

Case No. 205025039A  
6 March 2006

**H Moses**  
-v-  
**London Borough of Barnet**

Vehicle Registration Number: J562OLF  
Penalty Charge Notice(s): BA30078011

I have referred your application for review to the Duty Adjudicator and he has directed me to reply. The Adjudicator Mr Austin Wilkinson has rejected the application for review and has made the following observations:

"The Council has correctly pointed out that the finding of non-compliance with Section 66 of the *Road Traffic Act 1991* was not the primary reason in either case for the previous Adjudicator allowing the appeal. Therefore it is plain that the Adjudicator has not fully considered the non-compliance as the primary issue in the case.

"It is put to me that Mr Thorne's decision is "perverse" because he failed to give adequate reasons for the decision and that his reliance upon the case of *Macarthur -v- Bury MBC (NPAS BC188)* was also perverse because that case had struck down a Penalty Charge Notice because of more than one problem leading to 'a totality of deviation' – but that they do not relate to the instant case. Further, the Council contends, as a matter of fact, that there is no non-compliance as the 'date of contravention' in the tear-off slip is distinguishable from the date of issue half-way up the PCN.

"The Adjudicator in *Macarthur* has, in his words, considered a body of jurisprudence in deciding as he did and he has specifically drawn attention to the fact that he had had regard for the leading and precedential case in this Tribunal decided in 2002: *Al's Bar & Restaurant Ltd -v- Wandsworth (PATAS 2020106430)* which was decided by the Chief Adjudicator. The Council has not referred to this decision in its application.

"I regard this application as somewhat misconceived. It presupposes that an Adjudicator is required to decide an appeal on the fullest possible reasoning on each and every point. He is not required to do so. He must have regard for the relevant law and facts and give reasons which are *Wednesbury* reasonable to show how he made a just disposal of the appeal. I am satisfied that Mr Thorne has done this.

"The motive for this application is reasonably plain. Paragraph 22 of the submissions shows this to be so. The secondary reason for allowing these appeals, if followed in other cases, might well cause many Penalty Charge Notices issued by this Council to be regarded as non-compliant and unenforceable. I nevertheless find it a somewhat curious concept that a

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legal finding of a potentially widespread failure of compliance with Statute in a penal system could possibly be regarded as "unduly detrimental to good administration of the Council and other London Authorities". Surely good administration commences with compliance with the Law ?

"If, therefore, I were to regard the application as effectively being one where the Council is seeking expanded reasons – and then to seek a review of those reasons – I am afraid the Council is in difficulty on both the facts and the law.

"The issues exercising the Adjudicators in both *Macarthur* and *Al's Bar* were more extensive and fundamental than is suggested in the Council's submissions. In both cases the Adjudicators had to consider the wording of the relevant PCNs and apply to them the requirements of Section 66. In concluding as they did, both Adjudicators specifically pointed out that the need for substantial compliance was because Section 66 (3)(c,d and e) required the recipient of the Notice to have communicated to him/her a certainty as to the requirement to pay AND certainty in the period of time given for the payment. There must therefore be a 'date of the notice' and there must be a description of the payment period for both the full penalty and the discounted penalty which refers to that date: 'beginning with the date of the notice.'

"In these instant appeals the date half way up the PCN is simply a 'date'. In fact it is the date of the allegation, ( as a result of Section 66(3)(a) ).

"The base of the PCN has a payment tear –off slip. Strictly this might be regarded as not being part of the PCN at all – the view of the Adjudicator in *Macarthur*. But even if it were an integral part it does not refer to a date of the Notice. It refers to a date of contravention – exactly the same thing as the date of the allegation further up. (In fact the sample PCN does this. The ACTUAL notices adjudged by the Adjudicator referred to a date of 'offence'. Decriminalised contraventions are not offences and have not been so since 1991.)

"The PCNs inform the recipient that the penalty '...is due within 28 days of issue.' This wording is fundamentally non-compliant for two reasons:

1 It does not refer to any date ; and none of the date positions relied upon are dates 'of issue'. There should be a date of notice described as such and it should relate to the description of time period ;

2 The time period is plainly wrong for reasons fully aired by the Chief Adjudicator in 2002. The time period must "begin with" the date of the notice to be compliant with Statute. The wording used would appear, upon accepted case law, to add a day onto the payment period.

"I do not think I can improve upon the words of the Chief Adjudicator in *Al's Bar* .

*'I take account of this passage from Lord Hailsham's judgment in London & Clydesdale Estates Ltd –v- Aberdeen DC [1980] 1 WLR 182 :*

*'I do not think we are entitled to play fast and loose with statutory requirements designed to inform the subject as to his legal rights against an authority possessed of compulsory powers.....I do not think that prescriptions for the benefit of the subject are to be so disregarded.'*

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And in the highly respected textbook *Wade & Forsyth: Administrative Law (8<sup>th</sup> Edn.)* page 230 it is stated as follows:

*'In notices affecting private rights, particularly where the effect is penal, scrupulous observance of statutory conditions is normally required...An enforcement notice is void if it fails to state, as it should, the time allowed for compliance.'* (citing *Burgess v Jarvis [1952] 2 Q.B. 41*).....*The requirements of section 66(3) are plainly designed to inform the subject as to his legal rights in the context of the penal scheme. These considerations weigh in favour of finding the PCN a nullity, but they are not conclusive on their own.*

*I also consider the nature and extent of parking control as an activity. It is a necessary one of considerable importance that affects the daily lives of millions of motorists. PCNs are issued in their thousands every day; over 4 million every year. Only about 1 per cent gets as far as an appeal before a Parking Adjudicator. In relation to such a routine, everyday, prolific activity it is highly undesirable for non-compliant PCNs to be served in large numbers. My decision should in my view provide every encouragement to Local Authorities to ensure that the PCNs they serve are compliant with the statutory requirements as to their content. This is not the first occasion this issue has come before a Parking Adjudicator. In the case of *Moulder v Sutton LBC (PATAS Case No. 1940113243 24 May 1995)* an Adjudicator found the PCN in that case to be a nullity because it omitted the statement required by section 66(3)(e). Yet it seems that invalid PCNs are still being issued, as both this case and *Sutton v London Borough of Camden* show. The drafting of a compliant PCN is a simple drafting task and it is difficult to understand why these difficulties have arisen and continue to do so. These sentiments apply to every stage of the enforcement process, not just the issue of a valid PCN. The Parking Adjudicators have had cause in their annual report on more than one occasion to comment on procedural irregularities that have come to their attention in appeals. The motoring public deserves nothing less than that the public authorities exercising penal powers understand the importance of their complying with the conditions attached to their powers and are scrupulous about having in place administrative processes that do so. It is imperative that the public can have confidence in the fairness and propriety of the enforcement of parking controls.'*

"It is up to local councils to ensure their PCNs are drafted in compliance with Statute. These appeals show only too clearly that the findings and concerns of the Adjudicators over several years have been disregarded - a most unattractive basis for asserting good administration.

"I conclude that Mr Thorne was correct to find as he did that the PCNs in these appeals were not compliant and could not be enforced."

The application is rejected.

Yours sincerely



Miss C Axelson  
Head of the Parking and Traffic Appeals Service

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