

APPENDIX 8

Memorandum submitted by Neil Herron on behalf of the Metric Martyrs Defence Fund

CURRENT EFFECTIVENESS OF PARKING PROVISION AND ENFORCEMENT POLICY

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I wish to make the following submission to the Committee but I also wish to make a formal request that further, more substantive evidence, either written or oral, may be submitted after the date 3 October 2005.

The reason it will be necessary to do so as there are allegations of malfeasance, misfeasance and possibly more serious offences involving decriminalised parking enforcement in a number of local authority areas currently in the process of being uncovered. There are also serious concerns and possible legal action involving the National Parking Adjudication Service. The outcome of both of these will have fundamental and serious implications for the future of decriminalised parking enforcement across the country.

There is currently a serious internal and external investigation being conducted into the legitimacy of Sunderland City Council's D.P.E. There has already been an admission by the City Council that over £20,000 has been collected unlawfully from motorists with more to follow:

1. Accrington Council have also been forced to repay monies to motorists who have received unlawful PCN's.
2. More evidence is being uncovered in other local authorities arising from incorrect Traffic Regulation Orders or misinterpreting or misunderstanding the legislative requirements with regard to DPE.

The implications of legal action being taken in areas across the country must be fundamental to the Transport Committee's understanding of the serious concerns that are being raised with regard to DPE and the perception by the motorist of DPE's legitimacy.

ROAD TRAFFIC REGULATION ACT 1984 V ROAD TRAFFIC ACT 1991

The first series of problems arises because of the iniquitous situation across the country whereby parking restrictions are enforced under two different pieces of legislation. The motorist does not generally become aware of this inequity until he has received a ticket . . . i.e. after having committed an "offence" (under the 1984 RTRA) or a "contravention" (under the 1991 RTA).

Surely this is fundamental principle. The consequences of this do not appear to have been addressed.

For laws to be accepted and understood by society at large, they need to be seen as clear, fair and just. However, with the case of parking offences, it is the case that access to justice for an alleged offender is potentially totally different in two neighbouring local authority areas. This is purely dependent on which parking enforcement regime a Local Authority is operating.

One enforcement regime, operating under the RTRA 1984, results in an appeal process which allows access to a magistrates' court. The other, operating under the RTA 1991, does not allow access to a court of law but to an "independent" tribunal.

Under the 1984 Act it is the driver who is responsible for the offence.

Under the 1991 Act it is the registered keeper who is responsible for the contravention. Hardly fair, just, transparent or acceptable and not apparent to the motorist until he receives a ticket.

We have actual cases ready to cite as examples of injustice.

Therefore, surely the best legislative provision would be to have one national parking law to ensure fairness, transparency and acceptance rather than the situation at present, where under the RTA 1984 the system has the necessary common law checks and balances yet the system operating under the 1991 RTA simply perceived by the public as a "revenue raiser" with Local Authority's simply incentivised by profit and no access to justice for the motorist.

A simple question to ask is . . . "As the number of PCN's has exponentially increased have the towns and cities become clearer of traffic?"

If the DPE enforcement system works then the number of contraventions should decrease as funded alternatives increase.

This is not the case and there appears to be no evidence to support this, but the revenue raised from a more draconian enforcement regime seems to be the main driver, not the necessity to create a fairer parking enforcement regime for local businesses, customers and residents.

LEGITIMACY OF DPE/BILL OF RIGHTS 1689

For the avoidance of any doubt in the following matter it is very useful that the Houses of Parliament Transport Committee Press Notice (04/2005-06, 9 August 2005) refers to "parking fines". There can be no argument. If the Committee, the public, the Bulk Traffic Enforcement Centre at Northampton County Court and the legislators consider parking penalty charges as fines then the attempted justifications put forward by local authorities that it is not a fine but an "excess charge" or other play on words, it is clear to all that what we are dealing with here is a fine.

Therefore, I wish for the Committee to now consider and address the legality of DPE itself in light of the following.

As no doubt members will be aware, on 21 July 1993, the Speaker of The House of Commons issued a reminder to the courts. Betty Boothroyd said: "There has of course been no amendment to The Bill of Rights . . . the House is entitled to expect that The Bill of Rights will be fully respected by all those appearing before the courts."

There is a provision in the Bill of Rights Act 1689 which states:

"That all grants and promises of fines and forfeitures of a particular person before conviction are illegal and void."

This states that a conviction is necessary before a fine or forfeit can be imposed. As you will be aware, the Bill of Rights is a "constitutional statute" and may not be repealed impliedly. This was stated in the case *Thoburn v City of Sunderland*, the decision commonly referred to as the "*Metric Martyrs*" Judgment. This was handed down in the Divisional Court (18 February 2002) by Lord Justice Laws and Mr Justice Crane (I will paraphrase, but have included a copy of the judgment's relevant sections 62 and 63).

62. "We should recognise a hierarchy of Acts of Parliament: as it were "ordinary" statutes and "constitutional statutes." The special status of constitutional statutes follows the special status of constitutional rights. Examples are the . . . Bill of Rights 1689 . . ."

63. "Ordinary statutes may be impliedly repealed. Constitutional statutes may not . . ."

This was upheld by Lords Bingham, Scott and Steyn in an appeal which went to the House of Lords on Monday 15 July 2002.

I am not aware that the Road Traffic Act 1991 makes express reference to repealing the Bill of Rights Act 1689 therefore there can be no fine except for one that is imposed by a court.

It is therefore important that the Transport Committee considers the implications of any attempt to override the provisions of the Bill of Rights and the constitutional considerations of doing so. It will then be necessary to understand the constitutional considerations of ignoring the Declaration of Rights.

THE SUNDERLAND CITY COUNCIL INVESTIGATION

A specific case, which has "implications" for all other DPE's, across the country. The submission or application to the Department for Transport for approval by the Secretary of State to create the Special Parking Area to allow Sunderland City Council to create a DPE simply gave "reassurances" that all necessary signs, lines and Traffic Regulation Orders would be in place when the DPE was to commence. If it is proved not to be the case and that the Secretary of State was misled into granting an SPA creating a DPE then there are very serious implications indeed as over 60,000 PCNs will have been issued unlawfully.

The investigation is ongoing but there has already been an admission to unlawfully receiving over £20,000 from PCN's issued under non-existent TRO's and the allegation is that none of the TRO's are "in force" thereby meaning every PCN issued has been done so unlawfully.

There appears to have been no checks by either the DfT or the Secretary of State regarding the substance of claims made by any applicant to have valid and accurate signage and TROs.

Evidence is coming to light of many other similar situations by other Local Authorities. It is in light of this that I stress the need for further, more detailed submissions to the Committee involving citing specific cases in detail.

NPAS (NATIONAL PARKING ADJUDICATION SERVICE)

Again, there is an ongoing investigation in relation to this body. It involves complaints to the Department of Constitutional Affairs and the Law Society.

NPAS is representing itself as a "Court of Law" on its website yet when questioned in writing it confirms it is not a court of law, but a tribunal.

However, the main concern is that NPAS is not "independent" as it is scrutinised by a Joint Committee (comprising appointed members from participating LA's) and is funded solely by 60p per PCN issued.

There is no right of appeal except on a point of law.

If NPAS is not a court of Law within the meaning of Article 234 EC, therefore its decision will be in contravention of Article 6 of The European Convention on Human Rights.

In order to determine whether a body making a reference is a court or tribunal of a Member State for the purposes of Article 234 EC, the Court takes account of a number of factors, such as whether the body is established by law, whether it is permanent, whether its jurisdiction is compulsory, whether its procedure is inter partes, whether it applies rules of law and whether it is independent (see, in particular, Case C-54/96 Dorsch Consult [1997] ECR I-4961, paragraph 23, and the case-law there cited, and Case C-516/99 Schmid [2002] ECR I-4573, paragraph 34).

Under the Court's case-law, an arbitration tribunal is not a "court or tribunal of a Member State" within the meaning of Article 234 EC where the parties are under no obligation, in law or in fact, to refer their disputes to arbitration and the public authorities of the Member State concerned are not involved in the decision to opt for arbitration nor required to intervene of their own accord in the proceedings before the

arbitrator (Case 102/81 "Nordsee" Deutsche Hochseefischerei [1982] ECR 1095, paragraphs 10 to 12, and Case C-126/97 Eco Swiss [1999] ECR I-3055, paragraph 34).

Therefore because of the rights of the individual are being removed in the name of parking "efficiency" then the resistance to DPE will grow and as more and more motorists realise the illegitimacy of the whole operation and begin to challenge and clog the system then it will collapse under its own bureaucratic burden.

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