

**█████ B█████ and others v. The London Borough of Tower Hamlets and others**

**█████ C█████ v. The London Borough of Southwark**

**█████ A█████ v. The London Borough of Camden**

**█████ L█████ v. Transport for London**

**█████ Q█████ v. The London Borough of Ealing**

**█████ K█████ v. The London Borough of Ealing**

**█████ B█████ v. The London Borough of Hackney**

## **Introduction**

1. On 14 September 2015, a specially convened Panel of Adjudicators (Mr Edward Houghton and Mr Alastair McFarlane) heard these seven appeals, which had been consolidated under the provisions of Paragraph 14 of the Schedule to the Civil Enforcement of Parking Contraventions (England) Representations and Appeals Regulations 2007 ("The Appeals Regulations"). This had been on the ground that common questions of law or fact arose in the appeals and that it was desirable for these issues to be determined together. None of the parties has objected to the making of this order. The factual/legal connection between the cases is that all of them raised issues as to loading or unloading. The Adjudicators considered that the consolidation of these cases would provide an appropriate opportunity to revisit the law on this topic – the lead decision from this tribunal having been decided nearly 20 years ago.

## **The Appeals**

2. The cases before the Panel were the appeals of:
  - █████ B ██████ v. The London Borough of Tower Hamlets
  - █████ C ██████ v. The London Borough of Southwark
  - █████ A ██████ v. The London Borough of Camden
  - █████ L ██████ v. Transport for London
  - █████ Q ██████ v. The London Borough of Ealing
  - █████ K ██████ v. The London Borough of Ealing
  - █████ B ██████ v. The London Borough of Hackney

### **Representation**

3. Mr Sims, Senior Parking Business Officer and Mr Ahnita, Appeals Officer, appeared for the London Borough of Tower Hamlets. No other party appeared or was represented.

### **The Approach of the Panel**

- 4.1 A large number of appeals that come before the Tribunal concern the issue of what constitutes the exemption of "loading and unloading" or "delivering or collecting" goods or what constitutes proper use of a loading bay.

- 4.2 The standard form of exemption found in Traffic Management Orders is that:

*"No person shall cause or permit any vehicle to wait during prescribed hours in a restricted street except.... For so long as may be necessary for delivering or collecting goods or loading or unloading the vehicle at premises adjacent to the street"*

- 4.3 In the case of loading bays, Traffic Management Orders commonly provide that a vehicle may wait or be left in the bay for the purposes of loading or unloading goods.

- 4.4 The Panel is satisfied that the term “loading” carries the same meaning and the same principles apply for loading/unloading exemptions and for loading bays.
- 4.5 The meaning and extent of the term loading /unloading was set out in Mr Houghton’s decision in Westminster City Council v. [REDACTED] F [REDACTED] (1997 PATAS) where the extensive case law was considered. Although this decision is no more than the view of an individual Adjudicator, it was arrived at following full legal argument from Counsel representing three parties, none of whom applied for review of the decision; and it has since been widely applied by Adjudicators, Enforcement Authorities and Appellants.

**High Court authorities cited in Westminster City Council v. Jane Packer Flowers**

5. The following High Court authorities were cited.

*Sprake v. Tester (1955) 53 LGR 194*

- 5.1 This case concerned a motorist purchasing six champagne glasses packed in a parcel about 1 foot square. It was argued that the mere placing of a parcel that a person can quite easily carry in his hand into a car, makes it a loading or unloading of goods. Lord Goddard CJ adopted a purposive approach to the interpretation of the order. He stated:

*"One has to think what is the object of the order and what is the object of the exemption. Of course, the object of the order is to prevent obstruction in the streets by people leaving their cars alongside the road..... One knows that local authorities and police authorities are having the greatest possible difficulty both in London and provincial towns in keeping traffic moving at all... Of course in favour of trade the corporation or local authority does not make an absolute prohibition so as to prevent anybody in the daytime taking a lorry load of goods either to or from a shop. I think it*

*is really a question for the justices whether the particular matter, which was going on at the moment when the police say that the offence has been committed, could fairly be said to be a loading or unloading of goods. As Cassels J has pointed out, if any person could stop a motor car and escape prosecution by saying, "I'm going to put a bag, a small parcel, an ounce or two or a bundle or two into the car," what is to happen if the person stops the car, goes into the shop and finds that he cannot get the particular article he hoped to get? I suppose the car might be stopped for the purpose of loading, the words of the regulation being "to enable goods to be loaded". Such a person might say that he intended to load goods, but the answer is this: would anybody, the man in the street – and if I may say so with all due respect, the justices for this purpose are men in the street – read this prohibition and think that it authorised a car to stand there for a trivial parcel to be put in? It means a loading or unloading for some commercial purpose, and I think that there is a reason why it is not limited to goods vehicles. I can understand a private motor-car coming along with a load of things inside; it might be a piece or two of furniture, it might be half a dozen pictures to be reframed or cleaned. I would not even exclude a heavy laundry basket. There may be many cases in which the motor-car would be used for something which it would not be reasonable for anybody to carry in his hand; and, therefore, it might be said persons putting such things into the car or taking them out of the car were loading or unloading in the terms of this order. In other words, I think that it has to be left to the good sense of the justices to say whether, when the transaction is going on, it can fairly be said to be a loading or unloading the purpose for which this order is designed, and which the exception is intended to protect." (The underlining is ours)*

The Court upheld the decision of the justices that the purchase of the champagne glasses did not fall within the exemption.

Richards v. McKnight [1977] RTR 289

5.2 In this case the motorist parked his motor-car in a Manchester street for 9 minutes during which period he collected from a bank the sum of £695 for paying the wages of his firm's employees. He put the banknotes in the breast pocket of his coat. The justices found that this activity was exempted. The majority of the divisional court

(Lord Widgery CJ and Slynn J) allowed the authority's appeal and the case was remitted to the justices with the direction to convict. Slynn J stated:

*"To my mind, the essential fact is the defendant drove a private car into a restricted road and parked outside the premises of the National Westminster Bank Ltd. He went into the bank and withdrew the sum of £695 which was required for wages of employees. He put the money, which was mainly five pound notes and one pound notes, into the breast pocket of his coat and he returned to his car."*

Having referred to the exemption in the order which referred to vehicles waiting *"for so long as may be necessary for the purpose of delivery collecting goods or merchandise or loading or unloading the vehicle at premises adjoining that road"*

Slynn J continued:

*"At first glance this appears to say that it is enough if the person who parks a vehicle delivers or collects goods or loads or unloads the vehicle. So far as the latter is concerned, loading and unloading has been held in comparable regulations to refer to the commercial loading or unloading of goods or to the loading from private vehicles of articles which could not be conveniently carried by hand."*

Slynn J then referred to Sprake v Tester and said *"Lord Goddard CJ stressed that one should look at the object and purpose of the regulations. It seems to me that the object and purpose of the exemption ... is to exempt, from the prohibition against waiting, vehicles which are parked in order that the person can deliver from the vehicle, or collect and put into the vehicle, goods or merchandise which are in the course of trade, or which are collected or delivered by a vehicle because they cannot conveniently be carried by hand. It is, in effect, the collection and delivery of goods in a vehicle which is covered, not merely collection and delivery of goods by a person. Thus, a man who delivers or collects commercial goods or merchandise or goods or merchandise which reasonably need to be transported by vehicle, is enabled to park. A man who has merely a pair of shoes or a fountain pen to be repaired, or to collect a pair of shoes which he has purchased or a fountain pen which has been repaired, is*

*not entitled, in my judgement to leave his car in the restricted road by virtue of this exemption.*

*What matters is that the goods shall be delivered from the vehicle or collected by the vehicle, and not merely that the driver shall for convenience use the vehicle to deliver or collect things which are or can be reasonably carried by him personally. In other words, it seems to me that the relevant question is to ask whether it is reasonably necessary to have the vehicle in the street adjacent to the premises for the purpose of collection or delivery of the goods or merchandise."*

Slynn J considered that the wording of the exemption (which specifically referred to cash or other valuables) placed the emphasis on the vehicle and stated *"to my mind it indicates the link between the vehicle as a transporter of goods and the goods, rather than between the individual driver and the goods. ... In my judgment... the real question is whether the vehicle was engaged in delivering or collecting goods (including cash) or whether it is really the driver who is simply using his car in order to deliver or collect goods himself. In the present case the justices asked if the cash was bulky enough to constitute goods. This in my judgment is not the right question. The real question is: was the vehicle engaged in delivering or collecting goods or cash, or, put another way, was it used for the purpose of delivering or collecting goods? Quite clearly, on the facts found by the justices, it is not. The driver put the money in his pocket. He merely used the car for convenience and it is he who collected it and not the vehicle."* (The underlining is ours).

Slynn J stated that the justices came to the conclusion that the wording of the proviso enabled the collection or delivery of any cash. He rejected this argument stating *"if a man who goes to pay or collect £20 cannot park, as I am satisfied that he cannot by virtue of these regulations, nor can a man whose funds enable him to collect £200 which he puts into his pocket and carries away. £200 in £1 pound notes is at least as bulky as £695 in £5 pound notes, and in my judgment the same result is reached. The driver can, in other words, only wait if his vehicle collects or delivers .... So far as cash is concerned this proviso in my judgment, is dealing with the delivery of the money in bulk to or from a bank, whether money constituting wages or money to be*

*used for some other purpose, and similarly dealing with vehicles which collect or deliver goods from premises where goods are not money."*

Lord Widgery CJ agreed with Slynn J. He referred to the judgement of Lord Goddard CJ in *Sprake v Tester* and the importance of construing orders consistently with their intent and purpose. He stated that the purpose of this Order was to prevent congestion of the streets in Manchester and that any exemptions had to be considered conscious that the author of the Order intended in the exemptions to set out cases where vehicles had to wait "*if some unreasonable hardship was to be avoided*". He stated "*what one expects to find in the exemptions are cases where vehicles, for practical purposes, must be left in the street, rather than vehicles which are left there purely for simple convenience of the driver. That is underlined in the terms of this Order by the words 'necessary'.... That underlines the fact that it is okay only where it is necessary to have the vehicle in the road stationary in the restricted area that these matters arise at all...*".

**Summary of the approach taken in Westminster City Council v [REDACTED] [REDACTED] F [REDACTED]**

6. The Adjudicators considered that the following principles from the [REDACTED] [REDACTED] F [REDACTED] case have been applied by Adjudicators:

- "loading" "unloading" "collection" "delivery" are synonymous (we use "loading" as shorthand for each of these activities)
- "loading" was the moving of bulky, heavy good or commercial goods
- in cases involving commercial loading, the Appellant does not have to show that the use of the vehicle was necessary
- in cases involving non-commercial loading, the Appellant has to show that the goods are of such size and bulk that they reasonably need to be transported by vehicle – i.e. that the use of the vehicle was necessary and, in effect, that any commercial delivery would always fall within the exemption.

- loading should be viewed as a process and might include any necessary paperwork or the making of payment. However, the process of going round a shop selecting goods and taking them to the counter or checkout was not “loading” but another process normally described as “shopping”
- the mere fact that a CEO does not see loading in progress does not automatically mean that loading is not taking place. However, the longer the observation period with no sign of movement of goods the greater the evidential burden on the motorist to give some explanation for this and demonstrate that something amounting to loading was in progress out of view.

6.1 Since the decision in *Westminster City Council v. [REDACTED] F [REDACTED]*, many Councils and Adjudicators have taken the view that any form of commercial or business context would remove the necessity to consider the bulk or weight of the items, no matter how small they might be. They have also taken the view that, unless goods have been pre-ordered, the process of going into a shop to make a purchase must be viewed as shopping rather than loading. Both these views require reconsideration in the light of the case of *Marsh v Thompson [1985] QBD (Unreported)*.

### **Marsh v Thompson [1985] QBD (Unreported)**

6. This Authority was not cited before the Adjudicator in *Westminster City Council v [REDACTED] F [REDACTED] (1997)*. The Panel considered that the decision of the Divisional Court in *Marsh v Thompson* required a reconsideration of the contentions that any commercial delivery would always fall within the exemption and the goods must have been pre-ordered.

6.1 *Marsh v Thompson* was an appeal by way of case stated from a decision of the St Austell Justices. The facts were that the motorist, a sales representative, parked in a restricted street in St Austell whilst delivering a small pack of Schweppes drinks to the White Hart public house. He did not visit any other address during the 11 minutes

the vehicle was observed unattended and had hoped, when entering the White Hart, that he would receive an order from the landlord. In fact, he did not do so. The Justices were of the opinion that the motorist "*was delivering goods in the course of his employment as a sales representative and that, in the light of the lack of any definition of the size or weight of goods in the relevant order produced to us, the size of the parcel was irrelevant.*"

6.2 The Justices (unassisted by argument or cases cited) concluded that in the light of their knowledge of the area the distance involved the amount of time was not unreasonable and the motorist was acquitted. The police appealed. The exemption in the relevant Traffic Regulation Order enabled the vehicle to park for "as long as may be necessary to enable goods to be loaded onto and unloaded from the vehicle".

6.3 The Divisional Court was asked:

*"Does a small parcel as described, come within the definition and size of goods which can be lawfully loaded or unloaded under the said order?"*

Watkins LJ noted that the Justices were not referred to *Sprake v Tester* and *Richards's v McKnight* and that had their attention been drawn to those cases, they may very well have come to a different conclusion.

Watkins LJ stated:

*"It does not seem to me that inevitably the size of the pack which is carried is crucial to the decision. It may be that in most cases it is. Further, it does not seem to me that it is always crucial to the decision that what is being engaged in at a relevant time, is or is not a commercial transaction by way of trade. It is quite conceivable that a person who goes into a shop and buys something, having parked his car outside for the purpose of taking it away, is nevertheless lawfully parked for that purpose if what is bought cannot conveniently be carried away by hand. The observations of Lord Goddard appear to contemplate the order covering a situation of that kind"*

The Court was unable to go so far as to say that the Justices finding was actually perverse, and therefore dismissed the appeal. However it clearly doubted that it was correct. Watkins LJ issued the following note of caution:

*“Where a small parcel is involved, that is to say a parcel which can conveniently be carried by hand, then whether or not there is a place close by where the vehicle can lawfully park, it might very well be perverse of justices to come to the conclusion that a defendant who has parked in a ‘no parking’ area has brought himself within the exemption... even in the case of a commercial transaction..”* (The underlining is ours)

### **The Panel’s Conclusions**

7. The Panel concluded that although much of the Adjudicator’s decision in *Westminster City Council v [REDACTED] F [REDACTED]* remained good law, in the light of the authority of *Marsh v Thompson* some modification and elucidation of its conclusions was required. It seems to us that the key points to be drawn from the case law as explained in *Marsh v Thompson* are as follows:-
  - a. Loading and unloading primarily means loading or unloading something heavy or bulky i.e. a **"load"**.
  - b. The underlying principle when considering whether the exemption applies is whether it can fairly be said that what was taking place was the sort of activity the exemption was intended to cover. (*Sprake v Tester*)
  - c. Loading and unloading is essentially the movement of something heavy or bulky from premises to a vehicle and vice versa. The key test as to whether something is heavy or bulky enough to qualify is whether the use of a vehicle was reasonably necessary for its transport. (*Richards v McKnight*)

- d. It is not automatically the case that merely because items are being moved in a commercial context loading will be established, whether or not the goods are heavy or bulky (*Marsh v Thompson*).
- e. However, in the case of couriers or professional deliverers of goods on a delivery round, this commercial context would lead the Panel to conclude that this is certainly the sort of activity for which the exemption is designed - even if an individual item being delivered at any one point is small and easily carried in the hand. In the Panel's judgment it would be wholly unrealistic to expect, for example, a DHL courier to ask himself every time he parked whether his next parcel was big enough to qualify; or to require the milkman to find a parking bay every time he stopped to deliver a bottle of milk. The exemption to waiting restrictions and the provision of loading bays are, in the Panel's view, designed exactly to allow the carrying on of essential commercial activity of this kind.
- f. In the Panel's judgment different considerations may well apply to, for example, the greengrocer taking, say, a bag of lemons to his shop or the estate agent dropping off keys or the solicitor collecting a light file from his offices. As a one-off delivery of a small item, such cases are likely to fail, despite the commercial context. The case of K [REDACTED] (2013) PATAS 2130636755, where a gas engineer was collecting paperwork not found to be loading, provides an example of Adjudicators applying this approach.
- g. The process of shopping is not loading. Most supermarket shoppers undertaking their weekly shop have heavy and bulky items to carry from the shop - normally because a large number of individual small items are heavy in total. In our view, such a motorist would not be entitled to use a loading bay while the items were selected and then paid for. Were it otherwise yellow lines and loading bays would effectively be turned into shoppers' car parks - something which, in the Panel's judgement, was not what the bays and lines were intended for. However, once the goods have been selected and paid for, it would, in our view, be within the purposes of the bay or the exemption for a vehicle to be brought round and parked whilst moving the purchased items into the vehicle.
- h. Nonetheless, there may be circumstances, when the payment for a heavy and bulky item may be merely ancillary to the collection. For example, the motorist who has pre-selected

a heavy chair and parked in a loading bay to collect it. The fact that he had not pre-paid for it would not, in our view, be fatal to a correct use of the loading bay. Each case must turn on its own merits and is a question of fact and degree for the individual Adjudicator. However it is the Panel's view that going round the shop and selecting items - even if they are heavy and bulky - cannot fall within loading.

### **Individual Decisions**

8. The Panel applied the principles set out in ██████████ *F* ██████████ as modified by *Marsh v Thompson* in the cases before us.

9. ██████████ *B* ██████████ *v. The London Borough of Tower Hamlets*

9.1 A penalty charge notice was issued to the Appellant's vehicle which was parked in a loading place in Roman Road after an observation period of 6 1/2 minutes when no loading or unloading activity was seen.

9.2 The Appellant is a locksmith working for AFS Security Limited and was attending the premises on behalf of court bailiffs to assist with an eviction. He asserted that they do not unload their tools "until the last minute" so as not to look threatening to the people inside the premises and that they have to stand and wait to get the go-ahead from the bailiffs.

9.3 The CCTV footage showed two people standing outside the vehicle and one person inside and while movement is seen at the vehicle, there is no evidence on the footage of items being unloaded from the vehicle.

9.4 The Panel accepted that the Appellant was a locksmith who was waiting to be called upon in order to gain access to the premises. However, it was not persuaded that the Appellant had discharged the evidential burden on him. No items were seen to be unloaded during the footage. There was no evidence as to what tools the Appellant contended he would be unloading and the Panel noted that initially the Appellant had only referred to taking keys to the premises. There was no evidence that any items would be sufficiently bulky to justify the correct use of the loading bay. It was satisfied that the Council's evidence establishes that the vehicle was parked without loading. While the Panel accepted that the Appellant had a difficult job to perform, and accepted that a locksmith unloading tools could fall within the permitted use, it appeared here that he had arrived at the location 15 minutes early.

9.5 Accordingly, the appeal is refused. The Panel did not consider that the facts reach the threshold for compelling reasons for it to be able to make a recommendation, but noted that Mr Sims, on behalf the Council, indicated that the Council would, in any event, exercise their discretion in this case not to enforce the penalty.

10. [REDACTED] *C* [REDACTED] *v. The London Borough of Southwark*

10.1 A penalty charge notice was issued to the Appellant's vehicle which was parked in Camberwell Green – a restricted street – during prescribed hours after an observation period of 1 minute when no loading or unloading activity was seen.

10.2 The Appellant states that she is a self-employed contractor working for Haart Estate Agents on Camberwell Green. She stopped for "no more than 2 minutes" while she dropped a set of keys back to the agent's office.

10.3 Although the Panel accepted that the Appellant was undertaking a commercial activity, it was not persuaded that this was the sort of activity for which the loading exemption was designed. The keys could reasonably be carried by hand and did not

require the vehicle to transport them. The Panel was satisfied that the contravention occurred and that the exemption was not established. Accordingly, the appeal was refused.

11. ██████████ *A*██████████ *v. The London Borough of Camden*

11.1 A penalty charge notice was issued to the Appellant's vehicle at 12.40 hours which was parked in a resident's parking place in Bucknall Street after an observation period of 5 minutes when no loading or unloading activity was seen.

11.2 The Appellant states that he is a courier working for Addison Lee. A generic letter from Addison Lee states "at the time the ticket was issued the driver stopped only briefly to pick up/drop-off goods (loading/unloading). A "Job Details" sheet refers to a "parcel delivery" and provides a timeline in what is listed as "Execution History". This suggests that the parcel was dropped at 13.12 hours.

11.3 The Panel was not persuaded on the evidence provided by the Appellant that he had discharged the burden upon him to establish the exemption. The evidence that had been provided was either generic or referred to a parcel drop at a different time from when the vehicle was observed by the Council's civil enforcement officer. Time endorsed digital photographs show that the vehicle was at the location at 12.41. Although a professional courier driver would qualify for the loading exemption irrespective of the size of the item being delivered or collected, the Panel was not satisfied that the evidential burden upon the Appellant to establish the exemption had been discharged in this case.

11.4 The Appellant also raised the issue that the signage indicating the restriction was inadequate and "not at all clear". The Panel considered the photographic evidence supplied by the Council and noted that there were two time plates displayed on one post on the junction between the two different types of bay. This method of signing

follows the recommendation given in the Traffic Signs Manual. The Panel was satisfied that the signage was compliant, sufficiently proximate to the vehicle and adequate.

11.5. Accordingly, this appeal is refused.

12. ██████ L ██████ v. Transport for London

12.1 A penalty charge notice was issued to the Appellant's vehicle which was parked on the red route in Camden High Street. No stopping was permitted at the location from 8 a.m. to 7 p.m., except for loading from 8 a.m. to 4 p.m., for a maximum of 20 minutes. An immediate penalty charge notice was issued at 14.33.

12.2 The Appellant stated that she parked in a loading bay "within the designated times" and was there to deliver a lawnmower to an adjacent Oxfam shop. She states that Oxfam was unable to accept the mower and that she "then purchased some goods and loaded them within the 20 minute period". In a letter, dated 25 March 2015, she explained that she had intended to donate the lawnmower and also "to purchase a large item (chair)". She explained that Oxfam were unable to accept the mower and the chair had already been sold so she returned to her vehicle "with some smaller purchases".

12.3 The Panel accepted the Appellant's account as credible. It was satisfied that the frustrated intended delivery of the lawnmower would have fallen within unloading. Further, the frustrated intended purchase of the large chair could have fallen within loading, irrespective of the fact that the purchase was not pre-ordered. However, the purchase of the subsequent smaller items cannot fall within loading and these latter actions by the Appellant rendered her stopping unlawful.

12.4 Further, the Panel rejected the Appellant's contentions as to the signage of the restriction. There is no requirement in law that the signs should identify, as the Appellant contended, what could amount to a loading activity. The Panel was satisfied that the contravention occurred and that the penalty charge notice was lawfully issued. Accordingly, the appeal is refused. Although the Panel had some sympathy with the Appellant, the facts do not amount to compelling mitigation so as to enable it to make a recommendation.

12.5 The Panel would however ask TfL to note, the Authority's assertion in its Case Summary that "to purchase goods immediately prior to loading is not permitted ..." is an inaccurate oversimplification of the legal position, which is as set out in this decision.

13. ██████████ *Q* ██████████ *v. The London Borough of Ealing*

13.1 A penalty charge notice was issued to the Appellant's vehicle for being parked in a loading place in Ruislip Road without loading after an observation period of 5 minutes.

13.2 The Appellant states that he delivers and collects products on behalf of his employer who operate hair and beauty salons known as "Riz Hair & Beauty". He adds that the items he delivers tend to be "very small" and "do not require a van" and he gives examples of colour tubes and nail polish "which fit in one's pocket". The Panel noted that a "Delivery Note" had been supplied which referred to one item of "eyebrow tint".

13.3 The Panel accepted that this was a commercial delivery or a delivery in the course of trade. Nonetheless, it was not satisfied that this was a correct use of the loading place. Following *Sprake v Tester*, it concluded, on the information before it, that the facts did not fall into the sort of activity for which the loading exemption was designed.

From the invoice provided this appears to be a one off delivery of a single very small item that could readily be carried by hand as opposed to needing the vehicle to transport it.

13.4 On the Council's evidence, the Panel was satisfied that the contravention occurred and that the penalty charge notice was lawfully issued, and therefore the appeal is refused.

14. ██████ K ██████ v. The London Borough of Ealing

14.1 A penalty charge notice was issued to the Appellant's vehicle for being parked in a loading place in Greenford Road without loading after an observation period of 5 minutes.

14.2 The Appellant states that she was correctly using the loading place as she was loading 56 litres of Coke and 10 litres of other drinks that were for her wedding the following week. She has supplied a copy of the till receipt from Tesco's.

14.3 The Council rejected the Appellant's representations on the basis that the goods must be pre-ordered and that parking was not permitted in the loading bay "to purchase goods from nearby shops".

14.4 The Panel was satisfied that the facts here do not fall within the correct use of the loading bay. It accepted the Appellant's evidence that she had purchased a large quantity of drinks that were heavy. Had she moved her vehicle into the loading bay after she had effected the purchase from Tesco's there would have been a correct use of the bay. However, this was not the case. The evidence provided shows that the vehicle was first observed at 20.53 and till receipt shows she was still in the shop 17 minutes later. During this time she was not loading goods but purchasing goods. We are unable to distinguish this case on its facts from other incidents of motorists going

to a supermarket to purchase what turn out to be heavy and bulky goods. The Panel specifically considered whether the Appellant's actions were the sort of activity for which the loading bay was designed. It noted that many people using supermarkets intend to purchase heavy items, but concluded this cannot turn loading bays into shoppers' car parks. While the Panel accepted that the Appellant genuinely thought she was correctly using the loading place, she was in error and this appeal must therefore be refused.

15. ████████ *B* ████████ *v. The London Borough of Hackney*

15.1 A penalty charge notice was issued to the Appellant's vehicle for being parked in a loading place in Forest Road without loading after an initial observation period of 5 minutes. The Council rely on their officer taking subsequent photographs and assert that therefore that no loading activity was seen for a total of 9 minutes.

15.2 The Appellant has supplied an invoice for £535 of builders' materials that he was unloading to "Arthur's Café". He explained that the bay immediately adjacent to the café was occupied and therefore he parked outside "William Gees", which was further away from the premises to which he was unloading. He stated that he had to load up a trolley with all the materials and his tools and that the entire process took approximately 10 to 15 minutes.

15.3 The Panel accepted the Appellant's evidence as credible and was satisfied on these facts that there was a correct use of the loading bay on this occasion. Accordingly, the appeal is allowed.

## Summary of the Panel's conclusions on the law

The Panel considered it might be helpful for both Councils and motorists to have a summary of the Panel's conclusions in the light of the entirety of the case law. It has to be borne in mind that it is impossible to define "loading" so precisely that it will cover every factual situation and that there will inevitably be marginal cases and grey areas.

Subject to that, the principles to be applied are as follows:-

- Loading is all about the movement of loads i.e. heavy or bulky items from premises to vehicles, items which necessitate the use of a vehicle for their transport.
- The overarching question is whether the activity that was taking place can fairly be said to be one which the exemption was intended to cover.
- Motorists – whether acting in a commercial or private capacity - should ask themselves:
  - whether the items can reasonably be transported by hand, as opposed to needing the vehicle to transport them. Slynn J gave the examples of the motorist collecting their shoes or a fountain pen just having been repaired as cases falling the wrong side of line. Lord Goddard CJ gave the examples of the piece or two of furniture inside the vehicle or half a dozen pictures to be reframed or even a heavy laundry basket as items that would be covered. The issue may be affected by the physical characteristics of the driver, such as age or disability.
- A commercial context may be relevant to deciding whether the activity falls within the exemption, especially in the case of couriers and other professional deliverers. However, it is not the case that moving an item, no matter how small, is covered merely because it is the course of trade or business. The smaller the item the more difficult it will be for the motorist to persuade the Council or an Adjudicator that an exemption applies.

- Going round a shop or supermarket selecting goods is not “loading” but “shopping”, even if the items individually or cumulatively when purchased are heavy or bulky. Bringing a vehicle round to collect the items, once selected and paid for, would usually fall within the exemption.
- The one-off purchase of a large item may be covered even if payment is made for it before it is moved to the vehicle. The payment must be merely ancillary to the collection. If items have been pre-ordered, parking whilst collecting them will normally be covered, even if payment is made, (provided they are sufficiently weighty or bulky to necessitate the use of a vehicle)
- The completion of necessary paperwork will normally be viewed as part and parcel of the loading process (even if it means a return to the premises once the goods are in the vehicle)
- Unexpected short delays in locating the goods will not normally remove the vehicle from the benefit of the exemption.
- If a vehicle is parked in the reasonable expectation the goods will be available to load, and it transpires that they are not, the benefit of the exemption will not be lost provided the driver then removes the vehicle promptly.
- Unloading includes taking the items to that part of the premises where they are required to go; however it would not normally include further unpacking or arrangement of the items
- Councils should not automatically assume that because no sign of loading was seen during a five minute or other observation period, loading cannot have been taking place. However, the longer the time during which no items enter or leave the vehicle the greater the evidential burden on the motorist to provide an

explanation and demonstrate that something amounting to loading was in progress out of sight.

15 January 2016

Edward Houghton

Alastair McFarlane

Adjudicators