

# Uk law problem question



Memorandum A Trainee A Principle 15/03/2008 Client: Richard De Vere File  
Ref: AP/RDV-0738 Matter: TFL penalty charge Notice

### Relevant facts

We have been instructed by Richard De Vere who has been served with two penalty charge notices from Transport of London.

On the 28th of February Mr Richard and his wife, Marjorie, had to rush up to central London unexpectedly to go to St Thomas's hospital to see their daughter who had suddenly been taken very ill.

Given the urgency of the situation they had no choice but to drive.

When they arrived they were informed by the consultant that their daughter had suffered a burst appendix and that her condition was critical, so they stayed there all night until the following day.

On the following day, once they were told that their daughter is out of danger and recovering, they travelled back to their home in Dorest.

A few days after their return to Dorest, Richard received two penalty charge notices from Transport of London ('TFL') dated 28 and 29 February, one for each day, stating that his vehicle had been photographed within the congestion zone area.

Richard was liable for penalty charge of £120 per day, total £240 because there have been no payment made for this vehicle.

Richard is the registered keeper of the vehicle; he drove it within the charging zone area and given the personal circumstances he forgot to pay the daily congestion charge.

Richard wrote to TFL and made representations to them about the penalties he had received explaining to them the situation with his daughter.

Richard received a notice from TFL rejecting these representations and

notifying him that he may have the right to appeal their decision to an independent adjudicator.

Client's objectives

Mr Richard De Vere wants to know:

The possibility and likely outcome of challenging TFL's decision that he should be penalised, in these circumstances, for not paying the congestion charge for his vehicle.

The limitation issues involved in making any appeal.

Relevant law

The Road User Charging (Enforcement and Adjudication) (London)

Regulations 2001

Regulation 13 - representations against penalty charge notice

Regulation 13 (1)

Where it appears to the recipient that one or other of the grounds mentioned in Regulation 13 (3) are satisfied, he may make representations to that effect to the charging authority who served the penalty charge notice on him.

Under Regulation 13 (3) these grounds are:

(a) That the recipient -

(i) Never was the registered keeper in relation to the vehicle in question;

(ii) had ceased to be the person liable before the date on which the vehicle was used or kept on a road in a charging area; or

(iii) became the person liable after that date;

(b) that the charge payable for the use or keeping of the vehicle on a road on the occasion in question was paid at the time and in the manner required by

the charging scheme;

(c) that in the circumstances of the case no penalty charge is payable;

(d) that the vehicle had been used or kept, or permitted to be used or kept, on a road by a person who was in control of the vehicle without the consent of the registered keeper;

(e) that the penalty charge exceeded the amount applicable in the circumstances of the case;

(f) that the recipient is a vehicle-hire firm and -

(i) The vehicle in question was at the material time hired from that firm under a hiring agreement; and

(ii) the person hiring it had signed a statement of liability acknowledging his liability in respect of any penalty charge notice imposed in relation to the vehicle during the currency of the hiring agreement.

Regulation 16 - Adjudication by an adjudicator

Regulation 16 (1) provides:

where a charging authority serve notice under regulation 13(6) that they do not accept that a ground on which representations were made under that regulation has been established, the person making those representations may appeal to an adjudicator against the charging authority's decision before -

(a) The end of the period of 28 days beginning with the date of service of that notice;

or

(b) such longer period as an adjudicator may allow.

Regina (Walmsley) v Lane and Others (2005) WLR (D) 170 CA

Held: that regulation 16(2) permitted an adjudicator to direct the

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cancellation of a penalty charge notice where the recipient had failed to establish one of the grounds specified in regulation 13(3)(a) to (f) but there were other reasons for mitigating the penalty or totally relieving the recipient of the penalty.

#### Application of law to facts

1. Under the Road User Charging (Enforcement and Adjudication) (London) Regulations 2001, while applying the relevant grounds under reg. 13 Mr. Vere may be able to plead that due to his extenuating circumstances (daughter's ill health etc) no penalty charge should be payable by him (reg. 13(c)) or that the amount that he has been charged exceeds the amount applicable in the circumstances of the case( reg. 13 (e). However it seems that he has a better chance of making this a case of mitigating circumstances under reg. 13(c). Nevertheless as the facts of the case indicate he has infact done this without any success and the TFL has already rejected his representations as to his mitigating circumstances.

2. In such a case Regulation 16 will preside and allow his appeal to be heard by an adjudicator. This provision provides a flexible way out from the stringent TFL Regulations and case law suggests that the office of the adjudicator has used his authority in the past to direct the cancellation of a penalty charge notice even where the appellant failed to establish any of the grounds under 13(3). The position for Mr. Vere is not quite clear here though as he has been refused the mandate to represent his daughter's ill health as a ground already. But under the case law the adjudicator might be prepared to accept other reasons for mitigating or totally extinguishing the penalty charge<sup>1</sup> and this may allow him to have his unfortunate position taken into

account to extinguish or mitigate his liability to pay the fine.

### Advice

1. Despite the fact that there is a very good chance for Mr. Vere to appeal against the TFL penalty charge decision he is better advised not to proceed with the appeal to the Adjudicator as this will cost him more than the penalty amount in terms of the solicitor's time and fee's.
2. Based on Mr. Vere's query about the limitation period the provision under reg. 16 is that the time limit for making any appeal to TFL is 28 days beginning with the date of service of the penalty charge notice. Since the date of this report/memorandum is the 15th of March and the TFL notices have been dated the 28th/29th of February Mr. Vere has little time left but has not lost his right to appeal to the adjudicator entirely
3. In the event of Mr. Vere's wish to continue with the appeal it would be useful to suggest at the outset that he should furnish all the correspondence that has taken place between him and the TFL (as pointed out below) as such documents will allow the premise for further advice as to the success of the appeal with the adjudicator.

### Qualifications

Based on the advice above there is a request for all correspondence between Richard and TFL. In particular this should mandatorily include.

A Copy of the penalty charge notice.

A Copy of representation which Richard made to (TFL) and a copy of their rejection letter.

### Certificate

This report takes account of the law up to 15/03/2008 by using Butterworth's online services and/or Westlaw to verify the latest law.

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Signed:

Date: 15/03/2008