuse this appeal.

I certify this to be a true copy of an entry in the register