

M

v Kent CC

Application for Review

Case number: KB00015-1905

Vehicle:

PCN: KB72002467

**Mrs. Zingstra your request for a review is refused.
The penalty charge remains payable to the Council.**

Adjudicator's Reasons:

On 19.07.2019 I issued a decision refusing Mr request for a review which had been made on the basis that the Adjudicator had not sufficiently explained the reasons for dismissing the appeal. Then the issue was raised that a letter sent by the council on 17.06.2019, four days after the Adjudicators decision was a procedural impropriety.

The first review request was received on 24.06.2019 and the further request on 25.06.2019.

Paragraph 12 of the Schedule to the Civil Enforcement of Parking Contraventions (England) Representations and Appeals Regulations 2007 requires that when a review request is made, full reasons are given and it is unclear why the first request did not include the point about the council letter.

Paragraph 12 only provides for a review, in certain limited circumstances, of a decision by an Adjudicator to dismiss or allow an appeal and therefore must relate to the issues raised in that appeal.

The Council's correspondence following the decision was not part of the appeal and not part of the Adjudicator's decision.

In effect, Mr was seeking to re-open the original appeal by adding the additional ground of 'procedural impropriety' but it was too late to do so.

Finally, although M _____ has produced and relies on decision of other Adjudicators, they do not create a binding precedent and must be viewed only as potentially persuasive authority. For my part, I do not agree with the conclusions of those decision insofar as they relate to the transposition of 'may' and 'will'.

In any event, for the reasons set out above, the circumstances of _____ a's case are wholly different. The decision to dismiss the appeal will not be changed and any further challenge must now be to the High Court.

Stephen Knapp

Adjudicator

19.08.2019

Whilst I did not deal with the issue in my earlier review decision there could in fact be no request for a review under Paragraph 12 on the basis of the council letter because it was not part of the original appeal or the Adjudicator's decision.

Ms [redacted] suggests that Paragraph 12(b)(v) provides for a review where new evidence becomes available since the decision was made but that, in my judgement, can only apply where the evidence relates to issues raised in the original appeal and is relevant to the findings or reasoning the Adjudicator. It does not apply to an entirely separate issue which only arose after the decision was made.

However, as I anticipate that Ms [redacted] may well want to raise the whole issue in the High Court, I will deal briefly with the merits of her latest challenge.

The Council's letter issued after the Adjudicator's decision was served, stated that if payment was not received by 15.07.2019, the *'penalty will increase to £105.00 and a charge certificate will be sent to you'*.

This, it is suggested, is contrary to the provisions of Regulation 21 in the Civil Enforcement of Parking Contraventions (England) General Regulations 2007 which states that if the penalty charge is not paid, the Council *'may'* issue a Charge Certificate.

However, Regulation 21 relates to the issue of the Notice to Owner (NTO) in the context that the recipient need to be informed about the enforcement process.

Regulation 21 gives the Council power to issue a Charge Certificate and does not specify the form of the NTO or information about the enforcement process.

The relevant information to be included in the NTO is set out in Regulation 19(g).

In fact, the NTO issued to Mr [redacted] a states:

'The penalty charge may increase by 50%...and a charge certificate may be served on you'.

The letter on which Ms [redacted] now relies is not in fact a statutory document and must, in any event, be read with the information on the NTO.

A procedural impropriety is defined in Regulation 4(5) of the Appeals Regulations as being a failure by the Council to observe any requirement imposed on it by the 2004 Act, or by the General Regulations, and is to include:

- (a) *"The taking of any step, whether or not involving the service of any document, otherwise than*
 - (i) *In accordance with the conditions subject to which; or*
 - (ii) *At the time or during the period when*

It is authorised or required by the General Regulations or these Regulation to be taken..."

Insofar as they are relevant the decisions from the appeal courts state that literal compliance with the Regulations is not required and it is sufficient that there has been substantial compliance. (see *Barnet LBC v The Parking Adjudicator [2007] RTR 162* and *Hackney Drivers Association Limited v The Parking Adjudicator [2012] EWHC 3394 (admin).*)

In my judgement, it is not reasonable to suggest that the use of the word 'will' fundamentally conveys the meaning that the Council cannot exercise discretion at any stage of the enforcement process.

Therefore, even if the Council's letter was considered relevant, I am satisfied that taken together with the information on the Notice to Owner, the power to issue the Charge Certificate is sufficiently conveyed.