



## Adjudicator's Reasons

1. The Council has made application for a review of the decision by the Adjudicator Ms Kennedy to allow Mr Curzon's appeal and direct cancellation of the Penalty Charge Notices.
2. They have requested a hearing to determine the application.

### Relevant Law

3. The Adjudicator's decision is made under the terms of the Road User Charging Schemes (Penalty Charges, Adjudication and Enforcement) (England) Regulations 2013 ("the 2013 Regulations").
4. Paragraph 12 of the Schedule to the 2013 Regulations provides: -

*'12(1) The adjudicator may, on the application of a party, review*

- (a) Any interlocutory decision; or*
- (b) Any decision to determine that a Notice of Appeal does not accord with paragraph 2 or to dismiss or allow an appeal...on one or more of the following grounds*

- (i) The decision was wrongly made as a result of an administrative error;*
- (ii) The adjudicator was wrong to reject the Notice of Appeal*
- (iii) The party who failed to appear or be represented at a hearing had and good sufficient reason for failing to appear*
- (iv) Where the decision was made after a hearing, new evidence has become available since the conclusion of the hearing, the existence of which could not reasonably have been known or foreseen*
- (v) Where the decision was made without a hearing...*
- (vi) The interests of justice require such a review.*

*(2) An application under subparagraph (1) must: -*

- (a) Be served on the proper officer within the period of 14 days, beginning with the date on which the decision is given to the parties and*
  - (b) State the grounds in full.*
- (3) The parties must have the opportunity to be heard on any application for review under subparagraph 1. The adjudicator considering the application may direct the means which that hearing will be conducted.*
  - (4) Having reviewed the decision, the adjudicator may direct that it be confirmed, revoked or that it be varied.*
  - (5) If having reviewed the decision, the adjudicator directs that it be revoked, the adjudicator must substitute a new decision or order a redetermination by that adjudicator, the original adjudicator or a different adjudicator.*

(6) ...'

5. Insofar as similar provisions have been considered by the appellate courts, the following principles have been determined.

*DK (Serbia) v Secretary of State for the Home Department* [(2007) 2 ALLER 483

*'The jurisdiction is one which is being exercised by the same tribunal conceptually, both at the first hearing of the appeal and then at any reconsideration. That seems to me to be the key to the way in which reconsideration should be managed in procedural terms.*

*As far as what has been called the second stage of reconsideration is concerned, the fact that it is, as I have said, conceptually a reconsideration by the same body which made the original decision, carries with it a number of consequences. The most important is that a body asked to reconsider a decision on the grounds of an identified error of law will approach its reconsideration on the basis of any factual findings and conclusions or judgements arising from those findings which are unaffected by the error of law need not be revisited. It is not a re-hearing..'*

The Queen, on the application of *Steven Deeds v The Parking Adjudicator* [2011] EWHC 1921 (Admin)

*'30. Even if the adjudicator on the review application had been satisfied the Appellant had good cause for not attending the original hearing, the adjudicator on the application for review was not bound to review the earlier decision. Regulation 12 gives a discretion to do so. It uses the word 'may'. Again, the parking adjudicator must exercise that discretion judicially. If there has been no notification of the hearing but the appeal is in any event patently meritless, the adjudicator is still not bound to allow the review. Indeed, again, because of the principle of proportionality, which is a strand of justice in the manner I have described an adjudicator will be bound to refuse a review in those circumstances.'*

6. The Queen, on the application of *Alexander v The Parking Adjudicator* [2014] EWCA 560 (Admin)

*'36. ...The adjudicator's decisions are subject to review on normal public law grounds, in summary that they involved an error of law or were irrational in the result or that adjudicators took into account relevant matters or failed to take into account relevant matters or that the procedure by which they were reached were unfair...'*

*58. Appeal decisions of adjudicators do not have the force of precedent, apparently inconsistent decisions may be made on the facts of particular cases...the decisions of other adjudicators in other appeals, even if in apparent conflict...are relevant only if and insofar as they suggest... (the adjudicator made an error of law or reached an irrational conclusion).'*

## Background

7. The appeal is one of a significant number of challenges made by recipients of PCNs following the alleged non-payment of a charge for crossing the Mersey Gateway Bridge. Ms Kennedy's decision refers to an earlier case decided by the adjudicator, Mr Solomons, in May 2018. Neither party to Ms Kennedy's appeal had requested a hearing and both sides made detailed written submissions in support of their respective cases. These are carefully summarised in Ms Kennedy's judgement.

## The Decision

8. It is clear from the terms of the decision that Ms Kennedy has given proper consideration to the arguments put forward by both parties and she has based her decision to allow the appeal on three clear findings of fact, giving proper reasons, namely: -
- (Paragraph 490) 'A PCN must state the grounds on which the charging authority believe that a penalty charge is payable...therefore the PCNs issued did not comply with Regulation 7 of the 2013 Regulations. That non-compliance amounts to a procedural impropriety on the part of the charging authority...'
  - (Paragraph 625) 'I find that these signs are not adequate to allow motorists to know the nature of the fee the Council wish them to pay'.
  - (Paragraph 1110) 'I find that the failure of the Council to consider Mr Curzon's representations amounted to procedural impropriety'.
9. Any one of these grounds is a sufficient reason for her to allow the appeal under Regulation 8 of the 2013 Regulations.

## The Application for Review

10. The submission is that Ms Kennedy has misdirected herself in relation to: -
- The legal effect of signage (and specific wording on signage) on the underlying powers to charge...
  - The Council's ability to delegate or otherwise instruct processing of representations to Emovis Operations Mersey Limited and
  - The use of the word 'toll' on the face of the PCN's leading to a finding of procedural impropriety.

## Findings

11. I am satisfied that the provisions of Paragraph 12 of the Schedule to the 2013 Regulations (which are in, essentially, the same terms, as those in the Schedule to the Civil Enforcement of Parking Contraventions (England) Representations and Appeals Regulations 2007), must be interpreted as meaning that a review is a two-stage process.
12. Firstly, assuming the application complies with the procedural requirements as to time and form, which is not an issue in this case, the applicant has to show that in principle one of the limited grounds for review is established. In this case, the Council presumably relies on the interests of justice ground and must therefore establish that the adjudicator's decision is an error of law because it should be regarded as perverse or irrational.
13. It is only if a ground for review is arguably established that the regulations give a right to a hearing. Were it otherwise, an appeal about a PCN could routinely result in two hearings by the same or different adjudicators only because the losing party disagrees with the outcome. That would be a wholly disproportionate process.

14. On the facts of this case, neither party asked for a hearing before Ms Kennedy but instead made detailed written submissions which, as far as the Council is concerned, are essentially in the same terms as their reasons for review. There is nothing new in the request for review which is in effect a restatement of the original case.
15. Insofar as they rely on suggested inconsistencies with the decision of adjudicator Solomons, Ms Kennedy has explained her consideration of that decision and further I note that as part of the evidence submitted by the Council for this appeal, there was a public statement issued by them following Mr Solomons' decision which, expressed the view that insofar as it found against them, it was wrongly decided and in any event, only applied to the particular appeals being considered.
16. Ms Kennedy has given admirably clear reasons for her findings and I am entirely satisfied they cannot be described as perverse or irrational. They do not amount to an error of law. I find that the Council has not established a potential reason for review under Paragraph 12, with the result that there is no right to a hearing and the review request must be refused.

Stephen Knapp  
Adjudicator  
15/05/2019