

An independent tribunal for parking  
and traffic penalties in London

Case No.2100433329

**Oksana Melnikova**  
-v-  
**London Borough of Enfield**  
(The Enforcement Authority)

Mrs Oksana Melnikova appealed against liability for payment of the Penalty Charge and associated release fees paid in respect of:

Vehicle Registration Number:	Penalty Charge Notice:	EF22490495
Contravention Date:	Mon 21 Jun 10	
Contravention Time:	11:02	
Location:	Riversfield Road EN1	
Contravention:	Parked in a special enforcement area adjacent to a dropped footway	

**Adjudicator's Decision**

The Adjudicator has allowed the appeal on the grounds that there has been a procedural impropriety on the part of the Enforcement Authority

The reasons for the Adjudicator's decision are attached.

**The Adjudicator directs London Borough of Enfield to cancel the Penalty Charge Notice and refund the penalty charge and the release charges paid.**

The Enforcement Authority must now issue this refund without delay. Enquiries regarding payment of the refund should be made to the Enforcement Authority.

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### Adjudicator's Reasons

The authority's case is that the Appellant's vehicle was parked adjacent to a dropped footway when in Riversdale Road on 21 June 2010 at 11.02.

The Appellant's case is that there has been a procedural impropriety in relation to the period of time expressed by the authority in relation to the consideration of representations following the removal of a vehicle. The Appellant argues the authority mis-states the Appellant's true legal position because it adds a day to the time prescribed in law for the authority to respond to the representations.

The removal representation form issued by the authority reads as follows:

'Upon receipt The London Borough of Enfield will investigate your representations and inform you whether they have been accepted or rejected within 56 days of the service of representations.'

Regulations 12(2) of the Civil Enforcement of Parking Contravention (England) Representations and Appeals Regulations 2007 reads in relation to vehicles that have been removed as follows:

(2) Subject to paragraph (1), if representations are made in accordance with regulation 11(4), it shall be the duty of the enforcement authority, before the end of the period of 56 days beginning with the date on which it receives the representations –

I find that the period of time as expressed by the authority in its removal representation form mis-states the time for consideration of the representations by adding one day, which is not permitted by the regulations.

The fact that this Appellant may or may not have been prejudiced by this is not a 'cure' to the substantive defect. The defect renders the penalty unenforceable. In the well-known decision of R (Barnet) v The Parking Adjudicator (2006) EWHC 2357 (Admin), relating to a Penalty Charge Notice issued under the Road Traffic Act 1991, the importance of complying with the requirements of the legislation was emphasised. Mr. Justice Jackson said in that case:

"Prejudice is irrelevant and does not have to be established. The 1991 Act creates a scheme for the civil enforcement of parking control. Under this scheme motorists become liable to pay financial penalties if certain specified statutory conditions are met. If the statutory conditions are not met then the financial liability does not arise."

I am satisfied that the judgment in the Barnet case is applicable to the Road Traffic Management Act 2004 as it was to the Road Traffic Act 1991.

All the legislation pertaining to decriminalised traffic enforcement is based around a sequence of actions. Each action must be completed within a specified time limit otherwise there are

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consequences. Any variation to one of these time limits has a knock-on effect on the subsequent actions and it effectively destroys the overall framework of the legislation. For reasons of coherence and consistency individual local authorities cannot be permitted to vary time limits

I find the Penalty Charge Notice to be defective and unenforceable.

In relation to other matters relied on by the Appellant I have decided that in light of my ruling on the first issue raised I am not required to resolve any other issues.

The appeal is allowed.

**Carl Teper**  
Adjudicator