

Submission

To: Lord Falconer of Thoroton

Date: 20 July 2006

cc: Please see end of document

From: [REDACTED]
Business Development Officer, Tribunals Development Group
1st Floor Abbey Orchard Street

Tel: 020 [REDACTED]

Subject: **Parking Adjudicator powers under part 6 of the Traffic Management Act 2004**

Issue

1. Following discussions with Department for Transport (DfT) and the Chief Parking Adjudicators, Caroline Sheppard and Martin Wood, to seek your agreement on proposed powers for the Parking Adjudicators, as part of the implementation of part 6 of the Traffic Management Act 2004.

Timing

2. Urgent. The consultation period closes on 25 September 2006 therefore; your agreement would be helpful before the summer recess. The attached letter, once agreed, should be sent as soon as possible.

Recommendation

3. That you agree the proposals about Adjudicator powers and send the reply attached opposite to Douglas Alexander.
4. Consider financial implications for DCA because of implementing Part 6 of the Traffic Management Act. (This information has been provided by HMCS.)

Argument

5. Following your most recent letter to Alistair Darling in February attached at flag B, you asked officials in both departments to continue to discuss parking adjudicator powers in general and more specifically how adjudicators exercise discretion in mitigating circumstances. In the reply from Alistair Darling (attached at flag A) in April, matters were still unresolved. Following discussions between officials in DfT in consultation with the Chief Parking Adjudicators and DCA, the following agreements set out in paragraphs 6 – 11, were reached.

Adjudicators' discretion in mitigating circumstances

6. There are situations where a contravention has occurred and the authority has acted lawfully, however, some extenuating circumstances may warrant cancellation of the Penalty Charge Notice (PCN). In your February letter you asked the Secretary of State to allow adjudicators the power of discretion and to cancel a PCN when there are mitigating circumstances. This was in response to the issues raised by the Baroness Walmsley case about a congestion charge.

7. Unfortunately, due to previous Government assurances given in the House, I could not seek agreement on allowing adjudicators to cancel PCN's in mitigating circumstances. DfT officials and the Chief Adjudicators felt the idea of no restrictions on the grounds for appeal could lead to increased numbers of appeals and costs. Instead of this provision, if an adjudicator feels there are mitigating circumstances for why the contravention occurred, the adjudicator within new regulations, will have the power to remit the case back to the local authority for re-consideration.
8. Caroline Sheppard proposed that under new regulations, when a case is referred back to the local authority, the recommendations of the adjudicators must be considered by the Chief Executive's Office to ensure a detailed, more independent, examination of the case. The authority will then have the choice whether they accept the adjudicator's suggestion or reject the appeal. If the authority rejects the appeal it must, within 5 weeks, provide to the adjudicators and appellants, the reason it took the decision. Appellants who are still unhappy with the decision can apply for a judicial review.

Comment [A1]: This was not Caroline Sheppard really, it was agreed it was suggested and agreed in the Lords. Agreed by adjudicators. It may be beneficial to leave it as Caroline though for sway with LC.

Removing of right of appeal on the grounds of exceptional circumstances

9. Currently, adjudicators can not consider appeals on the grounds of exceptional circumstances. In discussions with the Chief Adjudicators, DfT, with our agreement, have removed this right of appeal from the new regulations. It is hoped that by taking this action it will make it easier for adjudicators to decide cases without having such wide rights to make representations. The Regulations and statutory guidance that have been produced place a duty on local authorities strongly to consider representations from those who receive PCN's at an earlier stage in the process. If an appeal is not cleared at representation stage, the Adjudicator's can hear the case and recommend that the council re-consider its decision.

Comment [A2]: They cannot at present though sort of do unofficially. An authority could if it wished ignore this though

Duties and rights of appeal on the grounds of mitigating circumstances

10. I suggest for the above paragraph. Currently adjudicators cannot consider appeals on the grounds of mitigating circumstances, but do so on an unofficial basis. Furthermore an authority's responsibility to consider mitigating circumstances is not currently clear cut in legislation. The new regulations and statutory guidance place a duty on local authorities strongly to consider representations from those who receive PCN's at an earlier stage in the process. If this representation is turned down an adjudicator may hear the case and if it sees fit, recommend that the Chief Executives office of the council reconsider its decision.

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Procedural Irregularities

11. If an authority has acted unlawfully in administering the issuing of a PCN, the adjudicators will now have the additional power to direct the cancellation of the PCN. To put this in context, leaving a date off of the PCN, accidental inclusion of incorrect information on the PCN or the issuing of a charge certificate before an appeal to the adjudicators is decided would be considered procedural irregularities and will result in an order to cancel being made.
12. In previous secondary legislation the Adjudicators did not have the express power to cancel on these grounds. This provision is intended to ensure that if an authority acts unlawfully there is an independent and effective means of removing a vehicle owner's liability when it was incorrectly applied.

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The new Regulations

13. The above powers have been added into the Civil Enforcement of Parking Contraventions (England) General Regulations 2007 and The Civil Enforcement of Parking Contraventions (England) Representations and Appeals Regulations 2007. The statutory instruments are currently out for public consultation. We are content that the new Regulations reflect the agreements made and although we

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do not have confirmation directly from the Chief Parking Adjudicators, it is clear from the comments from them to DfT, that they are also content with the Regulations.

Comment [A3]: I don't think it is worth mentioning but there are a few minor things that are still being tweaked etc but on the whole the adjudicators happy, and we are still working with them.

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Background

14. As you can see from the attached correspondence, it appeared that had been some misunderstanding* surrounding the complexity of the adjudicators' powers. The adjudicators remit is to decide whether or not a contravention has or has not taken place. This is a system of strict liability. Presently an adjudicator has no power to act where a contravention has taken place, but the individual is not liable (due to procedural irregularity) or mitigating circumstances were involved. The current proposals widen these powers.

Deleted: In terms of adjudicator powers when an authority has acted unlawfully they can cancel a PCN. However, adjudicators may only use discretion in a situation where they are satisfied a contravention took place.

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15. During the House of Lords third reading of the Traffic Management Bill, Lord Davies, DfT Minister, gave an assurance to Viscount Astor that cases where there were mitigating circumstances that the Adjudicators could direct the case to be re-considered by another individual within the local authority. The agreements made reflect this commitment.

16. In order to assist with the implementation of part 6 of the Traffic Management Act, DfT established a working group with their largest stakeholders, including groups such as the Association for Local Government, Local Government association, the chief adjudicators and motorists groups, the RAC Foundation and the AA Motoring Trust. All stakeholders, including DCA, have been able to comment on the draft regulations at each stage and comments were sought from them prior to the public consultation.

Deleted: RAC and the Chief Adjudicators.

Financial implications

Other financial implications resulting from the new parking regulations

Claire, On the below issue. I would appreciate if this could not be flagged as potentially escalating to ministerial level. Could it possibly be phrased that There is a potential cost burden, obviously outlined in 17 and 18, then could 19 say that agreement is being sought at official level. I think flagging it up that it may escalate may slightly oversell it.

I think it may be a good idea on this cost issue for someone from your department or David Cannings division to write to my grade 5, Ben Still. We can proceed from there. Is this ok?

I think we want to get agreement on the main issues of the letter etc and this may confuse things a little if his mind wanders and loses perspective.

17. The new Traffic Management Regulations introduce a new provision allowing local authorities to challenge the declarations made by respondents in response to the registration of a PCN for enforcement in the county court. Currently, if a respondent files a statutory declaration all enforcement is stopped in order to allow the respondent time to lodge an appeal with the parking adjudicator. This is abused however and in some cases the local authority has to start all over again several times before the court puts a stop to further declarations being filed by the respondent.

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18. The new procedure will provide savings for local authorities and create greater certainty over the status of proceedings. But this change will require changes to the Traffic Enforcement Centre's IT systems and create additional pressures on staff and judicial time. We are currently in the process of calculating this extra cost to HMCS but it is estimated that the system changes alone may cost in excess of £200,000.


19. This has been raised with the Department for Transport who have so far refused to consider paying because they say the new regulations are DCA policy. They are not and this will be pursued further

with them when firmer costing are available. Ultimately, if no agreement can be made at official level, we will escalate to Ministerial level. As the regulations must be signed by you (Lord Chancellor) agreement over who pays the costs of implementation is a pre-requisite to moving forward. In the current financial climate HMCS will not be able to accept this as an unfunded pressure. It is estimated that the earliest possible date for implementation is October 2007, but April 2008 is more achievable.

Presentation and media handling

20. There is no need for any DCA publicity as DfT has already gone out to public consultation with the statutory instruments and statutory guidance. The resulting press coverage was very positive. The consultation was covered by GMTV, BBC, Sky as well as numerous positive stories in the written press.

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