

Adjudicator's Decision

Mrs Deepa Lukha

and

Aylesbury Vale District Council

Penalty Charge Notice AY00350448

Penalty Charge £60.00

Appeal Allowed

I direct the Council to cancel the Penalty Charge Notice and Notice to Owner.

Reasons

The PCN was issued on 03 May 2005 at 11:25 to vehicle XXXX XXX in West St for being parked in a restricted street during the prescribed hours. However Mrs Lukha did not find the PCN and the first she knew of it was when she received a Charge Certificate demanding payment of £90. She contacted the council and explained that while she did not deny the contravention, but had never found the PCN, and was denied the right to settle the penalty charge at the reduced rate of £30.

The council have produced copies a number of Notices they issued to Mrs Lukha in connection with this penalty charge, purportedly under the Road Traffic Act 1991, all of which are flawed.

Apart from the time scales set for the original PCN, which are 14 and 28 days from the date of **issue** of the PCN, all the other time limits in the Road Traffic Act 1991 are set from the date of **service** of the particular notice, i.e. the date when it was delivered to the recipient. Therefore the council must add at least two days to the date of issue if they send notice by first class post, five days if they send them second class. In this case Aylesbury Vale District Council have expressed

the time limits in their various notices as running from the date of issue of the notice. In some instances they have written it in bold type, thereby highlighting their mistake.

1. **The Notice to Owner (NtO)** does not conform to paragraph 1(2)(c) of Schedule 6 which since the time period stipulated for paying or making representations is, “before the end of the period of 28 days beginning with the date on which the notice to owner is **served** (*my emphasis*)”. The NtO in this case was issued on 15 June 2005, but the time limit shown on the Notice is as follows:

YOU MUST NOT IGNORE THIS NOTICE. IF BY 13/07/2005 YOU HAVE FAILED TO RESPOND TO THE COUNCIL A CHARGE CERTIFICATE WILL BE SERVED ON YOU INCREASING THE PENALTY BY 50% TO £90. FAILURE TO PAY THE INCREASED AMOUNT MAY RESULT IN A COUNTY COURT ORDER AGAINST YOU AND A WARRANT BEING ISSUED TO BAILIFFS

13 July 2005 is 28 days from the **issue** date of the NtO, not the date of service, which is the date that it would have been delivered to Mrs Lukha. Depending on whether the council sent it first or second class post, the earliest date of service would be 15 July 2005. Therefore by threatening to increase the charge to £90 on 13 July the council have failed to comply with paragraph 1(2)(4)(e).

2. **The Charge Certificate** that is dated 27 July 2005 says:

If payment of this amount is not received **within 14 days beginning with the date of this notice**, action will be taken by Aylesbury Vale District Council to recover the sum due through the County Court. If a debt is subsequently registered at the County Court against

Paragraph 7 of Schedule 6 states, “Where a charge certificate has been served on any person and the increased penalty charge provided for in the certificate is not paid before the end of the period of 14 days beginning with **the date on which the certificate is served**” (*my emphasis*). Therefore the Charge Certificate does not comply with Paragraph 7.

3. **The Notice of Rejection** sent to Mrs Lukha after she had made representations to the council against a second Notice to Owner also fails to comply with Paragraph 4 of Schedule 6. Mrs Lukha had requested to pay the reduced penalty charge of £30, which would have been her right had she found the original PCN. The council not only glibly, but also surprisingly, in my view, refused that offer on the basis that it was beyond their control that Mrs Lukha had not found the original PCN. They went on to say in the Notice of Rejection:

You now have 28 days **beginning with the date of this letter** to pay the penalty charge or to appeal to the National Parking Adjudication Service for your case to be heard by an independent Parking Adjudicator. Please be advised that no further representations will be

Paragraph 4 of Schedule 6 of the 1991 Act requires that a Notice of Rejection “**must** (*my emphasis*) state that a charge certificate may be served under paragraph 6 unless before the end of the period of 28 days beginning with the date of **service** of the notice of rejection” the recipient pays the penalty charge or appeals to the adjudicator. Therefore again the council have failed to comply with a mandatory requirement of the Road Traffic Act 1991.

Mrs Lukha has appealed to me against that purported Notice of Rejection. However, since it does not comply with paragraph 4 it does not constitute a Notice of Rejection at all.

The council enforcement process throughout this case has wrongly expressed the mandatory requirements of the 1991 Act by attempting to shorten the time that the vehicle owner has to complete payment or the next process. I find that Mrs Lukha is under no obligation to pay a penalty charge demanded on a non-compliant notice and accordingly her appeal is allowed. Given the tortuous history of this case I see fit to direct the council to cancel the PCN as well as the other defective notices.

Caroline Sheppard

Parking Adjudicator appointed under Section 73 of the Road Traffic Act 1991

Date: 09 May 2006