In the matter of an application by Halton Borough Council for a review of decisions made by adjudicators

Case numbers: XM00480-1712, XM00772-1802, XM01398-1803, XM01316-1803 & XM01284-1803

PCNs – XM01427195, XM02255175, XM02306196, XM02382004, XM01884175, XM0233832A & XM02346587

Miss C, Mr L, Mr M, Mr H and Mr A-N v Halton Borough Council

The applications for review are allowed.
The appeal decisions are revoked and re-made.

All of the appeals are allowed on the grounds of procedural impropriety.
The appeal of Miss C is additionally allowed on the grounds that no road user charge was payable under the charging scheme for her second crossing of the bridge.

I direct the Council to cancel all of the Penalty Charge Notices listed above.

Adjudicator’s Reasons

INTRODUCTION

1. This is an application by Halton Borough Council for the review of a series of decisions by three adjudicators concerning the enforceability of road user charges and penalty charges for the use of a bridge known as the Mersey Gateway. The issues to be decided include some of the most significant ones arising in around 500 appeals presently pending before adjudicators of the Traffic Penalty Tribunal.¹

2. The towns of Runcorn and Widnes are separated by the estuary of the River Mersey. They are joined by the Silver Jubilee Bridge, which spans the estuary at a relatively narrow point. In the
early part of the 21st century it was noted that traffic flows across that 4 lane bridge exceeded 90,000 vehicles per day, leading to severe congestion and long queues. It was therefore decided to build a new bridge, to be known as the Mersey Gateway. The Mersey Gateway is a spectacular feat of engineering, crossing the estuary and the Manchester Ship Canal about 1½ miles up-river from the Silver Jubilee bridge, but at a wider point. It opened on 14 October 2017 and provides 6 lanes in a dual carriageway formation. On the opening of the Mersey Gateway bridge the Silver Jubilee bridge was closed for extensive maintenance but it is intended for it to re-open in about a year.

3. Runcorn, Widnes and the surrounding areas fall within the boundaries of Halton Borough Council, which is a unitary authority. As the roads which form the Silver Jubilee and Mersey Gateway bridges are not designated as trunk roads, Halton is the Highway Authority for both.

4. It was decided that the cost of the construction and operation of the Mersey Gateway would be substantially funded by tolls or charges, which would apply both to the Mersey Gateway and the Silver Jubilee Bridge (to which previously no charges had applied). The imposition of these charges has been controversial locally. Indeed the papers that I have seen include a copy of a Minute of a meeting of the Council on 11 December 2013 in which it resolved for the Leader of the Council to write to the Government expressing the Council’s anger and frustration at the requirement to impose tolls.

5. However it appears that central government was not to be moved and so the Council has felt obliged to proceed with a charging arrangement. There remains an active protest group opposed to the charges. Some members of that group attended the hearing today, initially mounting a demonstration outside the hearing venue and subsequently listening intently to the argument. Whilst I note the fact of the opposition to any charging regime it is necessary also for me to say at this early stage that I can express no opinion about the essentially political issue as to whether there should be charges. My role is limited to considering the legal issues which will be outlined below, as they apply to these particular appeals.

6. The legal basis for the charges and the enforcement process which led to this hearing is provided by the Transport Act 2000, as amended by the Local Transport Act 2008, and is known as road user charging. More detail is contained in the Regulations. Regulation 4 provides for the imposition of a penalty charge in prescribed circumstances:

4.—(1) A charging scheme may provide that a penalty charge is to be imposed in respect of a motor vehicle where—
(a) the motor vehicle has been used or kept on a designated road;
(b) events have occurred by reference to the happening of which a road user charge is imposed by the charging scheme; and
(c) the road user charge has not been paid in full within the time and in the manner in which it is required by the charging scheme to be paid.
(2) …
(3) …
(4) A charging scheme is to specify whether a penalty charge referred to in paragraph (1) or (2) is payable in addition to the road user charge or instead of such charge.

7. Regulation 4 allows a charging scheme to provide for the issue by the charging authority of a Penalty Charge Notice (‘PCN’) where a road user charge has not been paid. The recipient of a PCN may make representations to the charging authority on one or more of the specified grounds (Regulation 8).

8.—(1) Where it appears to the person on whom the penalty charge notice is served (“the recipient”) that—
(a) one or more grounds mentioned in paragraph (3) apply; or
(b) whether or not any of those grounds apply there are compelling reasons why, in the particular circumstances of the case, the penalty charge notice should be cancelled, the recipient may make representations in writing to that effect to the charging authority that served the penalty charge notice on the recipient.

...The charging authority may accept that challenge and cancel the PCN, or serve a Notice of Rejection.

8. The specified grounds that were relevant to the appeals underlying this review decision are as follows:
   (e) no road user charge or penalty charge is payable under the charging scheme;
   (g) there has been a procedural impropriety on the part of the charging authority.

9. For these purposes a procedural impropriety is defined in Regulation 8(4):
   4) In these Regulations “procedural impropriety” means a failure by the charging authority to observe any requirement imposed on it by the Transport Act 2000 or by these Regulations in relation to the imposition or recovery of a penalty charge or other sum and includes in particular—
      (a) the taking of any step, whether or not involving the service of any notice or document, otherwise than—
         (i) in accordance with the conditions subject to which; or
         (ii) at the time or during the period when,
      it is authorised or required by these Regulations to be taken;
   (b) ...

10. If the challenge is rejected it is open to the person who made the representations to appeal to an adjudicator. The adjudicator must allow that appeal if satisfied that one or more of the specified grounds applies (Regulation 11(6)), and may then give directions for the purpose of giving effect to that decision including for the cancellation of the PCN and for the refund of such sum (if any) as may have been paid to the charging authority in respect of the penalty charge or road user charge to which the PCN related.

11. The Procedure Rules³ include provision for either party to apply for a review of a decision of an adjudicator on specified grounds. Those specified grounds include ‘that the interests of justice require a review’ (paragraph 12(1)(b)(vi)).

12. Paragraph 12(3) provides as follows:
   (3) The parties must have the opportunity to be heard on any application for review under sub-paragraph (1). The adjudicator considering the application may direct the means by which that hearing will be conducted.

13. The appeals with which this decision is concerned relate to PCNs issued for alleged failure to pay a road user charge for crossing the Mersey Gateway bridge. In each case the recipient of the PCN challenged the PCN but then received a Notice of Rejection of the challenge(s). They then appealed to an adjudicator, and the adjudicator allowed the appeal. Halton Borough Council requested a review of that decision. In their applications for reviews they requested a hearing. I decided that the hearing should be oral and in public and the hearing took place in Runcorn on 8 May.

14. The Council informed the appellants that they would not seek to enforce payment of the road user charges or penalty charges that were in dispute regardless of the outcome of this review.
Understandably, none of the appellants participated in the review hearing. The Council was represented by Mr Timothy Straker QC. In view of the importance of the issues I was assisted by submissions as to the law from Ms Ruth Stockley of counsel, for whose help I am grateful.

**THE PUBLIC HEARING**

15. In advance of the hearing the Council requested that I should ‘explain’ my decision to hold the hearing in public and for it to be recorded. They did not exercise their right to apply to vary the Direction to that effect.

16. The reasons for that decision were that the Council had requested a hearing and there was no good reason for this to be refused. It seemed undesirable for a hearing of such length and complexity to be conducted by telephone or video link. The Procedure Rules provide for hearings of appeals to be in public unless the adjudicator otherwise directs (paragraph 8(1)). Having regard to the potential significance for other appeals and the local interest in issues concerning the charging regime, it seemed desirable for the hearing to be in public taking into account general considerations of open justice (including article 6 of the European Convention on Human Rights and Fundamental Freedoms). It is the practice of the Traffic Penalty Tribunal for all hearings, including telephone hearings, to be recorded for the assistance of the adjudicator and to resolve any issues that may arise as to the conduct of the hearing.

**THE GROUNDS FOR THE CHALLENGES AND THE ADJUDICATORS’ DECISIONS**

17. The grounds upon which Mr A-N, Mr H and Mr L challenged and subsequently appealed the PCNs were that they said that they did not see the signs informing them about the requirement to pay charges for using the bridge. Mr M said that he did see the signs but that they did not make clear how he could pay the charge.

18. The Council rejected the challenges and resisted the appeals. Their grounds for resisting the appeals of Mr H, Mr L and Mr M were in common form: ‘We will be contesting this case. We have decided this as at the time and date of the crossing all adequate signage was in place to inform users of the toll and how to pay. Merseyflow has been well publicised in the media and Halton Borough Council has made every effort to ensure that all customers can gain access to information about where and how to pay.’ It is to be noted therefore that, before the adjudicators, no issue was taken by the Council as to the power of an adjudicator to consider whether the signage was adequate.

19. The adjudicators allowed these appeals and directed the cancellation of the PCNs, having found that the signage was inadequate to inform the road users about the liability to pay a road user charge and / or how to pay it.

20. Miss C did see the signs and paid for two uses of the road, on 20 & 21 November 2017. The Council issued her with two PCNs because they considered that she was liable to pay four road user charges. On 20 November Miss C had crossed from Runcorn to Widnes but had then missed her exit. She took the next exit, immediately turning at a roundabout, and then passed back over the bridge to the Runcorn side, then turning again and re-crossing the bridge so that she could take the correct exit. She said that on 20 November she had made only one journey and should only be charged once. The documentation indicated that the three crossings had been completed within 8 minutes.

21. The underlying issues included whether Miss C had left and re-entered the scheme roads, whether a second or subsequent use on the same day (especially as part of the same journey) gave rise to further charges, and if so whether the signage was adequate to inform her of those additional liabilities.
22. The appeal of Miss C was allocated to Adjudicator Mr Barfoot. Neither party requested a telephone or face to face hearing and the decision was made without a hearing. On 12 January 2018 the adjudicator gave Directions for the further consideration of the appeal. He noted that the PCNs issued by the Council related to the second northbound crossing by Miss C on 20 November and the southbound crossing on 21 November. Miss C had made payment of two charges, believing that she was liable to pay for one on 20 November and a second on 21 November. The Council had apportioned the two payments respectively to the first northbound crossing and the southbound crossing on 20 November and therefore issued PCNs in respect of the second northbound crossing on 20 November and the southbound crossing on 21 November. The adjudicator found that the second payment made by Miss C should have been allocated, as she had intended, to the southbound crossing on 21 November. The Council had uploaded no documentation relating to that PCN. It followed that the appeal in respect of the PCN for that crossing was allowed. The Council has not sought a review of that Decision.

23. That left in issue the appeal relating to the road user charge and PCN issued in respect of the second northbound crossing. In his Directions the adjudicator noted that the road user charge was a charge for using the scheme roads, rather than a toll for crossing the bridge. He questioned whether the evidence provided by the Council supported a finding that Miss C had ever left the scheme roads, and if so whether leaving and re-entry in such circumstances gave rise to an additional charge under the scheme.

24. He also questioned whether, if so, the signage would have been adequate to inform Miss C that she would be liable for such a further charge. He noted the absence of a sign similar to diagram 679 at item 6, Part 4 of Schedule 8 of the TSRGD4 2016, which is used to identify the end of a road user charging scheme in a congestion zone. Further he referred to concerns raised in a previous appeal relating to whether there was an enforceable road user charging scheme in effect for the Mersey Gateway bridge. He identified those issues in detail. They included whether the scheme had been commenced and advertised in accordance with the procedures for doing so contained within it and whether the charging scheme complied with the requirements of the Transport Act 2000, in particular that it must specify the charges imposed. He noted that in the previous appeal the Council had not responded to the directions but instead gave notice that they would cancel the PCN.

25. The adjudicator set out the issues in detail and invited the Council to respond by a prescribed date. Their response, signed on their behalf by external solicitors and supported by extensive documentation, gave their replies to the issues raised by the adjudicator, set out their understanding of the route taken by Miss C, the steps taken to bring the charging scheme into force, the authority for the road user charges imposed, and the signage scheme.

26. Having considered that response and the additional documentation provided, Adjudicator Mr Barfoot reached his decision. In summary he found that the charging scheme provided for commencement by a resolution of the Council, and that there had been no such resolution until after the scheme came into effect. The scheme also required that the commencement resolution must be advertised in the London Gazette and in at least one newspaper circulating in the Borough of Halton. As the Council (when responding to his Directions) had provided a copy of an advertisement from the London Gazette but not one from a local newspaper he found that there had been no such advertisement and that the charging scheme had not taken effect. He therefore found that the ground provided for in Regulation 8(3)(e) was established as no road user charge or penalty charge was payable under the scheme (because the scheme was not in force).

27. The appeal was therefore allowed on that basis but he also made a finding that the charging scheme did not comply with the requirement in the Transport Act that it must specify the charges imposed, and further that there was no sufficient evidence that an officer of the Council had
exercised delegated authority to fix the charges. He therefore found that this also would have been a sufficient reason to allow the appeal. In those circumstances he did not consider it necessary to reach any decision whether Miss C left the scheme roads during the three crossings on 20 November, nor whether doing so would give rise to more than one charge or whether the signage of the consequences of turning and re-crossing the bridge met the required standard.

THE REVIEW APPLICATIONS

28. The applications for review were made under paragraph 12 of the Procedure Rules:

12.—(1) The adjudicator may, on the application of a party, review—

…

(b) any decision … to dismiss or allow an appeal, or any decision as to costs, on one or more of the following grounds—

…

(v) where the decision was made without a hearing, new evidence has become available since the decision was made, the existence of which could not reasonably have been known of or foreseen; or

(vi) the interests of justice require such a review.

(2) An application under sub-paragraph (1) must—

(a) be served on the proper officer within the period of 14 days beginning with the date on which the decision is given to the parties; and

(b) state the grounds in full.

(3) The parties must have the opportunity to be heard on any application for review under sub-paragraph (1). The adjudicator considering the application may direct the means by which that hearing will be conducted.

(4) Having reviewed the decision the adjudicator may direct that it be confirmed, revoked or that it be varied.

(5) If, having reviewed the decision, the adjudicator directs that it be revoked, the adjudicator must substitute a new decision or order a re-determination by that adjudicator, the original adjudicator or a different adjudicator.

29. The requests incorporated the grounds relied upon, and again were signed on behalf of the Council by their solicitors. In relation to Mr A-N, Mr H, Mr L & Mr M the requests are essentially in common form with minor tailoring to the individual circumstances. They deal in detail with the findings by the adjudicators and set out the processes under which signage was designed, approved by the Department for Transport under sections 64 & 65 of the Road Traffic Regulation Act 1984, and the interaction with byelaws which they said required the provision of the signs (see e.g. paragraph 3.1 of the request relating to Mr L’s appeal).

30. The request relating to Miss C set out the reasons why the Council believed that the adjudicator was in error in concluding that the resolution to commence the charging scheme pre-dated the making of the scheme, accepted that the local newspaper advertisement had not been before the adjudicator but explained that this was due to an oversight, and argued that the charging scheme did specify the ‘tolls’ so that the charging scheme satisfied the requirements of the Transport Act.

31. In his skeleton argument, and in his sustained oral argument at the hearing, Mr Straker sought additionally to take some more fundamental points. He argued that an adjudicator had no jurisdiction to consider whether or not the signs were adequate, indeed he submitted that as a matter of law the road user charges were enforceable regardless of whether there was any signage at all. He further argued that an adjudicator had no power to allow an appeal on any ground that was not advanced by the motorist appellant in representations to the Council or to
the adjudicator. It was his case that there was a presumption of regularity in favour of the Council. He submitted that any challenge to the validity of the charging scheme should have been by application to the High Court for judicial review and the time for such a challenge had long passed. It was not open to an adjudicator to allow an appeal on grounds amounting to a collateral challenge to the scheme. He also argued that the references in Regulation 8(3)(e) to ‘the scheme’ presupposed the existence of a scheme and therefore precluded an adjudicator from allowing an appeal on grounds concerning the existence or enforceability of a scheme.

SIGNAGE – THE LAW

32. It is convenient to deal initially with the issues as to signage. It seems to have been mutually assumed or accepted by the adjudicators, the Council, and their solicitors, that an appeal was capable of being allowed on grounds that the signage was inadequate. The Notices of Rejection of the initial challenges referred to the signage on the approach roads and on the bridge and stated that checks with maintenance contractors had revealed that none of the signs was missing or damaged on the alleged contravention dates. The requests for review of the adjudicators’ decisions did not assert any absence of a duty to provide signage in order for the charges to be enforceable. In his skeleton argument Mr Straker questioned whether an absence of signage fell within any of the grounds upon which an appeal may be allowed but the stark proposition that the charge could be enforced in the absence of signing was developed only at the hearing.

33. As noted above, article 12 of the Procedure Rules requires the party requesting the review to ‘state the grounds in full’. The (detailed) request for a review did not include any ground that that there was no duty to provide adequate signage. There was no application for permission to amend that request. I am therefore doubtful that this argument was open to the Council at the hearing. Nevertheless in deference to the importance of the issue I will make some findings.

34. The adjudicators, and the Council when exercising its powers to impose parking and bus lane restrictions, are familiar with the case-law relating to the duties to provide signage as it relates to them. In a significant number of cases the High Court and Court of Appeal have considered and where appropriate upheld findings by adjudicators that a council has failed in its public law duties as to signage and that as a result there was no contravention of the restriction. It would appear that there was a mutual understanding that the same principles applied to signage of road user charging schemes. That is the probable explanation for the adjudicators making findings as to the adequacy of the signage without also considering the basis of the duty to provide signage or the consequence of a failure to comply with any such duty; and the Council defending the appeals and seeking these reviews on the basis that the signage was adequate rather than as now asserted that there was no duty to sign or that a failure adequately to sign would not prevent enforcement.

35. The basis of the duty in parking and bus lane restrictions to provide signs, and of the power of the adjudicator in the case of a failure to comply with that duty, is given in a number of the judgments but is perhaps most fully developed by Burnett J, as he then was, in Camden.  

50. Mr Rogers expressed concern that if a free standing and unfettered power to allow appeals on the basis of ‘collateral challenge’ were not recognised, the approach of Parking Adjudicators to cases where motorists contend that signs or notices erected by enforcing authorities fail to comply with statutory requirement would be undermined. These cases are colloquially known as ‘signs and lines’ cases and make up about 15% of the workload of Parking Adjudicators. However, it became apparent in the course of argument that the current approach of the Adjudicators would be accommodated by the first ground of appeal: ‘that the alleged contravention did not occur’. That is because for a contravention to occur in addition to the underlying parking order being valid signs and lines complying with statutory rules must be in place. Various arguments have long been made by motorists, originally by way of defence in Magistrates’ Court proceedings and now in response to
Penalty Charge Notices and before Parking Adjudicators, that signs or lines did not comply with the rules. There is a well established body of case law which deals with this issue. Subject to a de minimis rule the signs must comply with the Traffic Signs Regulations and General Directions 2002/3113, or otherwise be authorised by the Secretary of State. These arguments raise issues of fact which go to the question whether there has been a contravention.

51. An enforcing authority has a statutory duty under regulation 18 of The Local Authorities Traffic Orders (Procedure) (England and Wales) Regulations 1996 to place signs giving notice of the effect of a traffic order. The authority must take such steps as are necessary to secure the placing of traffic signs in such positions as it considers requisite for securing adequate information as to the effect of a traffic order. The decision is one for the authority in the first instance. A failure to perform the duty, including a public law failure in the judgements it makes as to the requisite number and placing of signs, and the adequacy of the information thereby conveyed, would properly lead to the conclusion that a contravention had not occurred.

36. Mr Straker argued that there were two important distinctions between the parking and bus lane cases on the one hand, and the road user charge cases on the other. The first is that there is no ground of appeal in the road user Regulations that the alleged contravention did not occur. The second is that LATOR? does not apply to the road user charging orders.

37. He pointed out that section 177 of the Transport Act enables the appropriate national authority (which in England is the Secretary of State for Transport) to give a direction as to the signs that are to be placed and maintained in connection with the scheme. No such direction has been given. It was his case that if no signs had been provided, or hypothetically the signage had all been blown down in a gale, nevertheless the road user charge would have been enforceable, as would penalty charges for failing to pay them. He said that in such a case it would have been open to the motorist to apply to the Council for them to cancel the PCN on the basis of compelling circumstances (Regulation 8(1)(b)). If the Council were, as he put it, hard hearted and refused that request the motorist could appeal to an adjudicator and an adjudicator could exercise his power to refer the matter back to the Council with a recommendation that the PCN should be cancelled (Regulation 11(9)): but if the Council remained stony hearted and rejected that request the PCN and road user charge would be enforceable.

38. It would indeed be surprising in the extreme if a duty to pay a road user charge, backed in this case by a potential liability for a penalty charge for failure to do so, was not associated with a duty to provide signage. The most law abiding and diligent motorist is not to be expected to research the restrictions that apply to every road on which they intend to travel, before embarking on a journey. That is the reason for road signs.

39. Mr Straker gave examples of duties that need not be signed, such as the duty not to drive dangerously or recklessly. I agree that there are some duties of drivers that are general or universal, and that there is no need or expectation on the part of the motorist for these to be signed to be enforceable. However Mr Straker went further and asserted that the complete absence of signage for e.g. a 40 mph speed limit would not render it unenforceable. I do not agree. The requirement to sign speed limits is prescribed in section 85(1) of the Road Traffic Regulation Act 1984 but even if it were not it would be an abuse of process to prosecute in the absence of signs. The required signage is prescribed in Schedule 10 of the TSRGD 2016.

40. A motorist is entitled to expect that any restriction that is not general or universal and which is not obvious will be indicated by signage. Restrictions that do not require signage might include compliance with a 30 mph speed limit (indicated by frequency of lampposts), or the duty not to park beside a dropped kerb? (which is a universal duty, but the location of the dropped kerb is obvious and needs no additional signage).

41. Mr Straker also submitted that adjudicators were not well equipped to decide issues as to adequacy of signage and that these must be questions solely for the determination of the local
authority. In an extreme case an absence of signage might perhaps be the subject of an application for judicial review but even in such a case the judge might at best make a mandatory order requiring the Council to consider the signage further.

42. I cannot accept that submission. On a daily basis adjudicators consider appeals which raise issues as to whether parking or bus lane signage is adequate or has been adequately maintained. They routinely consider whether for example yellow lines have become so eroded that they no longer give adequate information to a road user, or whether signs erected are compliant with the TSRGD, or sited so that they are not obscured from the vision of the motorist. There is no reason in principle why they should be less well-equipped to deal with road user charging signage.

43. In Camden, Burnett J referred to decisions of Mr Gary Hickinbottom (as he then was), sitting as a parking adjudicator. Mr Hickinbottom had been dealing with a series of appeals in cases where the enforcing authority had delayed for years in issuing PCNs.

…He concluded that although the statutory scheme made the service of a Notice to Owner discretionary and imposed no time limit, it was implicit that a Notice to Owner must be served within a reasonable period. A failure to do so amounted to a failure to comply with the requirements of the scheme. In the result the authority could not enforce the charge and the appeals were allowed. This decision was of a piece with another of Mr Hickinbottom in PATAS Case No. 1940113243 given in May 2005. There the Penalty charge notice failed to contain prescribed information. The appeal was allowed on the basis that the authority could not rely upon a Notice that failed to comply strictly with the requirements set out in the statutory scheme. Both these cases were decided before the General Regulations and the Appeals Regulations were made in December 2007 and subsequently came into force on 31 March 2008. …

Although the parking regulations were amended in 2007 to impose a specific time limit for the service of a PCN, this is yet to be applied to the Bus Lane Regulations and so an adjudicator may even now only allow an appeal on the basis of a very seriously delayed PCN in a bus lane case on the same basis as was found by Mr Hickinbottom and approved by Burnett J.

44. It follows that in Camden the High Court found that terms may be implicit in a parking restriction scheme, in that case a term for service of the PCN within a reasonable period. There is no obvious reason why a term may not similarly be implicit within a charging order scheme.

45. Applying the contract law concept of asking an officious bystander whether a road user charge would be enforceable in the absence of signage would, in my view, very clearly elicit the response ‘of course not’. The public use highways as of right, and the duty to pay charges for such use is exceptional. Any road user would expect such a duty to be the subject of signs adequate to inform road users of the liability and how to discharge it.

46. In my judgment the duty under Regulation 18 of LATOR only codifies for parking and bus lane contraventions a duty which would in any event have been implied as a matter of law either in civil enforcement or in criminal prosecutions for motoring offences. Such a term should be implied into the road user charging scheme. It follows that I consider that the Council were under a duty to provide signage which in their opinion was adequate to inform road users about the road user charging scheme. Where the road user charging scheme is a congestion charging zone the charging authority may use the signage prescribed in Schedule 8 Part 4 of the TSRGD 2016. For other schemes they should seek specific authorisation for the signs from the Secretary of State under sections 64 & 65 of the Road Traffic Regulation Act 1984.

47. I further find that a failure to comply with that public law duty would in an appropriate case require an adjudicator to allow an appeal under Regulation 8(3)(e) (that no road user charge or penalty charge is payable under the penalty scheme) in similar manner to a finding that a failure
to comply with the duty to sign for a parking or bus lane case would give rise to a finding that a contravention had not occurred (paragraph 51 of Camden extracted above).

48. I note also that the byelaws refer at article 7 to a duty on a driver to comply with all notices road markings and traffic signals displayed in the bridge area, which itself would imply that there would be such markings and signs. That indeed was the case for the Council in their applications for review (see paragraph 29 above).

SIGNAGE – ITS ADEQUACY

49. Having dealt at some length with the question whether a failure to provide adequate signage would justify an appeal being allowed I must now turn to whether the signage in fact was inadequate, as found by the adjudicators. It would not be right for me upon a review too readily to disturb a finding as to fact made by an adjudicator. A review is not a re-hearing of factual issues.

50. Nevertheless I had regard to the fact that the adjudicators had not had the advantage of viewing the signs ‘on the ground’. They were reliant on photographic images provided to them by the Council. Photographs are often a proper and proportionate means for reaching decisions on routine appeals where the amount in issue may be a single penalty charge. However a site inspection is clearly preferable on the occasions when the expense can be justified.

51. I decided that as I was travelling to Runcorn for the hearing I should inspect the signage. Arrangements were made for me to be taken by minibus several times to and fro over the bridge and its associated roads. I was accompanied by representatives of the Council and others. I took into account that traffic was fairly light and weather conditions were good.

52. Having had the advantage of that inspection I regret that I was not able to accept the general findings of the adjudicators as to adequacy of the signage. It appeared to me to be large, well sited, in clear view, and to communicate to a driver unfamiliar with the area that a payment was required and how to pay it. The advance signs warn the driver of bridge ‘tolls’ ahead and that payment must be made by midnight the following day at Merseyflow. Next there are signs indicating the last exit before the tolls and ‘Bridge Tolls beyond this point’. A large sign indicates the charges for different classes of vehicle. There is an overhead gantry with a brightly illuminated warning to ‘Pay tolls online at Merseyflow’. I agree that there may be room for improvement of the advance signage but do not consider that it falls below the required standard of adequacy.

53. I recognise the criticism that the signage referred to payment of tolls whereas strictly what was payable was a road user charge. The confusion of language between tolls and road user charges may affect findings below, but for the purposes of signage I accept that the average motorist would more readily understand that a payment was required from a sign referring to a toll rather than one referring to a road user charge.

54. I also recognise that some motorists, on seeing a sign referring to tolls, may initially anticipate that there will be toll booths ahead. But the signage repeatedly clarifies that payment should be made online at Merseyflow and this seems to me to meet the rather low minimum standard of adequacy.

55. There is one exception however, which relates to the circumstances of Miss C’s journey. The Council contend that any exit and re-entry to the scheme roads gives rise to an additional road user charge and therefore that Miss C was liable for 3 charges for her use of the scheme roads for her journey on 20 November. I will return later to the question whether as a matter of construction of the road user scheme charging order they were correct.
56. However if the Council are right to seek payments for each re-entry I must consider whether it complied with its public law duty in relation to signage. That duty would be that the signage should be adequate to inform road users that leaving the bridge and its associated roads using a slip road, then using the roundabout at the foot to return onto the bridge and retrace one’s steps (a) involved leaving the scheme roads; and (b) – if indeed that is the case – that this would result in an additional road user charge being imposed.

57. The only sign relating to the charging arrangements on the slip road to exit the bridge read ‘Pay online at Merseyflow by midnight tomorrow’. It was effectively a repeat of information previously provided. It did not imply that the driver was leaving the scheme roads, nor that re-entry would require further payment.

THE APPROVAL OF THE SIGNAGE

58. By section 64 of the Road Traffic Regulation Act 1984, regulatory signage must either be of a size, colour and type prescribed in regulations, or must be specifically authorised by the Secretary of State. The relevant regulations are the TSRGD.

59. The Council did not rely for the road user charging signage on any signs in the TSRGD as there was no suitable signage there prescribed. It therefore applied for and obtained specific authorisation for the signage.

60. In his proof of evidence, the chartered engineer Mr Williams stated that ‘The 2016 TSRGD post-dated the contract for the Mersey Gateway Project (28th March 2014) and were issued too late for their provisions to be incorporated into the design/procurement process for the signs’. The TSRGD 2016 came into force on 22 April 2016 on which date the TSRGD 2002 were revoked. Transitional provisions allowed signage previously in use and consistent with the TSRGD 2002 to continue to be used, but that did not apply to this scheme as the bridge was not opened until October 2017. I do not understand why Mr Williams believed the material date for the relevant edition of the TSRGD to be the date of the project contract.

61. The checklist accompanying the request for authorisation of the signage included the question ‘[I confirm that] the signs follow the normal design rules and correspond as closely as possible to the nearest available prescribed sign or DfT working drawing’. The answer given is ‘N/A’. The reason for this would appear to be that the TSRGD 2002, by reference to which the signage had been designed, had no prescribed signs for road user charging schemes. However the TSRGD 2016, by reference to which the signage should have been designed, did have signs for congestion zone road user charging schemes. They were not directly capable of being used for this scheme but nevertheless these were the nearest available prescribed signs. Specifically, as Adjudicator Mr Barfoot observed, there was an ‘end of congestion charge zone’ sign, diagram 679, which conveniently might have been modified to inform users that they were exiting the scheme roads which were subject to the charge. This in turn might have alerted drivers that by re-entering the roads they might be subject to a further charge (if in fact as a matter of law that is the case).

62. The absence of exit signage was significant. Miss C appears from the documentation conscientiously to have tried to pay whatever was due. If the signage had indicated to her that she was leaving, and then re-entering, the scheme roads she should have understood that further payment might be required. It would have been at least desirable, potentially essential, for the signage to indicate that re-entry gave rise to a further charge bearing in mind that this is not obvious. For example neither the London nor Durham road user charge schemes require further payment on leaving and re-entering the zones. In my judgment – again I emphasise on the hypothesis that the Council is right that re-entry led to a further charge becoming due - the
absence of such signage for the information of drivers using the route followed by Miss C was so significant that I conclude that the Council would failed in its public law duty to provide adequate signage for drivers exiting and re-entering the scheme roads.

63. I cannot leave the issue of signage without referring further to the application process. The Introduction to the report which accompanied the applications for authorisation stated at paragraphs 1.2.1 and 1.2.2 that the scheme related to tolls to be charged for the use of the bridge. At paragraph 1.3.1 the legal basis for those tolls was given as the Mersey Gateway Bridge Byelaws 2016, a copy of which accompanied the application for authorisation.

64. Whilst I recognise above that the use of the word ‘toll’ may be justified as a matter of common English for the purpose of signage to motorists, it cannot be justified in a submission to the Secretary of State for authorisation of signs concerning a road user charge. Tolls and road user charges are legally separate and cannot co-exist – see section 172(4) of the Transport Act 2000. The PCNs were issued for failure to pay road user charges, not for breach of the byelaws (although confusingly they do refer to the PCN being issued for failure to pay the required toll). This signage was primarily required to inform road users about the road user charge sought under the charging scheme, rather than any toll due under the byelaws. The application to the Secretary of State for authorisation should have been accompanied by a copy of the road user charging scheme instead of, or at least as well as, the byelaws and the Introduction should have referred to road user charging rather than tolls. Further, the application for authorisation should have answered the question ‘For regulatory signs: - A statement of the restrictions(s), requirement(s) or prohibition(s) to be indicated by each sign design (or a draft or made TRO) with ‘Included’, rather than ‘N/A’.

65. Mr Straker invited me to conclude that the Secretary of State would not have been misled because officials in the Department for Transport had been intimately involved in the development of the road user charging scheme, and under the well-known principles derived from the Carltona 11 decision he should be taken as having all of the information known to his officials. I do not accept that argument. It is unrealistic to believe that the officials in the signs division would base their decision otherwise primarily than on the application material supplied to them. Furthermore the evidence clearly shows that in fact they thought that they were considering the approval of a tolling scheme – see the introductory paragraph to the Authorisation 'The Secretary of State for Transport, in exercise of his powers under Sections 64 and 65 of the Road Traffic Regulation Act 1984, and all other powers enabling him in that behalf, for the purpose of informing drivers of the conditions of use of tolls at the Mersey Gateway Bridge … (emphasis added).

66. I have considered anxiously whether I should conclude that this error undermines the authorisation to such an extent that it ceases to be valid, so rendering the signage non-compliant. With some hesitation I reach the conclusion that the signage was authorised and so it was lawful for it to be placed in these locations but the Council may well wish to consider seeking a fresh authorisation on the correct basis.

THE CHARGING SCHEME ISSUES

67. The three issues encompassed within the request for a review of the decision relating to Miss C concerned the commencement of the charging scheme, the publication of that commencement and the failure to specify the charges. I will return to the issues raised by Mr Straker as to the jurisdiction (or otherwise) of an adjudicator to determine such matters but it is convenient first to deal with the substance of them.

68. Article 1(2) of the charging order provided:
69. The charging order was made on 9 March 2017. The Council rely on a resolution by the Council at its meeting on 14 September 2016:

‘…that the charging scheme under the RUCSO come into effect on 1 July 2017, subject to the RUCSO being made by the Council (the appointed day)’

70. As a matter of construction, the adjudicator found that the requirement in the charging order for the date to be appointed by the Council implied that the resolution must post-date the making of the order. The Council responded that the resolution was conditional on the making of the scheme. Therefore the resolution did not take effect until the scheme was made and, in turn, therefore it did post-date the making of the scheme.

71. Conditional resolutions are not uncommon in local government. In my judgment the date was effectively appointed by the Council.

72. Article 1(3) of the charging order provided:

‘No later than three months before the appointed day the Council shall publish notice of the resolution under paragraph (1) in the London Gazette and in at least one newspaper circulating in the Borough of Halton’

73. In his Directions, the Adjudicator asked the Council ‘to provide copies of the relevant press notices published pursuant to Article 1(3) of the MGRUSCO’. In their response the Council referred to an advertisement in the London Gazette, and provided a copy of it. They did not refer to or provide a copy of an advertisement in a local newspaper. That was the basis on which the adjudicator found that no evidence of such advertisement had been provided and concluded that notice was not published in such a newspaper.

74. I consider that the adjudicator was entitled to reach this decision on the evidence that was before him.

75. However the Council has now provided a copy of an advertisement which appeared in the Runcorn & Widnes Weekly News, published on 23 March 2017. This gives the required notice.

76. At paragraph 3.2 of their request for a review the Council say:

‘Failure to provide a copy of the local press advert was an oversight during the appeal process and it was open to the Adjudicator to request a copy of it at any point, if he was minded to make adverse findings due to a lack of a copy. The Adjudicator’s role is inquisitorial, rather than judicial, and he has misdirected himself that the Council’s oversight in not providing a copy of the notice (which is a matter of public record) requires him to find that the publication did not take place at all’.

77. I accept that this was an oversight on the part of the Council or their solicitors. I do not accept the criticism of the adjudicator. He had, after all, directed the provision of the advertisement and the response by the Council’s solicitors did not provide this. He was fully entitled to draw the inference that there was no advertisement. There is a limit to the enquiries that are proportionate where a penalty charge of £40 and a road user charge of £2 are all that is in dispute.

78. Strictly speaking this does not fall within ground for review 12(b)(v) because new evidence has not become available since the decision was made, the existence of which could not reasonably
have been known about or foreseen. Bearing in mind the concession identified at paragraph 14 above it is sufficient in relation to this issue for me to say that had the local newspaper advertisement been provided to the adjudicator, the adverse finding in this respect would not have been made.

79. The final issue in the Miss C request for review relates to the finding by the adjudicator that the Council had failed to comply with its duty to specify within the charging order the charges imposed. The material provisions of the Transport Act 2000 are as follows:

163(1)In this Part “charging scheme” means a scheme for imposing charges in respect of the use or keeping of motor vehicles on roads. …

168 Charging schemes to be made by order.
(1) A charging scheme under this Part is made by order of the charging authority …

171 Matters to be dealt with in charging schemes.
(1) A charging scheme under this Part must—
(a) designate the roads in respect of which charges are imposed,
(b) specify or describe the events by reference to the happening of which a charge is imposed in respect of a motor vehicle being used or kept on a road,
(c) specify the classes of motor vehicles in respect of which charges are imposed,
(d) specify the charges imposed,
…
(5) The charges that may be imposed by a charging scheme under this Part include different charges (which may be no charge) for different cases, including (in particular)—
(a) different days,
(b) different times of day,
(c) different roads,
(d) different distances travelled, and
(e) different classes of motor vehicles.

The Order relied upon by the Council is The Mersey Gateway Bridge and the A533 (Silver Jubilee Bridge) Roads User Charging Scheme Order 2017 (known inelegantly as the MGRUSCO).

80. Article 10 of the MGRUSCO provides as follows:

10(1) On and from the appointed day the charges for the use of the scheme roads shall be at such level within the charge range specified as the Council may determine and shall remain at such level unless revised in accordance with paragraph (5) or (6) below.
(2) The classification of vehicles or classes of vehicles in respect of which charges may be levied from the appointed day shall be those set out in Schedule 1.
…
(4) In this paragraph “charge range” means the level of charge contained in the table below increased by the same percentage for each whole year between April 2008 and the appointed day as referred to in article 11 (percentage increase of charge ranges) subject to article 12 (general provisions as to charge ranges).

<table>
<thead>
<tr>
<th>Class of vehicle</th>
<th>Charge range</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>
(5) The charge range applicable in respect of any vehicle or class of vehicles as provided for in this scheme shall be revised by the Council in accordance with article 11 (percentage increase of charge range) each year.

(6) The charge payable in respect of any vehicle or class of vehicle may be varied within the charge range in effect from time to time.

(7) Whenever the Council proposes to revise the charge that applies to any vehicle or class of vehicles pursuant to paragraph (6) it shall publish in at least one newspaper circulating in the Borough of Halton a notice substantially in the form set out in Schedule 3.

(8) The charges set out in a notice given under paragraph (7) shall have effect from the date 4 weeks after the date on which the notice referred to in paragraph (7) is published.

<table>
<thead>
<tr>
<th>Class 1 vehicles</th>
<th>£0 - £2.50</th>
</tr>
</thead>
<tbody>
<tr>
<td>Class 2 vehicles</td>
<td>£1.00 - £2.50</td>
</tr>
<tr>
<td>Class 3 vehicles</td>
<td>£2.00 - £5.00</td>
</tr>
<tr>
<td>Class 4 vehicles</td>
<td>£4.00 - £10.00</td>
</tr>
</tbody>
</table>

81. The adjudicator found that the MGRUSCO failed to comply with the requirement by the Transport Act that it must ‘specify the charges imposed’. He said that providing a range within which a price may be fixed does not amount to specifying the charge. The dictionary definition of ‘specify’ includes ‘identify clearly and definitely’, ‘state a fact or requirement clearly and precisely’.

82. In their request for a review (paragraph 4.6) the Council say that the adjudicator misdirected himself both as to the meaning of ‘specify’ and in finding that ‘the toll charges must be set out on the face of the MGRUSCO’.

83. In argument Mr Straker developed this further. He submitted that it was wrong to find that a specification must be numerical rather than by description. By way of example he referred to the provisions in the MGRUSCO allowing upward revision of the range by reference to variation in the retail price index, rounded to the nearest 10 pence.

84. The fallacy of this argument is that a fixed figure, subject to adjustment for inflation by reference to a prescribed methodology, results in a fixed figure ascertainable by the public. However the prescription of a range within which the Council may subsequently select the particular charge to be applied does not result in a fixed ascertainable sum that complies with the duty for the charge to be specified.

85. Mr Straker suggested that section 173(5) of the Transport Act supported his argument that it was the statutory intent that it should be open to the Council to make a charging order which delegated detailed decision making to the Council, outside the order framework. He submitted that the purpose of this subsection was to facilitate differential charging on the occasion of specific events, for example horse races. I am unable to agree. It appears to me that this section is intended to enable the charging order to contain provisions to enable different charges on different days of the week or times of day. An example of this is that the Dartford crossing, the charging order for which is made under the same provisions, provides for no charges to be due for use of the scheme roads between 10 pm and 6 am.

86. The clear statutory requirement is for the scheme to specify the charges imposed and for those charges to be specified within the Order. It is not necessary for me to make a finding as to whether an inflation linking provision alone would be inconsistent with the requirement to specify the charge imposed. In the course of the hearing I was inclined to the view that this retained the required crystalisation at any particular date of the amount payable in similar manner to a conventional inflation clause in a property rental agreement. On reflection I am not sure that the
87. In argument I sought to test the issue by asking Mr Straker if he would still consider the scheme compliant with the Transport Act duty if the range specified had been £0 to £100. He said that it would. If this were right it would appear to me to drive a coach and horses through the statutory intent. It would mean that the charging order gave no real indication to the road user as to the amount of the charge or even whether there was a charge.

88. Ms Stockley helpfully referred me to the decision of the Court of Session in Scotland in Freight Transport Association v Lothian R.C. [1977] SC 324 and 1978 SLT 14. In that case Lothian Regional Council had made an Order intended to regulate the use of public off street car parks. The Order was made under section 31(1) of the Road Traffic Regulation Act 1967 which empowered the Council to make provision by order as to \textit{inter alia} the charges to be paid for the use of such parking places. The Order made by the Council provided for a scale of maximum charges, rather than fixed charges. Their avowed purpose was to avoid the necessity of making new orders to reflect the impact of inflation. The Court found that the words “the charges to be paid” were clear and unambiguous and meant that the actual charges to be paid were to be stated in the Order.

89. Although not strictly bound by that provision of the Scottish court, which in any event applies to slightly different legislative drafting, I find it highly persuasive. In my judgment the adjudicator was right to find that the provision within the Order of a range rather than a fixed figure did not satisfy the requirement for the order to specify the charge. I further find that this was not cured by the subsequent decision by the council’s Operational Director – Legal & Democratic Services to fix the figures within those ranges, notwithstanding those fixed figures were advertised in the Runcorn & Widnes Weekly News. His actions in doing so may have specified the charges but he did not do so by order as required by the Transport Act. The result was that even the most diligent member of the public was unable to ascertain his or her obligations, if any, on the face of the MGRUSCO.

90. It is right that I should say that I understand that a new road user scheme charging order was made with effect from 19 April 2018 under which the amounts payable are fixed, or at least fixed subject to inflation linkages. I have not read that document either in draft or in final form. Nothing that I say in this decision should be understood as expressing any view as to the enforceability of the MGRUSCO 2018.

**THE JURISDICTIONAL ISSUES**

91. I must now deal with Mr Straker’s argument that an adjudicator lacked jurisdiction to allow an appeal for invalidity of the charging order, including a failure to comply with the requirement to specify the charges.

92. He relied upon the legal presumption of regularity in the taking of administrative steps, formerly known by its Latin tag \textit{omnia prasemuntur rite esse acta}, referring to the well-known dicta in \textit{Calder Gravel v Kirklees [1990] 60 P&CR322} and more recent guidance in \textit{Williams v Patrick [2014] EWHC 4120}. However he accepted that there could be no such presumption if there was a defect on the face of the order. This presumption may therefore have assisted him if I had concluded that the commencement resolution was not compliant with the requirements of the Order or that there had been no advertisement as to the commencement as required, as these were not defects on the face of the order. But the provision of a charging range, rather than a specific price for each class of vehicle, is on the face of the order.

93. His next point was that the jurisdiction of the adjudicator was limited to considering the issues
contained in the representations by the vehicle owner in the challenge to the Council under Regulation 8(1), together with any additional representations made to the adjudicator (Regulation 8(5)). As Miss C had not claimed any procedural impropriety on the part of the Council, or alleged facts on which such a finding might properly be made, he contended that it was not open to the adjudicator to make such a finding.

94. This pleading issue was not contained within the Council’s request for a review. As noted above, the Procedure Rules (paragraph 12(2)) require an applicant for a review to lodge their request within 14 days and to 'state the grounds in full'. It is not right for the Council in a review application to seek to exclude a potential ground of appeal available to a lay motorist on the ground that it had not been contained in the initial representations, but then fail itself to plead that ground in its application for review. The requirement on a review application to state the grounds 'in full' clearly, and for reasons which may be obvious, is stricter than the initial requirement upon the vehicle owner.

95. It is also relevant to note that the form of PCN used by the Council was liable to mislead a potential appellant into believing that procedural failures by the Council did not fall within the definition of procedural impropriety. The reverse of the PCN form sets out the grounds for appeal as provided for in article 8(3) and 8(4) of the Regulations. The last such ground of appeal is procedural impropriety. Beside each potential ground of appeal is a box giving some explanation of that ground. The explanation provided for the procedural impropriety ground is:

‘If you believe that there has been a failure on the part of the Secretary of State for Transport in relation to this notice or its enforcement, you must explain this to us’

96. The reference to the Secretary of State for Transport is plainly wrong. It seems likely that the Council (or their agents) copied this from the PCN used for the Dartford Crossing. That road forms part of the trunk road network and so the Secretary of State is the Highway Authority. The Highway Authority for the Mersey Gateway is Halton Borough Council and that name should have appeared in the explanation box in substitution for the Secretary of State for Transport.

97. Easy as it is to understand how the error may have arisen, the consequence for the motorist considering whether there are any grounds which may be advanced for an appeal is very probably for them to dismiss this potential ground. They may have no reason to believe that the Secretary of State for Transport has done anything wrong in relation to the PCN or its enforcement. Their concerns, if any, will relate to the actions of Halton Borough Council or its operational agents. In my judgment this error alone would preclude the Council from taking any point against Miss C for failing to claim procedural impropriety, and failing to assert grounds upon which such a finding might have been made.

98. In any event to restrict the jurisdiction of the adjudicator to issues raised by the appellant would have most undesirable consequences. For example:

i. Following the lodging of an appeal the Council fails to comply with its duty under paragraph 3(4) of the procedure rules for adjudication proceedings. This could not be contained within the original grounds for challenge but is a ground on which the appeal should be allowed for the procedural impropriety of failure to comply with the Regulations;

ii. (Arising from real circumstances), a bus lane appeal is received based on grounds which cannot justify allowing the appeal, e.g. that the vehicle owner was not driving the vehicle at the time. However the Traffic Regulation Order imposing the restriction had not come into effect until some days after the alleged contravention, or due to a drafting error did not apply to the location of the alleged contravention;

iii. (Again arising from a real appeal), a bus lane appeal is lodged on the basis that there is an exemption for prison transport vehicles. The Traffic Regulation Order concerned does
not contain any such exemption. The adjudicator asks the vehicle owner how many seats there are within the vehicle. The owner replies that there are 11, and provides evidence to support this. The adjudicator then allows the appeal, not on the grounds or facts relied upon by the appellant (that it was exempt by reason of being a prison vehicle) but on the grounds and facts that the vehicle fell within the applicable definition of a bus;

iv. A parking PCN is appealed on the basis that a pay and display ticket machine failed to register a coin as a result of which the vehicle overstayed the time printed on the ticket. The adjudicator notes that the extent of the overstay was less than the 10 minutes of grace now allowed under the regulations and so allows the appeal.

99. As the Council pointed out in their review application (paragraph 74 above), the role of the adjudicator is essentially inquisitorial. They are entitled to ask questions. If, as in this case, the adjudicator notes an apparent defect in the charging order he is entitled to enquire into it and, if satisfied that there is such a defect which falls within one of the statutory grounds, to allow the appeal. There is nothing unusual about a Tribunal having the power to investigate a matter that was not raised by a party – see for example the decision of the Upper Tribunal in AP-H v Secretary of State for Work and Pensions [2010] UKUT 183 (AAC).

100. Mr Straker submitted that Regulations 8(5) and 8(6) should be read together, and that it followed that the adjudicator could only allow an appeal on the basis of the representations made by the appellant and the charging authority:

(5) On an appeal under this regulation the adjudicator must consider the representations in question and any additional representations which are made by the appellant together with any representations made to the adjudicator by the charging authority.

(6) If the adjudicator concludes that a ground specified in regulation 8(3) applies, the adjudicator must allow the appeal and the proper officer must notify the appellant and the charging authority of the outcome in accordance with paragraph 11(3) of the Schedule.

101. I respectfully disagree. The provisions of Regulations 8(5) and 8(6) are disjunctive. Regulation 8(5) provides a mandatory requirement for the adjudicator to consider the representations. Regulation 8(6) requires the adjudicator if satisfied that a ground under regulation 8(3) applies to allow the appeal.

102. The task of the adjudicator is in part described by Burnett J in The Queen on the application of Makda v Parking Adjudicator [2010] EWHC 3392 (Admin):

‘28. In the course of argument this morning I have had cause to observe that adjudicators have an extremely difficult task. They perform what seems to me to be an important yet very difficult judicial function. It is important because thousands of appeals are adjudicated upon in circumstances where many people who appeal parking tickets will have no other cause to become involved in the judicial system. Mr Rogers, who appears for the parking adjudicator this morning, indicated that overall about 80,000 appeals are made each year. The task is difficult because a large number of those appeals are dealt with on paper. They are dealt with on short submissions made by drivers or vehicle owners. Those submissions are inevitably not informed by reference to the underlying statutory provisions or legal concepts in play. Adjudicators are in one sense expected to be all seeing and all knowing’ (emphasis added)

103. These observations underline the inquisitorial role of the adjudicator. This includes knowledge as to the law and on occasion factual information drawn from other appeals. It would be wholly wrong to preclude an adjudicator from allowing an appeal, if satisfied that a Regulation 8(3) ground was satisfied, solely because the ground or the facts supporting that ground had not been included by the appellant in the challenge.
104. The final jurisdictional challenge from Mr Straker was again not anticipated in the application for a review. He argued that a challenge to the charging order could only be maintained by an application to the Administrative Court for judicial review. It was further his case that this route to challenge was no longer open as an application for judicial review must be brought promptly and in any event within 3 months. The MGRUSCO had been made in March 2017 and so the time for a challenge had long since expired. There was a public interest in certainty in legislation and the importance of such challenges being brought within the 3 month time limit was emphasised by the requirement for a 3 month delay between the making of the order and its implementation. A remedy capable of protection by a public law application should as a general rule be brought by application for judicial review and not in other proceedings (O’Reilly v Mackman [1983] 2 AC 237). There was no ground of appeal within the Regulations which would empower an adjudicator to allow an appeal, even if grounds for challenge to the order could otherwise be established. These were matters that should be left peculiarly to the Administrative Court.

105. The answer to these points is essentially given in Camden. Burnett J referred with approval to the previous decision of Scott Baker J in R v Parking Adjudicator ex parte Bexley LBC [1998] RTR 128. In that case the judge rejected the proposition that an adjudicator can only allow an appeal on grounds related to the validity of the order, if the order has first been found by the Administrative Court to be invalid. He found that it was open to the adjudicator to make a finding as to validity in the context of the individual appeal before him. ‘In my judgment the Adjudicator is given express power to consider vires … but even apart from that express power, it is my view that he would have been entitled to do so’ (paragraph 37). Scott Baker J also rejected a submission from counsel to the effect that issues of validity should not be decided by adjudicators: ‘My conclusion is that Parliament has entrusted the work of the parking adjudicators to those who are legally qualified … They are unlike magistrates, who often consider the validity of byelaws, and that on a true construction … they are entitled to consider the issues of collateral challenge that arose in this case’.

106. Mr Straker relied upon R v Wicks [1998] AC 92 in support of the proposition that an adjudicator could allow an appeal on validity grounds only if the provision had first been struck down by the administrative court. It is apparent from the judgment in Bexley that Scott Baker J had Wicks in mind. Burnett J in Camden noted that and said ‘Only an unusual individual motorist would be bothered with a parking order unless and until it were suggested that he had contravened it. It is for that reason, as it seems to me, that Scott Baker J concluded that even absent the express power, a challenge to the validity of the order on the basis advanced in that case would have been available to the motorist’. That reasoning applies with equal weight to a challenge to a road user charging order if justified as falling within the definition of procedural impropriety, even though the order had not previously been struck down by the Administrative Court and even though there is no express appeal ground based on invalidity of the charging order.

107. In Camden these references to collateral challenge fell further to be considered. Burnett J agreed with Elias J in R(Westminster City Council) v Parking Adjudicator [2002] EWHC 1007 (Admin) that the four corners of the adjudicator’s jurisdiction were to be found within the grounds for appeal provided for in the regulations. The adjudicator does not have the powers of the Administrative Court to allow an appeal on the wide range of administrative law grounds available on judicial review. Nevertheless he found (paragraph 47) that an adjudicator was empowered to allow an appeal on the ground of procedural impropriety contained in the definition within the regulation even though such an appeal would otherwise be an impermissible collateral challenge.

108. In those circumstances I conclude that it is open to an adjudicator to find an order unenforceable for the purposes of an appeal that is before him or her, but only if the nature of the invalidity of the order falls within one of the grounds for challenge provided for in the relevant regulations (which vary as between road user charging, parking and bus lanes).
109. This also is the answer to the argument by Mr Straker that, as the Regulations refer to ‘the scheme’, it is not open to an adjudicator to question the existence of the scheme. A decision by an adjudicator that there was procedural impropriety affects only the enforcement of the scheme. It is not the equivalent of an Order of the Administrative Court to bring up and quash the instrument in its entirety.

110. The ground of challenge relevant to the failure to specify the charges is procedural impropriety, subject to the special definition of procedural impropriety for the purposes of these regulations:

8(4) In these Regulations “procedural impropriety” means a failure by the charging authority to observe any requirement imposed on it by the Transport Act 2000 or by these Regulations in relation to the imposition or recovery of a penalty charge or other sum and includes in particular—

(a) the taking of any step, whether or not involving the service of any notice or document, otherwise than—

(i) in accordance with the conditions subject to which; or

(ii) at the time or during the period when,

it is authorised or required by these Regulations to be taken

111. It was a requirement of the Transport Act 2000 that the charging scheme must specify the charges imposed (section 171) and must do so by order. The MGRUSCO did not specify the charges to be imposed, nor did any other order. Those charges were a sum other than a penalty charge. It follows that the identified failures fell within the definition of procedural impropriety and it was open to the adjudicator to find that ground 8(3)(g) had been established.

THE BYELAWS

112. A further issue arose in the course of the hearing. Mr Straker said that the Mersey Gateway Bridge Byelaws remained in effect. Article 21 provides that:

‘A person driving a vehicle into the bridge area … is liable to pay a toll/charge before it finishes its passage through the bridge area at a level displayed at all entry points into the bridge area’

113. Article 23 provides:

‘Any person who shall contravene or fail to comply with a provision of these byelaws shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale’

114. Mr Straker accepted therefore that failure to pay the sum displayed on the notice boards before the vehicle finished its passage through the bridge area was a criminal offence capable of prosecution. He invited me to rely on the good sense of the Council not to prosecute for such an offence, in particular not to prosecute a motorist who paid the charge online by midnight on the day following the road use as required by the MGRUSCO but did not do so before leaving the bridge as required by the byelaw.

115. This is at best unsatisfactory, but it gives rise to a further potential ground for challenge. Section 172(4) of the Transport Act 2000 provides that:

‘A road shall not be subject to charges under a charging scheme under this Part if tolls are charged in respect of the use of the road’.

116. I asked Mr Straker if the byelaw created a toll, but he would not be drawn on this. It is difficult to see that the ‘toll/charge’ provided for under the byelaw could be anything other than a toll. It
requires a payment before leaving the bridge under pain of criminal sanctions. It cannot be a road user charging scheme, as the byelaw states on its face that it was made under powers in the Transport & Works Act 1992 and the River Mersey (Mersey Gateway Bridge) Order 2011 (and therefore not under the road user charging provisions of the Transport Act).

117. I conclude that the making and continued operation of the MGRUSCO without revocation of the byelaw was inconsistent with the requirement imposed by section 172(4) of the Transport Act in relation to the imposition of road user and penalty charges.

SECOND AND SUBSEQUENT USE OF THE SCHEME ROADS

118. The final issue is one to which I referred above, and is whether by exiting the bridge, using the roundabout and then returning Miss C incurred a second liability for a road user charge. The adjudicator was not satisfied on the evidence then produced to him that Miss C did leave the scheme roads when she went down the ramp from the bridge road, used the roundabout at the foot and then went up the ramp to cross the bridge in the opposite direction. The evidence now produced to me has established to my satisfaction that the roundabout was not included in the scheme roads.

119. The assumption by the Council that a further charge was payable on exit and re-entry may have been informed by the consistent use by them, their solicitors and agents of the word ‘tolls’ to describe what is in fact a road user charging scheme (certainly if the byelaws are disregarded). Most road users would understand that a toll was payable whenever a tolling booth or charge point was passed. That is not necessarily the case for a road user charging scheme – see for example the London and Durham congestion charge zones mentioned above in which a single daily charge is payable however many times a vehicle may exit and re-enter the zone.

120. Section 171 of the Transport Act 2000 requires the charging scheme to ‘specify or describe the events by reference to the happening of which a charge is imposed in respect of a motor vehicle being used or kept on a road’. Article 6(1) of the MGRUSCO provides that

‘A charge is to be imposed in respect of a vehicle where – (a) the vehicle has been used or kept on the scheme roads; and (b) the vehicle falls within a class of vehicles in respect of which a charge is imposed by this Order.

121. As there is no apparent facility to park a vehicle on the scheme roads it may be that charges will never be imposed for keeping a vehicle there. However if there were such parking facilities (as there are in Durham and London) it would appear that a daily charge would apply even if the vehicle were not moved. It might reasonably therefore follow that the charge for using the road arises daily rather than on each exit and re-entry.

122. In my judgment that provision is at best ambiguous as to whether a use of the scheme roads which involved leaving and re-entering them would give rise to a second or subsequent charge. It would have been simple for the charging order to make clear that second or subsequent use of the scheme roads, whether as part of a single journey or as separate journeys on the same day, gave rise to further charges. Provisions imposing charges or penalties should be construed strictly. Per Burnett J in Camden paragraph 32

‘The Appeals Regulations make clear that procedural impropriety as defined is fatal to the recovery of a penalty charge. It is therefore incumbent upon enforcing authorities to comply meticulously with the requirements of the statutory scheme if they are to recover penalty charges.’

In the absence of a clear requirement in the scheme, no second or subsequent charge became
due, in particular in the context of a single journey.

THE PENALTY CHARGE NOTICE

123. At paragraphs 95 - 97 above I refer to the provision of misleading information on the reverse of the PCN as to the basis upon which a challenge or appeal may be pursued for procedural impropriety. Whilst no doubt unintentional, this error was both careless and egregious. Regulation 7(3)(h) requires that the PCN must contain information to the effect that the recipient ‘is entitled to make representations to the charging authority against the imposition of the penalty charge on any of the grounds specified in regulation 8(3). At paragraph 33 of Camden, Burnett J said

‘In my judgment it is possible that contradictory, confusing or obscure language may result in ‘a failure to observe a requirement’ imposed on an enforcing authority by the statutory scheme’.

I conclude that this error alone would be sufficient to justify allowing these appeals for procedural impropriety.

CONCLUSION

124. In the result, as I consider that the appeals should be allowed but on different grounds from those given by the adjudicators, these applications for review are allowed but the decisions remade allowing all of the appeals.

125. In relation to Miss C I find:

i. There was a procedural impropriety on the part of the charging authority by reason of the failure to comply with the duty under the Transport Act 2000 to specify the charges within the charging order;

ii. No road user charge, and therefore no penalty charge, was payable under the scheme in respect of the second crossing of the bridge because payment was lawfully made in respect of the earlier crossing and the charging order did not provide for a second or subsequent charge on exit and re-entry to the scheme roads;

iii. If I am wrong about (ii), the Council failed in its public law duty to provide signage adequate to inform Miss C that she was leaving the scheme roads and then re-entering them, and that in doing so she was liable to a further charge. For this reason no road user charge or penalty charge was payable under the penalty scheme.

Had it been necessary to the decision I would further have found:

iv. There was a procedural impropriety on the part of the charging authority in that the Penalty Charge Notices contained misleading information such that they failed to provide the information required by Regulation 7(3)(h);

v. There was procedural impropriety on the part of the charging authority in that the Transport Act 2000 precluded the making of a charging scheme when tolls were payable under the byelaws.
126. In relation to Mr A-N, Mr H, Mr L and Mr M I consider that the signage was adequate to inform them of the restriction and of the manner of payment of the road user charge. However I find that there was a procedural impropriety for the same reasons as I have found in relation to Miss C in paragraph 125 (i).

Edward Solomons
Adjudicator
17 May 2018

The persons appointed to be parking adjudicators are also road user charging scheme adjudicators – see regulations 2(1) and 12(1) of the Regulations. The appointment is made by a joint committee of local authorities with the consent of the Lord Chancellor. The adjudicators are also separately appointed as bus lane adjudicators and have jurisdiction in England and Wales outside London. The adjudicators together with their administrative staff are collectively known as the Traffic Penalty Tribunal.


Procedure in Adjudication Proceedings, contained in the Schedule to the Regulations and provided for in Regulation 14(1)

Traffic Signs Regulations and General Directions

e.g. The Queen on the application of Neil Herron & Anr v The Parking Adjudicator & Anr [2009] EWHC 1702 (Admin), The Queen on the application of Nottingham City Council v Bus Lane Adjudicator [2017] EWHC 430 (Admin)

London Borough of Camden v Parking Adjudicator & Ors [2011] EWHC 295 Admin

Regulation 18 of the Local Authorities Traffic Orders (Procedure) (England and Wales) Regulations 1996

Excluded from LATOR by The Local Authorities’ Traffic Orders (Procedure) (England and Wales) (Amendment) (England) Regulations 2009

The Bus Lane Contraventions (Penalty Charges, Adjudication and Enforcement) (England) Regulations 2005


Carltona Ltd v Commissioners of Works [1943] 2 All ER 560

MGRUSCO: the Mersey Gateway Road User Scheme Charging Order