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# 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	2230404203
Declarant	<div></div> Plant Services Limited
Authority	Transport for London
VRM	<div></div>

## PCN Details

PCN	GX06436060
Contravention date	31 Mar 2023
Contravention time	17:09:00
Contravention location	LEE HIGH ROAD
Penalty amount	GBP 160.00
Contravention	Stopped where prohibited on red route or clearway
Referral date	05 Sep 2023
Decision Date	14 Dec 2023
Adjudicator	Carl Teper
Appeal decision	Appeal refused
Direction	Full penalty charge notice amount stated to be paid within 28 days.

**Reasons**

The Appellant is represented by Mr I Murray-Smith.

The Authority's case is that the Appellant's vehicle was stopped where prohibited when in Lee High Road on 31 March 2023 at 17.09.

The last hearing was adjourned on the following basis, which is self-explanatory in relation to the issue between the parties in this particular case. The issue being that whilst there was a certificate from the Secretary of State produced in relation to the approval of some camera/devices but nothing that confirms that the camera/device used in this case was one of those approved by the S of S.

*'Appeal hearing adjourned by the Adjudicator, Mr C Teper, who directs the Authority to disclose the information requested by the Appellant's representative in their email dated 10 October 2023 and timed at 15.44 by 4.30pm on 8 December 2023. Failing which the Adjudicator will draw such inferences as appear proper to the Adjudicator (Para 4(4) of Schedule 1 of the Appeal Regulations 2022).'*

The email dated 10 October 2023 and is as follows:

*'Dear Transport for London,  
There is a CCTV camera outside 266 Lee High Road, London, SE13 5PL which is visible here:  
<https://maps.app.goo.gl/TmsFNNDJZcJ25r698>  
I would like to know the make and model of this camera. Please also provide copies of any documentation confirming the make and model of this camera.'*

I have considered the submissions of both parties and some previous decisions the Appellant's representative referred me to, two of them were decisions of my own, which like the others are persuasive but not binding.

The Appellant's representative's argument is easy to understand. The Authority's submissions appear to miss the point. The Appellant is not challenging the veracity of the S of S's approval but is arguing that there is a break in the chain in relation to what camera/Device was actually used in this case to issue a PCN.

Neither the Appellant's representative or the Tribunal are seeking to go behind the S of S's certificate. I do not doubt that the camera/devices mentioned were approved. The point is how does the motorist know that it is one of those camera/devices that was outside 266 Lee High Road and used to capture and issue this PCN.

I agree that there does not appear to be a link by way of statement linking the devices the S of S approved and the camera/device used in this case..

I now turn to my powers under Para 4(4) of Schedule 1 of the Appeal Regulations 2022, that allows an Adjudicator to draw such inference as they deem fit when a direction is not complied with. Or as the Authority state its not possible to break the components of the device down, and that a device is not a camera but the camera is part of a device.

I have considered my powers and I have decided that it is more likely than not that the camera or camera component or device or camera/device used to capture this contravention has been approved by the S of S.

I find that the contravention is proved and the appeal is refused.

Decision Date	04 Mar 2024
Adjudicator	George Dodd
Previous decision	Appeal refused
Appeal decision	Appeal refused
Direction	Full penalty charge notice amount stated to be paid within 28 days.
Reasons	<p><b>Introduction</b></p> <p>1. This is an application for review in two cases: [REDACTED] Plant Services Limited v Transport for London (Case reference: 2230404203) ['CPS'] and Mr [REDACTED] S [REDACTED] v Transport for London (Case reference: 2230491139) ['AS'].</p> <p>2. The Appellants in both cases were represented by Mr Murray-Smith and Transport for London (TfL) was represented by Mr [REDACTED] G [REDACTED] (Operations and Performance Manager-TfL). They both attended the hearing on 29 February 2024 in person.</p> <p>3. Ms [REDACTED] B [REDACTED], Compliance and Administration Manager of Stanmore Quality Services Ltd ['SQS'], attended as a witness for [REDACTED] Plants Services.</p> <p>4. Two people unconnected to the parties attended the public hearing.</p> <p>5. In addition to the documentation that was available at first instance, the following documentation was produced for the review applications:</p> <p>a. [REDACTED] <b>Plant Services Ltd</b>: The Appellant's application for review dated 27 December 2023;</p>

Appellant's Preliminary Point Skeleton Argument drafted by Mr Murray-Smith dated 21 February 2004 which runs to 53 pages; and 4 indexed bundles of evidence which contain approaching 600 pages.

b. **Mr [REDACTED] S [REDACTED]**: TfL's application for review dated 22 December 2023 drafted by Mr G [REDACTED]; "Civil Enforcement of Road Traffic Contraventions: Certification of Approved Devices"; and the Appellant's Skeleton Argument dated 21 February 2024 and supporting material.

6. There was a suggestion in Mr Murray-Smith's CPS Skeleton Argument that Mr G [REDACTED] did not have the necessary authority to appear on behalf of TfL at the review hearing. I do not accept his arguments on this. In any event, I have a discretion under Schedule 1 Part 2 section 9(2) of the Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) (England) Regulations 2022 to permit "Any other person" to appear in addition to the parties. Accordingly, I permitted Mr G [REDACTED] to appear.

7. I decided to reserve my decision following the re-hearings.

### **Brief Summary of the Cases**

8. The case of CPS concerns a contravention of stopping where prohibited on a red route or clearway on 31 March 2023 at 17:09 on Lee High Road.

9. The case of AS concerns a contravention of stopping where prohibited on a red route or clearway on 21 August 2023 at 09:55 on London Road SW16.

10. It is not disputed by the Appellants that the contraventions occurred. It is, however, disputed that they are enforceable.

### **Consolidation**

11. In the absence of any objections by the parties, I exercised my power under Schedule 1 Part 2 section 14 of The Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) (England) Regulations 2022 to consolidate the cases for the purpose of the review application and re-hearings on the basis that the cases involve a common issue.

### **Applications for Review**

#### **[REDACTED] Plant Services Ltd**

12. Adjudicator Teper gave a decision on 14 December 2023 in favour of TfL. The issue in that

case was whether there was sufficient proof that the particular “camera/device” used had been an approved device (hereafter referred to as “the device issue”). Mr Teper held: “... that it is more likely than not that the camera or camera component or device or camera/device used to capture this contravention has been approved by the S of S.” There was an additional issue in this case, namely whether Ms B [REDACTED] had authority to submit representations on behalf of CPS. TfL submitted that she did not have the requisite authority in this case (hereafter referred to as “the B [REDACTED] issue”). This issue was not considered by the Adjudicator, presumably, because he refused the appeal on the device issue and so decided it was unnecessary to adjudicate on the B [REDACTED] issue.

13. As the Adjudicator refused this appeal it is, of course, the Appellant who makes the application for review.

Mr S [REDACTED]

14. Adjudicator Teper had given an earlier decision on 6 December 2023 in favour of the Appellant in respect of the device issue. He held: “I have allowed this appeal because the Authority has adduced a certificate, dated 16 November 2023, but it has not produced any positive evidence to prove that the device used is the same as the device mentioned in the certificate”.

15. As the Adjudicator allowed this appeal it is, of course, TfL who makes the application for review.

16. The above decisions in respect of the device issue are in direct conflict and for that reason alone, and given the importance of the issue, it would, in my view, be in the interests of justice for there to be a review of both cases, by way of re-hearings. As indicated above, the B [REDACTED] issue was not adjudicated on at first instance, but as it was raised at first instance and is not raised now as a new issue, I will include the issue in the rehearing.

#### **Additional Issue in AS Case**

17. In his Skeleton Argument dated 21 February 2024 in relation to the AS case, Mr Murray Smith raised an entirely new argument. He refers to item 28 of Schedule 2B2 The GLA Roads and GLA Side Roads (Croydon) Red Route Consolidation Traffic Order 2007 (the “2007 order”) which refers to the red route bay in question and its exact location. He says that item 28 is purportedly amended by The GLA Roads and GLA Side Roads (Croydon) Red Route Consolidation Traffic Order 2007 823 GLA Road (London Road) Variation Order 2015 (the “2015 Order”), which gives extended dimensions for the

location, however, he says that the 2015 order appears to be a draft and in the absence of an enacted copy, there is insufficient proof that the contravention is enforceable. I will refer to this issue as the “GLA Road” issue.

18. An inherent part of the statutory scheme is to ensure that an Adjudicator’s decision is final and conclusive. An application for review is not an appeal, it is a process of review; an assessment as to whether the decision was wholly unreasonable on the evidence submitted by the parties. It is not an opportunity to bolster arguments or introduce new matters. The GLA issue could and should have been raised at first instance. There is no evidence in respect of this issue which could not reasonably have been known or foreseen at the time of the first instance hearing. In those circumstances, I dismiss the GLA issue as a ground for an application for review.

19. Although I have decided to hear the B [REDACTED] issue, I should, at least, flag the fact that Mr Murray-Smith has made submissions and produced evidence at this stage, which could and should have been made and produced at first instance. I reiterate that the review process is not an opportunity for the parties to bolster their case and introduce new matters.

## RE-HEARING

### The Relevant Regulations

20. I have set out the relevant regulations in Schedule 1 below.

### The B [REDACTED] Issue

21. CPS maintain that Ms B [REDACTED] had actual or ostensible authority to make representations to TfL. They argue that there was a clear and sustained course of conduct to this effect, of which TfL was, of course, well aware. In those circumstances, there was no requirement that CPS should engage in the third-party authorisation process in this or other cases. Accordingly, TfL should have accepted Ms B [REDACTED]’s representations. They did, however, ignore them which CPS says amounts to a procedural impropriety.

22. Mr Murray-Smith produced in evidence numerous examples of CPS cases in which TfL had not deployed their third-party authorisation process, but they had still accepted Ms B [REDACTED]’s representations, the inference being that they accepted that she had authority to make representations. This was evidenced by the fact that, in those cases, Letters of Rejection or Acceptance were issued.

23. Mr Murray Smith could not confirm the number of CPS cases in which the third-party authorisation process had been deployed, but he said it was a minority.

24. TfL do not accept that Ms B [REDACTED] had actual or ostensible authority to make representations on behalf of CPS. The reason for this is that she is not an employee of CPS and TfL has never received confirmation from the directors that she has the said authority, despite it having been requested.

25. Mr G [REDACTED] accepted that there were cases, for whatever reason, where their third-party authorisation process had not been deployed in CPS cases, but TfL had still accepted their representations. However, in this case the process was deployed and TfL sent their standard Authorised Request letter to Ms B [REDACTED] on 4 May 2023 and their standard Third-Party Authorisation letter to CPS also on 4 May 2023. Neither CPS nor Ms B [REDACTED] responded to the said letters and so TfL sent a further letter to Ms B [REDACTED] on 14 June 2023 indicating that they would ignore her representations and so there was no right of appeal.

26. The consequence of TfL ignoring Ms B [REDACTED]'s representations, was that no representations were deemed to have been made within the relevant 28-day period and therefore, they were not required under the regulations to issue a Notice of Rejection and they did not do so. As indicated above, CPS maintains that, given Ms B [REDACTED]'s actual or ostensible authority to make representations on their behalf and the said course of conduct, TfL's decision to ignore her representations in this case amounted to a procedural impropriety. They say that TfL was, in effect, estopped from ignoring Ms B [REDACTED]'s representations.

27. Mr Murray-Smith said that the reason why CPS had not engaged with the third-party authorisation process was that they simply did not have the resources to do so given the volume of PCNs that they receive. He suggested that TfL deployed the third-party authorisation process arbitrarily and they did so capriciously in this case, knowing full well that Ms B [REDACTED] had authority to make representations based on the very clear course of conduct to this effect, which they had not challenged on many occasions.

28. Ms B [REDACTED] gave evidence briefly and she confirmed that she was an employee of SQS of which CPS was the holding company. Although she was employed by SQS, she performed functions for



CPS including the management of PCNs incurred by them.

29. I am satisfied that Ms B [REDACTED] had authority from SQS/CPS to make representations to TfL in this case. The fact that she is not an employee of CPS does not mean that she is unable to act on their behalf. It is probable that there was some kind of arrangement/contract between SQS and CPS, which enabled her to act on behalf of CPS.

30. I am satisfied that there was a course of conduct whereby Ms B [REDACTED], on many occasions, made representations to TfL on behalf of CPS. Her authority to do so was not questioned and TfL accepted her representations on those occasions without having deployed their third-party authorisation process, but they simply went ahead and issued Notices of Rejection/Acceptance.

31. I am satisfied that, whilst there may have been many cases in which TfL did not deploy their third-party authorisation process with CPS, there were cases when they did so, which was conceded by Mr Murray-Smith. He has not included in his evidence examples of such cases.

32. I am satisfied that TfL's third-party authorisation process, whilst not founded in legislation, is a legitimate and proper process.

33. I am satisfied that TfL was entitled to deploy their third-party authorisation process in this case. I am not satisfied that their decision to do so was capricious. This is no more than speculation on Mr Murray-Smith's part. By deploying the third-party authorisation process on this occasion TfL were, in effect, putting CPS on notice that, whilst there may have been a course of conduct in the past regarding the way in which Ms B [REDACTED]'s representations were dealt with, on this occasion they required formal confirmation that she had the necessary authorisation. The deployment of the process in this case interrupted the course of conduct and, in effect, put it on hold in respect of this case such that it ceased to have any effect and could not be relied upon.

34. CPS chose not to engage with the third-party authorisation process. The fact that they may not have had the resources to do so, is not relevant for my purposes; that is an internal matter for them. By not engaging with the third-party authorisation process, they took a risk that, in this case, their representations would be ignored. That risk did, of course, come to fruition.



35. In all the above circumstances, I am satisfied that, as CPS did not confirm that Ms B [REDACTED] had authority to make representations on this occasion, TfL were entitled to assume that she did not have such authority and therefore, they were entitled to ignore her representations and were under no obligation to issue a Notice of Rejection. Accordingly, I do not make a finding of procedural impropriety.

36. In reaching the above decision, I have been assisted by the decision of Adjudicator Chan in the case of [REDACTED] **Plant Services Ltd v Transport for London. Case number: 2230261354. Date: 21 December 2023.**

37. I should point out that, during the hearing, I was not addressed by Mr G [REDACTED] on the question whether this case should ever have been accepted for an appeal in the absence of a Notice of Rejection. There is, in any event, no need for me to adjudicate on this point, having found in favour of TfL on the B [REDACTED] issue.

#### **The Device Issue**

38. The Appellants maintain that the evidence produced by TfL in respect of the approved device is not sufficient to prove that the actual devices in question were approved devices and therefore, a contravention cannot be established. In effect, the Appellants are saying that, in order to meet the requisite standard of proof, there must be an evidential chain between the actual devices used and the evidence produced by TfL.

39. In each case there is an identical Secretary of State Certificate, which Mr Murray-Smith did not seek to challenge. Instead, he challenges the reliability of the statements made by Ms KA in the CPS case and Ms MJ in the AS case. This is on the basis that in other cases, identical statements had proved to be unreliable, such that, for example, despite such a statement, it had been proved that the actual camera used did not form part of a certified approved device. He argued that the statements, being identical in each case, were no more than template statements to which the authors put their names without there being any underlying process by them to check that the devices in question were approved devices.

40. It is worth quoting one of the statements in full:

“Authorised Officer Witness Statement

[REDACTED] Plant Services Ltd v TfL

PCN No: GX 0643 6060

I, KA, am an authorised officer working on behalf of Transport for London.

This statement is true to the best of my knowledge and belief, I make it knowing that, if it is tendered as evidence, I shall be liable for prosecution if I wilfully state anything that I know to be false or do not believe to be true.

I provide as evidence in the above case 3 still photographs: frame numbers 17:08:31.2, 17:08:35.6 and 17:09:08.4. I certify that these were produced from evidence pack DTES Footage reference number: PLCOMBINED 49\_2023 0331T 60831A.

I further certify that:

1. These were produced in accordance with the Code of Practice for the Operation of CCTV Enforcement cameras.
2. That the monitoring and recording equipment used at the location and time specified is an approved device under the relevant legislation.
3. That, to the best of my knowledge and belief, all conditions subject to which approval was given were satisfied.

On 31/03/2023 17:09:08 a motor vehicle registration [REDACTED] was stopped where prohibited (on a red route or clearway) located at O/S 278-290 Lee High Road SE13. Code 46 Stopped where prohibited (on a red route or clearway).

Signed: KA  
Dated: 05/09/23  
Name: KA  
Position: Enforcement Officer"

41. At the beginning of the statement there is a very stark warning regarding the serious consequences of lying in the statement. The said warning is intended to give the recipient of the statement strong reassurance that the statement is true. Accordingly, I am satisfied that the contents of the said two witness statements are true. That being so, based on those statements and the Certificate, I am satisfied that the devices used in each case, which include the cameras, were approved devices.

42. I should stress that the Certificate and statements amount, in my view, to sufficient evidence to satisfy the civil standard of proof and there is no need for me to see the evidence that underpins either the Certificate or the statements or any kind of evidential chain evidence as proposed by Mr Murray Smith. Indeed, the whole purpose of the Certificate and statements is to obviate the need for such evidence. I accept that such evidence might be required to meet the criminal standard of proof, but it is certainly not required to meet the civil standard. In my view, an Authority is under no obligation to

disclose such evidence in the context of the representation/appeal process.

43. I am also mindful of the Panel Decision of **City of Westminster v B [REDACTED] (2110325661) and City of Westminster v B [REDACTED] Motors (2110534297) 23 May 2012**. I refer in particular to paragraphs 29, 38, 39 and 40. In that case, a two-stage test in relation to an approved device was applied, which had been derived from another case (**F [REDACTED] v Westminster PATAS. Case number: 211000697A**). It was held in P [REDACTED] that: "The enforcement authority must be able in every appeal to establish that their device is approved and that the evidence on which they rely comes from an approved device. Beyond that the approval process itself or technical elements of the equipment used are not matters for the Adjudicator. If the enforcement authority can provide evidence that satisfies an Adjudicator that their device is approved, the Adjudicator has no role in investigating whether that approval was rightly given, either because the device should not have been approved or that the device does not meet any of the statutory or other requirements." The decision goes on to say that the enforcement authority must demonstrate that: "a) the record is produced by an approved device – ie that the camera and recording equipment used has been approved by the Secretary of State, and b) the record is produced by the approved device ie there must be an evidential link between the video footage produced and the equipment used." I am satisfied that, in this case, the said two-stage test has been met in respect of a) by the Secretary of State certificate and in respect of b) by the said statements.

45. To conclude, I am satisfied that the devices used in each case were approved devices and the video footage relied upon in each case was produced by those devices and therefore, the contraventions were enforceable.

#### **Decision**

46. I refuse the appeals.

#### **SCHEDULE 1**

#### **The Regulations**

#### **The B [REDACTED] Issue**

#### **47. The Civil Enforcement of Road Traffic Contravention (Representations and Appeals) (England) Regulations 2002**

Section 5 (1) - The recipient may make representations against the enforcement notice to

the enforcement authority which served it on the recipient”.

#### Section 6

(1) This regulation applies where an enforcement authority receives representations from a recipient under regulation 5.

(2) The enforcement authority may disregard any representations which it receives after the end of the period of 28 days beginning with the date on which the relevant enforcement notice is served.

(3) If the representations are

(a) made in accordance with regulation 5(2), and

(b) not disregarded by the enforcement authority under paragraph (2),  
the authority must, within the period of 56 days beginning with the date on which it receives the representations (“the 56-day period”), comply with the requirements specified in paragraph (4).

(4) The requirements mentioned in paragraph (3) are that enforcement authority must-

(a) consider the representations and any supporting evidence which the recipient provides, and

(b) serve on the recipient a notice of its decision (a “decision notice”) which states whether or not it accepts the representations made by the recipient.

#### The Device Issue

#### **48. The Civil Enforcement of Road Traffic Contraventions (Approved Devices, Charging Guidelines and General Provisions) (England) Regulations 2022.**

Section 7 (1) - A penalty charge may only be imposed in respect of a parking contravention on the basis of: (a) a record produced by an approved device, or (b) information given by a civil enforcement officer.

Section 10 (2) - An enforcement authority may give notification of the penalty charge by serving a Penalty Charge Notice by post where - (a) on the basis of a record produced by an approved device, the authority has reason to believe that a penalty charge is payable with respect to - (i) a regulation 11 parking contravention (Regulation 11 parking contraventions include circumstances where the relevant vehicle is stationary on a red route).

Section 4 - Approved Devices - A device is an approved device for the purposes of these regulations if it is of a type which has been certified

by the Secretary of State as one which meets requirements specified in Schedule 1.

Schedule 1 - Specified requirements for approved devices

1. The device must include a camera which is-

(a) securely mounted on a vehicle, a building, a post or other structure,

(b) mounted in such a position that vehicles in relation to which relevant road traffic contraventions are being committed can be surveyed by it,

(c) connected by secure data links to a recording system, and

(d) capable of producing in one or more pictures, a legible image or images of the vehicle in relation to which a relevant road traffic contravention was committed which show its registration mark and enough of its location to show the circumstances of the contravention.

2. The device must include a recording system in which-

(a) recordings are made automatically of the output from the camera or cameras surveying the vehicle and the place where a contravention is occurring,

(b) there is used a secure and reliable recording method that records at a minimum rate of 5 frames per second,

(c) each frame of all captured images is timed (in hours, minutes and seconds), dated and sequentially numbered automatically by means of a visual counter, and

(d) where the device does not occupy a fixed location, it records the location from which it is being operated.

4. The device and visual counter must-

(a) be synchronised with a suitably independent national standard clock; and

(b) be accurate within plus or minus 10 seconds over a 14-day period and re-synchronised to the suitably independent national standard clock at least once during that period.

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