

you have won this appeal.

There is nothing to pay and the authority will cancel the penalty charge

This is because the authority made a procedural error

Adjudicator's reasons :

1. Representations are made on behalf of [REDACTED]
2. [REDACTED] accepts the vehicle was parked as recorded by the CEO but appeals the issue of the PCN on a number of grounds based around the circumstances of parking as well as procedural impropriety. Mrs Zingstra-Mason also has supplied a number of other decisions from this Tribunal and the London Tribunals which I presume she says I should rely on when making my decision.
3. [REDACTED] she is a permit holder for the road she lives in but regularly finds it difficult to find a permit space after 6pm. Because of this she was forced on this occasion to park in West Street intending to move the car before 8am. However she forgot. When she did return to the car she says there was no PCN on it. She therefore missed the chance she says to pay the discounted penalty.
4. [REDACTED] also says the wording of the Notice to Owner (NTO) does not comply with the Regulations as it says if payment is not received the penalty charge will increase by 50% and a charge certificate will be issued. But the Regulations only say the Council may take this course of action. [REDACTED] submits this is a procedural impropriety and the PCN should therefore not be enforced against her. She also says the Notice of Rejection (NOR) did not respond to the procedural impropriety point she made in her formal representations. She also argues there are a number of other problems with the Council's evidence. The full submission can be seen at Evidence tab 13.
5. The Council rely on the evidence of the CEO and photographs taken at the time. They submit that signage is clear as to the limited period of time a vehicle may wait in the bay in question and the vehicle was parked for longer than permitted.
6. I have considered all of the evidence and from the CEO's notes it is clear the vehicle was observed parked in the bay firstly at 8:08 and then again at 8:46, beyond the 20 minutes permitted and signed. [REDACTED] does not argue that the vehicle was moved between the observations but gives an explanation as to why the vehicle was parked beyond the time permitted. I therefore find that the vehicle was parked for longer than the 20 minute period permitted in this bay. However I am going to grant the appeal because I find the Council failed to show they considered [REDACTED] formal representation properly.
7. A Council must consider the representations made to them fully before deciding whether to reject the representations or whether to exercise discretion in the matter (*Regulation 5(2) of the Civil Enforcement of Parking Contraventions (England) Representations and Appeal Regulations 2007*). It follows that if the circumstances presented by the motorist are not fully taken into account in the decision making process then an unlawful decision is reached as the duty under *Regulation 5* to consider all representations has not been complied with.

8. How the duty to consider representations is to be carried out is set out in the *Statutory Guidance on the Civil Enforcement of Parking Contraventions* issued by the Department for Transport (November 2015). *Chapter 10* of the Guidance emphasises the importance of the Council considering the motorists' representations properly and in accordance with the general principles of public law. In particular at *paragraph 10.22* the Guidance says:

*"The authority should give the owner clear and full reasons for its decision on a representation, in addition to the minimum required information."*

9. [REDACTED] made two sets of representations following the service of the NOR, both by email, received on 12.6.2019 and 28.6.2019. These representations were made within the 28 day period from service of the NTO laid down in the *Appeal Regulations*. Looking at the Council's response to the representations I can see nothing which indicates the Council consider the procedural impropriety point put forward [REDACTED] in the email sent on 28.6.2019.

10. The Notice of Rejection (NOR) sent to [REDACTED] is very brief. It simply deals with one aspect of her representations, namely whether the vehicle was parked longer than permitted and that the lack of suitable spaces did not provide a defence to the contravention. It also acknowledges the claimed lack of a PCN on the vehicle made by [REDACTED] but it does not mention anything else [REDACTED] puts forward as to why she believed the PCN should be cancelled. In particular no reference is made to her detailed argument about the wording of the NTO not complying with the *General Regulations* although the NOR was issued after the second set of representations was received.

11. Thus on the basis of the evidence before me I find that the Council failed properly to fully consider the representations made and whether they should exercise discretion and cancel the penalty charge. This amounts to a failure to follow *paragraph 5(2) (b) of the Appeals Regulations* and is a procedural impropriety.

12. The appeal is allowed on this basis. [REDACTED] has nothing to pay.