

Register Kept Under Regulation 20 of the Road Traffic (Parking Adjudicators)(London) Regulations 1993, as amended

This decision was corrected by the Proper Officer on the direction of the Adjudicator as per Regulation 15 of the Road Traffic (Parking Adjudicators) (London) Regulations 1993

Case Reference:	2070172175
Appellant:	Aspire Loft Conversions
Authority:	Camden
VRM:	ML02YKD
PCN:	CU04943551
Contravention Date:	22 Dec 2006
Contravention Time:	16:06
Contravention Location:	Belsize Crescent, NW3
Penalty Amount:	£100.00
Contravention:	Parked in a suspended bay/part of bay
Decision Date:	24 May 2007
Adjudicator:	Mamta Parekh
Appeal Decision:	Allowed
Direction:	cancel the Penalty Charge Notice and the Notice to Owner.
Reasons:	The appellant Mr Hughes appeared before me at a personal hearing which took place on the 18 th May 2007. He was a very polite but knowledgeable witness.

He denied the contravention stating that he had parked on a single yellow line. However during the course of the hearing and upon reading the appellant's previous correspondence with the local authority, wherein, he had claimed that he had parked in a permit bay, the appellant immediately conceded that he had been mistaken in his written correspondence.

The appellant claims that there was a witness, but that he was a Camden Councillor who was very reluctant to provide witness evidence and had only agreed to do so as a last resort once the appellant had exhausted all avenues. The appellant was offered an adjournment to obtain this evidence but the appellant preferred the case to proceed on legal argument also raised, and which is dealt with further below.

Accordingly, based upon the evidence presented, and upon the appellant's own admission of his error, I am satisfied on the balance of probabilities that the local authority's account is more reliable and find on the facts that a contravention did occur.

However the appellant also challenged the validity of the

penalty charge notice stating that it did not comply with Section 66(3)C of The Road Traffic Act 1991. The appellant referred to the decision in *Al's Bar Restaurant Ltd v LB Wands* worth Case no 2020106430, on the very same issue.

In that case the Adjudicator closely examined the issue of substantial compliance.
The relevant passage relating to S66(3)C is set out in italics below.

"Does the PCN comply with section 66(3)?

There is no dispute that the PCN complies with paragraphs (a), (b) and (f). The Appellant contends it does not comply with (c), (d) and (e).

Before considering each of these in turn, there is a preliminary point I must deal with. This is: must the PCN follow the wording of section 66 or may it use different words provided that they mean the same? To put it another way, must there be literal compliance or is substantial compliance sufficient?

There is no doubt in my mind that substantial compliance is sufficient. But this should not be thought of as encouraging enthusiastic departure from the statutory language.

Disciplined drafting dictates that where a statute requires a document to contain particular statements, the starting point for drafting a compliant document ought always be that the statutory language should be carried across to the document unless there are very good reasons for doing otherwise. This is for the very obvious reason that if the statutory language is adopted, the opportunities for challenging the document for failure to comply with the statutory requirements, as in this case, are eliminated. Local Authorities, like other organisations, are encouraged to couch their communications in plain English, and of course this is to be applauded. But the statutory requirements take precedence over this laudable aim, and Local Authorities must be aware that the language they use, however plain, must bear the same meaning in substance as that prescribed by the statute.

I now turn to consider compliance with each of the paragraphs in issue.

Section 66(3)(c): that the penalty charge must be paid before the end of the period of 28 days beginning with the date of the notice

The PCN says this.

'You are therefore required to pay the sum of £80 within 28 days.'

This does not follow the wording of the Act and therefore does not literally comply. Does it comply in substance? To decide, I must examine the elements of paragraph (c).

First, 'that the penalty charge must be paid'. The reference to 'the sum of £80' in the above sentence from the PCN is in fact the only place in which the full amount of the penalty charge is stated. It is referred to as a 'sum' rather than being specifically described as a penalty charge. In fact, rather than

being simply the statement required by paragraph (c), the sentence attempts to cover both (b) and (c). Whilst compliance with (b) was not disputed by the Appellant, it seems to me that merely to describe the £80 as 'the sum' is at best unsatisfactory and at worst non-compliance. The sentence that follows does refer to 'The charge' (not penalty charge) being reduced, but describing the full sum as a penalty charge when it is first referred to would avoid any doubts. Indeed, curiously the expression penalty charge appears nowhere in the PCN except as part of the term 'Penalty Charge Notice'. It appears that the draftsman of the PCN may not have appreciated the distinction between the penalty charge, which is the penalty payable, and the Penalty Charge Notice, which gives notice of the penalty charge payable. I say this because on the back the Notice says 'If payment of this Penalty Charge Notice is received....'

Reverting to paragraph (c), Mr Pitt-Payne contended that 'You are required to pay' means in substance the same as 'This sum must be paid'. I accept that 'are required' means in substance the same as 'must'. Having said that, I cannot see that it is an improvement. What could be plainer than the simple word 'must'?

But there is another point on this element. Under section 66(1) the parking attendant effects service of the Penalty Charge Notice by either fixing it to the vehicle or giving it to 'the person appearing to him to be in charge of the vehicle'. Under section 66(2) the person legally liable for payment of a penalty charge is the owner. It may or may not be that the person in charge of the vehicle is the owner. Therefore, the person who receives the Penalty Charge Notice may or may not be the person legally liable to pay the penalty charge. It is no doubt for this reason that the draftsman chose the impersonal 'that the penalty charge must be paid'. For the notice to say 'You are required to pay' will be an inaccurate statement of the legal position in a great many cases. In those circumstances, it cannot to my mind be said that the formulation in the PCN constitutes substantial compliance."

The appellant objected to the use of the word "You" which he believed was an "inaccurate statement of law" in accordance with the Adjudicator's findings in AL's Bar and therefore "did not constitute substantial compliance with the law." as propounded in that case.

Although I am not bound by the decision of another Adjudicator, as each case is decided on its own individual merits, I nevertheless find the reasoning as clearly set out in the AL's Bar case to be compelling, and consequently find the penalty charge notice to be substantially non compliant with section 66(3) C of the Road Traffic Act 1991.

Whilst I note that the appellant has not in any way been prejudiced by this inaccurate statement, Justice Jackson made it clear at paragraph 41 of his decision in L.B Barnet v Parking

Adjudicator, [2006] EWHC 2357, another case referred to by the appellant, and which dealt with the issue of compliance of penalty charge notices in relation to other parts of Section 66 (3) of The Road Traffic Act 1991, that : "Prejudice is irrelevant".

The same principle is equally applicable here, and it therefore follows that I must allow this appeal.

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



Mr R Reeve Proper Officer