

## **“It Pays to Check Your Parking Ticket”**

### **R(London Borough of Barnet) v Parking Adjudicator**

2.8.06, Administrative Court, Mr Justice Jackson CO/3055/2006

The judgment in these judicial review proceedings has attracted substantial press and television coverage recently, which may at first sight seem surprising for a case about a parking ticket (or to use the more accurate term, a "penalty charge notice", or "PCN").

It was, however, a test case to determine whether the Parking Adjudicator had been correct to hold that its standard form PCN was invalid and that Mr Moses, who challenged its validity, had no liability to pay the charge.

The Parking Adjudicator is an independent tribunal which adjudicates on disputes concerning parking and traffic penalties charged by London local authorities and Transport for London.

According to various press reports, a number of local authorities across the country using the same or a similar form of words as the Barnet PCN were watching the result somewhat nervously. In London alone, over 5 million PCNs are issued annually and 1% of these are appealed to the Parking Adjudicator. Barnet failed in its challenge and the High Court upheld the longstanding policy of the Parking Adjudicators to insist on scrupulous observance of the statutory requirements of a PCN. The Evening Standard recently reported that it had been estimated that Londoners may have paid some 400 million pounds to local authorities in respect of similarly defective parking tickets (13.9.06).

Mr Moses was unfortunate enough to receive two PCNs in different locations in Barnet, from different parking attendants, within a period of half an hour. He appealed both PCNs to the Parking Adjudicator.

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Each appeal was allowed for two reasons: an "evidential" reason and a "legal" reason. Only the legal reason was challenged for the purpose of these proceedings. Mr Moses was therefore unaffected by the outcome of these proceedings and did not participate as an Interested Party.

The legal reason was common to both appeals. It was that the PCN was invalid in that it did not specify the date of issue and did not comply with section 66(3) of the Road Traffic Act 1991 (as amended) ("the RTA"). Barnet applied for a review of the decision, in relation to the legal reason. A different adjudicator considered this application. He upheld the decision of the adjudicator considering the appeal, endorsing the reason that the PCN did not specify the date of issue.

He also added that the PCN was invalid for a second reason: that the language used in the PCN to describe certain periods of time required to be stated by section 66(3) was incorrect and in fact purported to add a day to the time to pay the charge at both the full and discounted rates.

Barnet proceeded to challenge the decision of the Parking Adjudicator by issuing a judicial review claim for a declaration that the Barnet PCN did comply wholly or substantially with the requirements of section 66(3) RTA. The Defendant maintained that its decisions were correct, that the Barnet PCN was substantially non-compliant because of firstly, the failure to specify the date of the notice and secondly, the failure to describe accurately the periods of time required to be stated by section 66(3) (c), (d) and (e).

Both parties submitted that the case was governed by the well-known public law principles set out by Lord Woolf MR in *R v. Immigration Appeal Tribunal ex p. Jeyeanthan* [2000] 1 WLR 354, at 362C-F, and by Lord Hailsham in *London & Clydeside Estates Ltd v. Aberdeen District Council* [1980] 1 WLR 182.

Barnet contended that there was no real risk of any substantial prejudice being caused by any perceived invalidity in the Barnet PCN. The Parking Adjudicator contended that the Barnet PCN should be declared a nullity and not enforceable in any case in which its validity is challenged, irrespective of prejudice. Having regard to the statutory framework, the context of the decriminalised parking control scheme under which local authorities exercise penal powers, and the millions of PCNs issued, Parliament could not have intended that the Barnet PCN should be enforceable if its validity is challenged timeously, whether or not an individual has in fact been prejudiced by the defect.

Mr Justice Jackson considered the "date of notice" ground first, and having found in favour of the Parking Adjudicator on this ground, dismissed Barnet's claim. The judgment is essential reading for all those concerned with the decriminalised parking regime which covers the whole of London and is gradually spreading across the rest of England and Wales. The judgment is also, for the public lawyer, an interesting example of a strict approach being applied to the issue of statutory compliance and the consequences of invalidity. The context must always be remembered. With so many millions of PCNs being issued each year by local authorities, and only about 1 % being scrutinised by a tribunal, the Parking Adjudicator has for many years sought to emphasise the need for local authorities to pay close attention to the statutory requirements of the variety of notices served in the course of the decriminalised parking enforcement scheme.

The Barnet PCN stated a "Date" on the PCN and also a "Date of offence" on the part of the form designed to be torn off. Section 66 (3) (a) of the RTA requires a PCN to state the grounds upon which it is believed that a penalty charge is payable. Jackson J said that he would expect any such statement of grounds to identify the form of the contravention alleged and to state where and when the contravention occurred. The reference to the "Date" on the Barnet PCN appears below the reference to the type of contravention and where it occurred. Read in that context, it was held that the "Date" must be the date on which the contravention occurred and therefore formed part of the statement required by the section 66 (3) (a) to be stated.

The Judge then turned to the statements required to be stated by section 66(3)(c), (d) and (e): -

"(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..."

The Judge accepted that as a matter of construction or by clear implication, these three subsections require that the date of the notice should be stated on the PCN. Otherwise, their statutory purpose will be thwarted. Usually, the date of the notice and date of contravention will be the same, but it is not necessarily so, particularly where parking attendants operate around the midnight hour (a not uncommon practice, apparently). It was also submitted by the Parking Adjudicator that PCNs are often passed from driver to owner some days after the contravention (teenager to parent, employee to employer, etc). Moreover, it was highly undesirable to leave anyone in doubt as to whether or not the date stated was the date of the notice (creating doubt as to the period within which the discounted and full penalty may be paid) where 5 million notices are issued in London alone each year.

This case determined that two dates must therefore be stated on every PCN: the date of contravention and the date of the notice. The Judge endorsed the longstanding policy of the Parking Adjudicators in their insistence on scrupulous observance of the statutory requirements. The Judge remarked, "The statutory requirements are simple and clear. Compliance is not difficult. The Department of Transport has published a specimen form of PCN for the assistance of local authorities. This specimen has been available for over ten years. It has "Date of Issue..." on the top line. There really is no excuse for local authorities who persist in issuing PCNs who do not state the date of the notice..."

Having referred to the arguments of the Parking Adjudicator set out above, the Judge continued, "There must always be certainty about the date when the notice was issued and the dates when the various periods for payment will expire."

The Barnet PCN was therefore held to be substantially non-compliant with section 66(3) (c), (d) and (e) RTA. Barnet's next argument was that even if the PCN was non-compliant, the consequence should not be an inability to enforce the charge, as it was argued that no prejudice was caused. This submission was rejected: "Prejudice is irrelevant and does not need to be established. The 1991 Act creates a scheme for the civil enforcement of parking control. Under this scheme, motorists become liable to pay financial penalties when certain specified statutory conditions are met. If the statutory conditions are not met, then the financial liability does not arise. In the present case... the requirements of section 66 were not satisfied and no financial liability was triggered either by the PCN or by any subsequent stage in the process such as the notice to owner."

This was sufficient to dispose of the claim. The Judge set out the arguments relating to the second ground of invalidity relied upon by the adjudicator considering Barnet's application for review. However, as it was a new point, he held that the adjudicator ought to have given all parties the opportunity to comment and adduce evidence on the point before making a decision on it of his own volition. The Barnet PCN (and indeed the Department of Transport's specimen form) use the "within x days" form of words to describe the periods of time required to be stated for the purpose of compliance with section 66(3) (c), (d) and (e). It was common ground that the use of this form of words purports to add a day to the periods of time stated. Senior adjudicators from PATAS (representing the London adjudicators) and NPAS (those outside London) have given different

decisions on this issue. One parking adjudicator cannot bind another. In this case, the Parking Adjudicator (representing the London adjudicators) submitted that the purpose of the statutory provision is to state the period of time accurately. By stating that a motorist has 15 days to pay instead of 14, the period of time is misstated, and so, therefore is the statutory right. Barnet claimed that the extra day amounts to an indulgence and served evidence shortly before the hearing purporting to show that in practice Barnet did allow the extra day.

This point remains to be decided on another day. However, having decided the first ground, it is now clear that every PCN must state a date of notice and a date of contravention.

*Ian Rogers appeared on behalf of the Parking Adjudicator.*

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