

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	2130193949
Appellant	████ G █████
Authority	London Borough of Newham
VRM	████████

PCN Details

PCN	PN07919855
Contravention date	14 Jan 2013
Contravention time	17:40:00
Contravention location	Barking Road
Penalty amount	GBP 130.00
Contravention	Entering and stopping in a box junction
Referral date	
Decision Date	29 May 2013
Adjudicator	Teresa Brennan
Appeal decision	Appeal allowed
Direction	cancel the Penalty Charge Notice.

Reasons

Mr G [REDACTED] attended today.

The contravention occurs if a person causes a vehicle to enter the box junction so that the vehicle has to stop within the box junction due to the presence of stationary vehicles.

Mr G [REDACTED] denies the contravention. He states that his car was not stopped in the box junction due to the presence of stationary vehicles because the exit on the nearside lane was clear.

I have seen the CCTV footage. It shows the appellant's car entering the box junction and stopping. However it is clear from the footage that the appellant could have driven out of the box junction into the nearside lane. In those circumstances I am not satisfied that Mr G [REDACTED]'s car was stopped due to the presence of stationary vehicles.

I allow this appeal.

Decision Date	08 Oct 2013
Adjudicator	Austin Wilkinson
Previous decision	Appeal allowed
Appeal decision	Appeal refused
Direction	None
Reasons	BEFORE ADJUDICATORS:

Mr Austin Wilkinson

Mr Michael Burke

Mr Kevin Moore

Consolidated cases of:

G [REDACTED] -v- L.B. of Newham (2130193949)

This appeal was allowed on 29th May 2013 by Adjudicator Ms Brennan and the London Borough of Newham applied for a review of that decision on 10th June 2013.

E [REDACTED] -v- L.B. of Enfield (2130232767)

This appeal was refused on 15th July 2013 by Adjudicator Mr Harman and Mr E [REDACTED] applied for a review of that decision on 24th July 2013.

K [REDACTED] -v- Transport for London (2130261437)

This appeal was refused on 2nd July 2013 by Adjudicator Mr Aslangul and Mr K [REDACTED] applied for a review on 24th July 2013.

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1Three Adjudicators are hearing these applications for review because the Parking and Traffic Appeals Adjudicators have agreed that when issues of complexity, or those giving rise to conflicting decisions arise in the tribunal, they will arrange for a hearing to be conducted by a panel of three Adjudicators. Such hearings allow for a breadth of experience and views to be brought to the issues by having more than one Adjudicator - and provide guidance for Adjudicators and for interested parties in other cases involving these issues.

2The Regulations provide only for a single Adjudicator to hear an appeal . For that reason the

consolidated Decision in these cases will be entered into the Statutory Register in the name of Mr Wilkinson . However this Decision does represent the unanimous views of the three Adjudicators . We hope that Adjudicators, motorists, those advising them and local authorities will find this Decision helpful.

NATURE OF APPLICATIONS

3These cases come before us following applications for review made under Regulation 11 of the Road Traffic (Parking Adjudicators) (London) Regulations 1993.

4Mr E [REDACTED] attended the Hearing on 26th September 2013. No other party attended or was represented. An observer was present from the London Borough of Enfield.

ORDER OF THIS DECISION

5We will set out the applicable law. The issues raised by these cases will then be summarised. The applications for review will then be determined on each case.

THE LAW

6Part II of Schedule 19 to the Traffic Signs Regulations and General Directions 2002 (as amended by the Traffic Signs (Amendment) (No2) Regulations and General Directions 2011) establishes, subject to certain very limited exceptions, a contravention that:

" the road markings ... shall each convey a

prohibition that no person shall cause a vehicle to enter the box junction so that the vehicle has to stop within the box junction due to the presence of stationary vehicles".

THE ISSUES

7Under the London Local Authorities and Transport for London Act 2003 Parliament caused the Parking & Traffic Appeals Adjudicators to be the responsible tribunal for adjudging local authority assertions of civil contraventions under this Regulation . Although the Regulation is drafted so as to commendably avoid undue prolixity, nevertheless it needs to be interpreted in a workable manner and applied to the wide-ranging and differing scenarios frequently met by Adjudicators in the many hundreds of appeals brought to this Tribunal each year.

8Moreover there has been, in recent years, an increasing trend in appellants making use of the resources, mainly via the internet, of self-help websites and in assistance given by individuals and organisations offering both advice and representation in the preparation and conduct of appeals. The Regulations governing this jurisdiction expressly provide that an appellant may seek the assistance of any representative whether or not legally qualified. This trend is entirely understandable since the subject matter of appeals relates to fixed penalties, the size of which renders prohibitive and unrealistic the cost of seeking advice or representation by lawyers.

9However a side-effect of the increasing use of unqualified representatives and advisers is that appeals are occasionally being presented without the attendant professional standards which would be expected and, indeed, imposed by the Bar Council (in relation to barristers) and by the Law Society (for solicitors). One such standard is the expectation that the citing of previously decided cases, showing a wish to have a law interpreted in a particular way, will include all cases relevant to that law, even if some of them encourage an alternative interpretation which is not the one desired . The point is: that a party or his/her representative has a responsibility not to mislead a court into believing that a cited interpretation is the only one possible - especially if the interpretation is a minority one.

10We note that the case of S [REDACTED] -v- L.B. of Newham (PATAS reference MV0071NE02 - September 2006) has received in recent times an unusually large degree of attention, even though the interpretation contained therein has not been a widely accepted one by the Adjudicators. Since there has been an occurrence of appeals where this case has been cited alone and where there has been no perceptible attempt to show that other Adjudicators have taken a different view, it seems to us to be desirable that the case be re-visited as to whether or not the findings therein are a sustainable and a reasonable interpretation of the above Regulation.

11It should be emphasised that Adjudicators are a Judicial Tribunal . They are not a Court of Record. Therefore, although the Adjudicators will have regard for each other's decisions and treat them, where appropriate, as persuasive both as to accuracy of law and as to the desirability of consistency, that is the limit of the authority of their decisions . The same is, of course, true of this Panel Decision.

12In Mr G [REDACTED]'s case the issue is whether or not a contravention has occurred if a driver enters a box junction and then stops behind stationary vehicles when, in the alternative, he could have chosen to leave the box junction by an alternative clear exit.

13Although she has not cited the case, the previous Adjudicator has interpreted the relevant law in the same manner as with the case of S [REDACTED]: that the vehicle did not have to stop due to the presence of stationary vehicles but that it was the driver's choice as he could have driven out of the box junction via the nearside lane. Mr G [REDACTED] had cited the earlier case - and had also raised submissions as to the quality of the box junction markings. The Adjudicator had not considered it necessary to make a finding on the issue of the markings.

14The local authority applied for a review objecting to the interpretation of the law and showing that another adjudicator had not supported it.

15In Mr E [REDACTED]'s case he had submitted that only after he had committed the vehicle into the box junction from the left hand lane, did another vehicle, approaching from the right hand lane, cut across in front of him and take the exit space. Therefore he was stranded in the box junction due to the

unexpected action of the other driver who had cut across into his lane without signalling. Mr E [REDACTED] objected to the local authority's evidence as he submitted that the camera did not show his point of entry.

16The Adjudicator made a finding of fact that Mr E [REDACTED] could not have predicted the behaviour of the van driver. However the Adjudicator did not find that there was any defence but that the circumstances were ones which went only to mitigation.

17Mr E [REDACTED] applied for a review in which, once again he objected to the camera evidence. He reiterated that, at the time he entered the box junction, his exit lane was clear. Only after he entered did the van decide to change lanes and cut in front of him. Mr E [REDACTED]'s recollection of the appeal hearing was that the previous Adjudicator had made reference to advice in the Highway Code - but that the Adjudicator had stated that this was not law.

18Mr E [REDACTED] raised a question about whether the box junction had been marked in a manner compliant with the Regulations relating to road markings and signs. However this was a new submission which had not been raised before the previous Adjudicator.

19In Mr K [REDACTED]'s case he had submitted that he was almost at the end of the box when there was an unexpected stopping of traffic ahead and he was unable to react in any other way than by applying his brakes and stopping, since he had no control over the traffic ahead of him.

20The Adjudicator found that he had driven his vehicle into the box at a time when there were stationary vehicles at the intended exit point.

21Mr K [REDACTED] applied for a review because he had objected to the judgment as he stated that the traffic had stopped suddenly and he had no other choice other than taking the action that he did.

DETERMINATION OF EACH CASE

G [REDACTED] -v- L.B. of Newham (2130193949)

22The relevant Regulation is , in our view, drafted so as to place upon the driver the duty of exercising a judgment at the point of entry as to whether s/he can proceed into the box without the consequence that the vehicle will have to stop due to the presence of stationary vehicles. The "prohibition" is that of "causing a vehicle to enter.." followed by the consequence. It is the entering into the box junction which constitutes the contravention, once the vehicle has had to stop.

23We regard it, therefore, as axiomatic that, in determining whether or not the Regulation has been breached, the essence of the case is crystallised in the choices and judgments made by the driver at the point of entry: the judgment to proceed, the choice of exit lane he directed his vehicle towards and the state of the traffic at that exit which could have been predicted by him at the point of entry.

24We examined all of the evidence including the camera footage. At the point of entry Mr G [REDACTED] made the choice to proceed into the box . That choice included the exit to which the vehicle was directed. It would have been plain to Mr G [REDACTED] that the vehicle would have to stop in the box due to the presence of stationary vehicles preventing him from leaving at his chosen exit lane.

25Therefore in our view this contravention clearly occurred. The vehicle did not stop as a matter of choice. Mr G [REDACTED] had already made his choice as to which direction he was going to drive when he entered. The vehicle stopped because it had to do so in order to avoid colliding with the stationary vehicles in front. That Mr G [REDACTED] might have made an alternative choice of exit is irrelevant, since he did not take it. The law must judge the actual facts of the case: i.e. what the driver did - not what he might have done.

26Therefore we find that the decision in the case of S [REDACTED] is not a reasonable and sustainable interpretation of the Regulation and is not followed.

27We are satisfied that it is in the interests of justice

to review the decision of the previous adjudicator as being a misdirection of law. The decision is set aside .

28We find that the contravention occurred .

29Since Mr G [REDACTED] raised a question about the quality of the road markings, we have made a finding that the box junction does pass the test of adequacy laid down in Regulation 18 of the Local Authorities' Traffic Orders (Procedure) (England & Wales) Regulations 1996 .

30The appeal is therefore refused.

E [REDACTED] -v- L.B. of Enfield (2130232767)

31We had the opportunity of hearing from Mr E [REDACTED] in person and we thanked him for his attendance. We examined the camera footage several times.

32We are not persuaded that there is any justification in Mr E [REDACTED]'s submission that there was a failure by the local authority to prove the case due to the scope of the camera. The evidence is sufficiently proximate so that the Adjudicator can draw the necessary judgment as to the state of the traffic which the driver would have seen as he entered the box.

33In examining the camera footage our attention was drawn to the somewhat brisk progress made by Mr E [REDACTED]'s vehicle. When he entered the box the offending van had already begun to straddle the two exit lanes. A more cautious approach would have given Mr E [REDACTED] the better chance of reacting to the van driver's decision to cut across. However it is certainly true that the van driver diagonally cut across the box junction from right to left with the

consequence that Mr E's vehicle could not leave the box.

34The finding of fact made by the previous Adjudicator - that the Appellant could not have predicted the behaviour of the van driver - is in our view a generous one. However it was a finding at which the Adjudicator was reasonably entitled to arrive upon the evidence. We therefore consider that we are bound by that finding of fact.

35Therefore the evidence before the previous Adjudicator was that, at the point of entry, Mr E would have been able to see the free movement of traffic and the likelihood that his exit would be free for his vehicle. Since he could not have predicted that the van driver would perform an intervening act, namely cutting across his right of way, Mr E's judgment was not at fault at the point of entry. Therefore in our view no contravention occurred here. Mr E did not breach the entry prohibition . The vehicle had to stop because of the intervening act of the other driver which was not predictable at the point of entry. A driver cannot be held liable for the contravention when it was outside his judgment to prevent it.

36In our view the Regulation, describing as it does a consequence that a vehicle has to stop in the box due to the presence of stationary vehicles, does not thereby impose a necessity upon a driver that he must wait outside the box to see if traffic ahead will become stationary before he decides to enter. The traffic may still be moving when s/he enters and yet a contravention still occur if the traffic stops thereafter. This is the driver's risk in the judgment s/he exercises unless, as in Mr E's case, the driver could not have predicted the reason for the stopping of the vehicles ahead.

37We have had regard to the relevant paragraph advising motorists in the Highway Code. The warning is " You must not enter the box until your exit road or lane is clear." However we are of the view that this steps rather beyond what is required by the Regulation. A driver may exercise a prediction in his judgment as to whether the exit space will be clear. He is not to blame if the exit is thereafter blocked by an unexpected event such as the intervening action of another vehicle cutting into his right of way without warning.

38We are therefore of the view that the interests of justice are served by a review here. Applying the finding of fact to the Regulation, we believe that the Adjudicator has made a misdirection in viewing the circumstances as only proving a contravention subject to mitigation. We review the decision and find that no contravention occurred. The appeal is therefore allowed.

39On the question of whether or not the box junction complied with the Traffic Signs Regulations & General Directions 2002 (as amended) we find that this is not a ground for review. Mr E's submissions were not new evidence. The submission could have been put to the previous Adjudicator.

40In any event in the case of R v THE PARKING ADJUDICATOR (2011) EWCA Civ 905 the Court of Appeal held that the proper approach to the Traffic Signs Regulations & General Directions 2002 is that the signage therein is there to convey adequate information to motorists as to the relevant traffic restriction. Therefore, substantial compliance with the statutory specifications in the TSRGD suffices - so long as the signage adequately informs motorists of the restriction and does not mislead.

41It is clear that, in deciding whether or not there was liability for a penalty for a civil contravention, the Court did not regard as necessary the precise replication of signs in accordance with the signage illustrations found in the above Regulations. This is important to note, since the Adjudicators are frequently faced with appeals where appellants claim a defence to a penalty if, for example, a box junction corner does not precisely meet the kerb. The Court of Appeal has clearly departed from such demands for signing exactitude and has placed the emphasis upon whether or not the driver would have understood the information intended by the sign.

K -v- Transport for London (2130261437)

42We viewed the camera footage and we are satisfied that when Mr K drove into the box he would have been able to see that the traffic was bunching to a halt and that all exit space would be

taken. Mr K entered the box immediately behind another vehicle and there is no evidence, therefore, of any assessment by him as to whether he would be able to clear the box. Although Mr K complained that the traffic had come to a halt sooner than expected, it is sufficiently clear from the camera evidence that the vehicle which stopped in the traffic queue was the vehicle ahead of the one Mr K was following. The evidence shows the likelihood that the event was simply the stopping of the traffic queue. The onus was upon Mr K, seeing the traffic ahead of him, to have paused before entry to ensure that there would be an exit space for him to leave by. The stopping was clearly predictable at the point of entry.

43If the state of the traffic had been such that there was clear open road beyond the vehicle ahead of Mr K's and that either Mr K or the vehicle ahead of him had to stop for an unexpected reason (for example the unexpected conduct of a pedestrian stepping into the road), then Mr K could have submitted that the unexpected happening was unpredictable and he would have had a defence .

44On the other hand if a driver is following a line of traffic into the box and the traffic comes to a halt for some reason much further along the line, this would not be a defence since , when he entered the box, the driver could have predicted the bunching up of an existing line of traffic for any number of reasons. It was his risk to proceed.

45Whether or not an unexpected or intervening event is within the ability of the driver to predict at the point of entry, is a question of fact in each case for the Adjudicator to determine.

46However in this case Mr K does not have a defence as when he entered the box he would have been able to see the amount of traffic bunching up and would have had no assurance that he could clear the box.

47We see that the previous Adjudicator found that Mr K had entered the box junction at a time when there were stationary vehicles at the intended exit point. The evidence does not precisely show this. It is not so clear that the line of traffic had already stopped at the time of his entry.

48However as we have previously stated it is our view that if moving traffic becomes stationary after a driver has entered the box then this is his risk and the contravention does occur. We are satisfied therefore that the previous Adjudicator arrived at the correct conclusion that there had been a contravention. There are no grounds for review and we refuse the application. The appeal will therefore stand as having been refused.

MICHAEL BURKE

KEVIN MOORE

AUSTIN WILKINSON

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