

**Mrs [REDACTED] v - Kent County Council (with
Canterbury C C)**

Review Details

Case number:	KB00015-1905	Original Decision:	13/06/2019
Vehicle:		Requested:	24/06/2019
Representative:		Requested by:	Appellant
Number of PCNs:	1	Review Adjudicator:	Stephen Knapp

Review Decision - PCN: KB72002467

The review request has been rejected.

The Adjudicator's decision will be final unless one of the limited grounds for review set out in Paragraph 12 of the Schedule to the Civil Enforcement of Parking Contraventions (England) Representations and Appeals Regulations 2007 applies.

A review is only required if the adjudicator has made an error of law or the decision is so unreasonable on the facts, in the sense of being perverse or irrational, that it amounts to such an error.

The process for challenging a PCN has to be proportionate to the amount of the penalty. It is not appropriate to re-open a case after the decision unless there is a very good reason for doing so.

The adjudicator decided to dismiss the appeal on the facts of the case. The evidence supported the findings of fact. It is not open to the appellant to challenge, or an adjudicator considering an application for a review, to interfere with, findings of fact.

The decision to dismiss the appeal will not be changed and the relevant penalty charge (or charges) should be paid to the authority. That is now an end to the appeal process as far as the Tribunal is concerned but there remains the right to make application to the High Court for Judicial Review on a point of law.

Please see the next page for the Adjudicator's further Reasons

Adjudicator's Reasons

requests a review of the decision on the basis that the Adjudicator has made an error of law concerning the form of the PCN in relation to the information required by Regulation 3(2)(b)(ii) of the Civil Enforcement of Parking Contraventions (England) Representations and Appeals Regulations 2007.

In so far as it is relevant Regulation 3 provides:

"(2) A penalty charge notice served under Regulation 9 of the General Regulations must in addition to the matters required to be included in it under paragraph 1 of the Schedule to the General Regulations include the following information:

- (a) That a person on whom a notice to owner is served will be entitled to make representations to the enforcement authority against the penalty charge and may appeal to an Adjudicator if those representations are rejected and
- (b) That if representations against the penalty charge are received before a notice to owner is served
 - (i) Those representations will be considered
 - (ii) but that if a notice to owner is served notwithstanding those representations against the penalty charge must be made in the form and manner and the time specified in the notice to owner."

The Regulations do not however prescribe the form in which the information must be given.

The information on the PCN issued to _____ includes, on the back of the form the information, under the heading "What happens next" that:

"If you wish to appeal against this notice you do so in writing All appeals must be in writing and telephone challenges will not be accepted All cases will be considered on their individual circumstances. If you challenge this PCN within 14 days of the date of issue progression of the charge will be put on hold pending a reply which can take up to 6 weeks. If your challenge is rejected the Council will usually re-offer the 14 day discount period. If the challenge is submitted after the 14 day period from issue then the full sum will be due and the discount will not be re-offered.

If the penalty is not paid before the end of the 28 day period as specified on the front of this notice or successfully challenged the Council may serve a notice to owner The NTO will state how the owner/keeper can make payment/representation to the Council and how to appeal to an independent Adjudicator if that representation is rejected....”

On the facts of this case I did not make representations to the Council about the PCN and a Notice to Owner (NTO) was issued on 23/05/2018. This followed a Witness Statement made by I to the Traffic Enforcement Centre at the Northampton County Court which resulted in an order requiring the Council to revoke the Charge Certificate but not the PCN.

The High Court has considered the terms of Regulation 3 in the decision of *Hackney Drivers Association Limited v The Parking Adjudicator (2012) EWHC 3394 (Admin)*.

This approved the principle that the information on the PCN had to be read as a whole and that there was no requirement to use any particular form of wording.

Paragraph 10 of the judgment includes the following:

“I am of the view that read as a whole this penalty charge notice does convey what is required to be conveyed under Regulation 3 (2). The person on whom the notice is served will understand that he is entitled to challenge the penalty charge notice and make representations as to why it should not be paid. Although the words “those representations will be considered” are not stated in relation to representations received before the service of the notice to owner I have no doubt that the recipient will understand from the statements on the reverse commencing “if you believe that a penalty charge should not be paid and wish to challenge this PCN” down to “all cases will be considered on their individual circumstances” that in deciding whether to proceed with enforcement by service of notice to owner the representations made in writing by way of challenge will be considered. Indeed the words “challenges in writing” as to why “the penalty charge should not be paid” which are stated in the penalty charge notice are in my view synonymous with the words “representations against the penalty chargeTaken as a whole the Adjudicator was entitled to find that the information did substantially comply with Regulation 3.”

was told that she had the right to make a challenge in writing and that her challenge would be considered on the basis of the individual circumstances. Further she was informed that there was an additional right to make a challenge after service of the NTO which would inform her how those representations were to be made.

Review Decision

Therefore the point of Regulation 3 is satisfied and although the Adjudicator has not detailed her reasoning I am satisfied the decision to reject a technical challenge cannot be described as perverse or irrational.

The request for review is refused.

Stephen Knapp
Adjudicator
19/07/2019